

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 31 January 2019

Public Authority: Cornwall Council
Address: County Hall
Treyew Road
Truro
TR1 3AY

Decision (including any steps ordered)

1. The complainant requested information about an economic viability assessment. In handling the request, Cornwall Council ("the Council") extended the time for compliance under regulation 7(1), and subsequently provided a response in which it disclosed the held information. The complainant queried the Council's decision to apply regulation 7(1), and the Council acknowledged in its internal review that it was incorrect to do this.
2. The Commissioner's decision is that the Council incorrectly applied regulation 7(1), and in doing so disclosed held information outside the time for compliance, therefore breaching regulation 5(2).
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 7 June 2018, the complainant wrote to the Council and requested information in the following terms:

The Planning Appeal Ref: APP/D0840/A/14/2229298 condition 5 states:

The first application for approval of the reserved matters submitted in accordance with conditions 2 and 3 shall be accompanied by a detailed Economic Viability Assessment.

The reserved matters PA16/03063 does not contain this information. I request to see the Economic viability assessment for this application.

5. The Council responded on 4 July 2018. It stated that, under regulation 7(1) of the EIR, it reasonably believed that the complexity and volume of the information requested meant it was impractical to comply with the request within 20 working days, and therefore needed to extend the period to 40 working days (that is, until 2 August 2018).
6. On 4 July 2018, the complainant asked the Council to undertake an internal review about its application of regulation 7(1).
7. The Council responded further on 25 July 2018. It disclosed the requested information, but with third party personal data redacted under regulation 13.
8. Following an internal review the Council wrote to the complainant on 29 August 2018. It stated that, on review of its handling of the request, the reliance upon regulation 7(1) was incorrect.

Scope of the case

9. The complainant contacted the Commissioner on 29 August 2019 to complain about the way his request for information had been handled, and specifically that the Council's incorrect application of regulation 7(1) had caused a significant delay in the disclosure of held information.
10. The Commissioner considers the scope of the case to be the determination of whether the Council has complied with regulation 7(1) and 5(2).

Reasons for decision

Regulation 5(2) – Time for compliance

Regulation 7(1) – Extension of time

11. Regulation 5(2) states that, where a public authority holds environmental information, the *'information shall be made available [...] as soon as possible and no later than 20 working days after the date of receipt of the request.'*
12. Regulation 7(1) permits that, where a public authority *'reasonably believes that the complexity and volume of the information requested means that it is impracticable either to comply with the request within the earlier period or to make a decision to refuse to do so'*, it may extend the time for compliance by a further 20 working days, to a total of 40.
13. In this case, the Council informed the complainant of its intention to extend the time for compliance on 4 July 2018.
14. Whilst the Council subsequently complied with the request within 40 working days, it then acknowledged (in its internal review outcome of 29 August 2018) that it had been incorrect to apply regulation 7(1).
15. The Council has since informed the Commissioner that it maintains this position, and has clarified that, due to the internal process that was followed in handling the request, it was not identified until a late stage that the requested information had previously been determined as suitable for public disclosure, and consequently made publicly available under a different planning application reference. The Council has further informed the Commissioner that it has now revised its internal processes in avoid similar situations in the future.
16. Having considered the above, the Commissioner has concluded that the Council incorrectly applied regulation 7(1), and in doing so, also breached regulation 5(2) by failing to comply with the request within 20 working days.

Right of appeal

17. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

18. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
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