

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 12 April 2019

Public Authority: Thanet District Council
Address: Thanet Council
Hawley Square
Margate
Kent
CT9 1NY

Decision (including any steps ordered)

1. The complainant has requested information pertaining to Thanet District Council's review of the Port of Ramsgate and related plans for increased commercial shipping capacity following Brexit.
2. The Commissioner's decision is that the Council has failed to respond to the request within 20 working days and has therefore breached regulation 5(2) of the EIR.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Issue a substantive response, under the EIR, to the request.
4. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

5. On 4 January 2019, the complainant wrote to the Council and requested information in the following terms:

"A press statement from Thanet District Council on 30th November 2018 said that: "the council has reviewed the capability of the Port of Ramsgate to provide capacity to support the Brexit position which, with an investment of £26 million, includes the potential for up to 24 sailings a day which would create capacity to divert 3,360 lorry movements per day from Operation Brock from the M20 and M26 significantly reducing pressure from the Port of Dover during peak traffic flows" It also says that "This information has been shared with Government" Under the Freedom of Information Act (2000) please could you provide me with a copy of : 1) the report reviewing capacity at Ramsgate referred to above 2) the submission made to the government by TDC relating to capacity at Ramsgate 3) any correspondence from Thanet District Council to the government regarding Seaborne Freight sent in October/November/December 2018 Additionally, please can you tell me: 4) who at Thanet District Council carried out due diligence on Seaborne Freight? (Job titles only would be fine) 5) what qualifications they held to do so"

6. The Council acknowledged the request on 4 January 2019 but had failed to provide a substantive response by the date of this notice.

Scope of the case

7. The complainant contacted the Commissioner on 13 February 2019 to complain about the way her request for information had been handled.
8. The Commissioner contacted the Council on 26 February 2019 to highlight the outstanding response and request that a response be issued, to the request, within 10 working days. The Council acknowledged receipt of the email on 26 February 2019. The email stated that the Council normally deals with information requests within the statutory timeframe.
9. The complainant contacted the Commissioner on 20 March 2019 to request a decision notice considering the Council's compliance with the EIR.

10. The Commissioner considers that the scope of her investigation is to determine whether the Council has complied with regulation 5(2) of the EIR.

Reasons for decision

11. Regulation 2(1) of the EIR defines environmental information as being information on:

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;*
- (d) reports on the implementation of environmental legislation;*
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);*

12. The Commissioner has not seen the requested information but has considered the wording of the request and notes that it is for information relating to assessments and plans for increased commercial shipping at a specific location. Therefore she believes that it is likely to be information about cost-benefit and other economic analyses and assumptions linked to measures likely to affect the elements and factors

of the environment. For procedural reasons, she has therefore assessed this case under the EIR.

13. Regulation 5(1) states that: *"a public authority that holds environmental information shall make it available on request."*
14. Regulation 5(2) states that such information shall be made available *"as soon as possible and no later than 20 working days after the date of receipt of the request."*
15. The Commissioner considers that the request in question constituted a valid request for information under the EIR.
16. Regulation 7 provides that an authority may extend the time for compliance to 40 working days if it reasonably believes that the complexity and volume of the information requested means that it is impracticable either to comply with the request or to make a decision to refuse to do so. However regulation 7(3) states that the authority is obliged to notify the applicant as soon as possible and no later than 20 working days after the request is received. The Commissioner has seen no evidence that the Council advised the complainant that it was relying on regulation 7.
17. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the Council has breached regulation 5(2) of the EIR.

Right of appeal

18. 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

19. 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.
20. 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

Sarah O'Cathain
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF