

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

Date: 17 June 2019

Public Authority: Essex County Council
Address: PO Box 11
County Hall
Chelmsford
Essex
CM1 1LX

Decision (including any steps ordered)

1. The complainant submitted a three part request to Essex County Council relating to Planning Permission ESS/00/12/BAS for a MBT facility at land at 'Tovi Eco Park', Basildon. In part 1 of the request the complaint seeks correspondence between Essex County Council in its capacity as Waste Disposal Authority and Essex County Council in its capacity as Waste Planning Authority. The requested correspondence concerns an alleged breach of planning control. Having initially refused to provide this correspondence, the Council reviewed its position and subsequently disclosed it to the complainant.
2. The Commissioner has decided that, in making its disclosure, the Council has now complied with Regulation 5(1) of the EIR. Due to the lateness of its disclosure the Commissioner has also decided that the Council has contravened Regulation 5(2).
3. The Commissioner requires the Council to take no further action in this matter.

Request and response

4. On 24 July 2018, the complainant wrote to the Council and asked to be provided with information relating to Planning Permission Reference ESS/22/12/BAS, for an MBT facility at land at 'Tovi Eco Park', Courtauld Road, Burnt Mills Industrial Estate, Basildon, Essex. The complainant asked the Council to provide the following information:
 - i. "Any correspondence between Essex County Council in its capacity as Waste Disposal Authority ("WDA") and Essex County Council in its capacity as Waste Planning Authority ("WPA") relating to an alleged breach of planning control due to the operation of a QSRF Line within the Development.
 - ii. Any file notes, documentation of or records of meetings or calls between Essex County Council in its capacity as Waste Disposal Authority ("WDA") and Essex County Council in its capacity as Waste Planning Authority ("WPA") relating to an alleged breach of planning control due to the operation of a QSRF Line within the Development.
 - iii. A full copy of the planning enforcement file (as held by the WPA in hard copy or electronically) with reference to DR/03/18 in relation to the above Development."
5. The Council responded to the complainant's request on 21 August 2018. It informed the complainant that it held some information falling within the scope of his request.
6. In respect of part 1 of his request, the Council directed the complainant to its website where it advised him that he could find the WDA's letter to the WPA of 16 November 2017. The Council advised the complainant that the WPA is applying the exception under Regulation 12(5)(f) of the EIR, to information concerning the alleged breach of planning control. It said that the third party has not consented to any wider disclosure.
7. The Council informed the complainant that neither the WDA nor the WPA hold information falling within part 2 of his request.
8. In respect of part 3, the Council advised the complainant that it holds information only as the WPA and not in its capacity as WDA. It informed the complainant that the of the information contained in its enforcement file is being withheld in reliance on Regulation 12(5)(b) of the EIR. The Council acknowledged that most of the information it holds is already made available to the public via:

<https://cmis.essexcc.gov.uk/essexcmis5/CalendarofMeetings/tabid/73/ctl/ViewMeetingPublic/mid/410/Meeting/3966/Committee/37/SelectedTab/>

[Documents/Default.aspx](#)

and,

<https://cmis.essexcc.gov.uk/essexcmis5/CalendarofMeetings/tabid/73/ctl/ViewMeetingPublic/mid/410/Meeting/3969/Committee/37/SelectedTab/Documents/Default.aspx>

9. On 6 September 2018, the complainant wrote to the Council and asked it to conduct an internal review. The complainant's letter set out his grounds for rebuttal of the Council's initial response.
10. Having conducted its internal review, the Council wrote to the complainant on 21 November 2018 to advise him of its final decision. In respect of part 1 of his request, the Council's reviewer informed the complainant that, "I have decided that in the absence of third party consent we will not be disclosing this information and therefore your request is not upheld".
11. In respect of part 3 of the complainant's request, the Council decided to release the enforcement, except for the name of a council junior officer which was redacted under Regulation 13 of the EIR.

Scope of the case

12. The complainant contacted the Commissioner on 25 January 2019 to complain about the way his request for information had been handled.
 13. The complainant has made clear to the Commissioner that his complaint concerns only the Council's position in respect to part 1 of his request and only to that information which has not been disclosed.
 14. The complainant advised the Commissioner that he disputes the Council's application of Regulation 12(5)(f) to the information it is withholding. He has set out the grounds for his complaint in a letter to the Commissioner of 25 January 2019.
 15. The Commissioner advised the complainant that the focus of her investigation would be to determine whether Essex County Council is entitled to withhold information from him in reliance on Regulation 12(5)(f) of the EIR.
-

Reasons for decision

16. The Commissioner wrote to the Council on 11 April 2019, making enquiries about its application of Regulation 12(5)(f) of the EIR to information which is relevant to part 1 of his request.
17. On 16 May 2019, the Council wrote to the Commissioner to advise her that, having reviewed its position further, the Council no longer wishes to rely on Regulation 12 (5)(f)) with regard to part 1 of the complainant's request and therefore it would release a copy of the correspondence to the complainant by the end of the week ending 17 May 2019.
18. The Council provided the Commissioner with a copy of the information it intended to disclose to the complainant.
19. Under Regulation 5(1) of the EIR a public authority that holds environmental information shall make it available on request unless it is subject to at least one of the exceptions to disclosure provided by Regulations 12 and 13.
20. Regulation 5(2) requires a public authority that holds environmental information to make that Information available to the requester as soon as possible and no later than 20 working days after the date of receipt of the request.
21. The Council, in providing the complainant with the information he asked for, has now complied with the provisions of section 1 of the FOIA.
22. The Council's disclosure of the requested information was made significantly outside of the twenty working day compliance period required by Regulation 5(2) of the EIR and therefore the Commissioner is obliged to conclude that Essex County Council has contravened this provision.
23. The Commissioner will use intelligence gathered from cases such as this to inform her office's insight and compliance function. This will align with the goal in the Commissioner's draft [Openness by design strategy](#) to improve standards of accountability, openness and transparency in a digital age. The Commissioner's aim is to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our [Regulatory Action Policy](#).

Right of appeal

24. 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@justice.gov.uk

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

25. 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.
26. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF