

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 21 August 2019

Public Authority: Manchester City Council
Address: Town Hall
Manchester
Lancashire
M60 2LA

Decision (including any steps ordered)

1. The complainant requested information from Manchester City Council ("the Council") relating to its climate change action plan with reports and guides stemming from that. The Council refused part of the request as it contained incomplete material. However, although some drafts were later provided to the complainant, the Commissioner is of the view that the information released does not constitute what was actually requested.
2. The Commissioner's decision is that the Council has breached regulations 5(1) and 5(2) of the EIR by not providing the information requested within the time for compliance.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request
4. The public authority 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 Act and may be dealt with as a contempt of court.

Request and response

5. On 30 November 2018, the complainant wrote to the Council and requested information in the following terms:

"1. In "Climate Change Action Plan 2016-20 Quarter 4 2017/18 Progress Report" it is stated:

"A full review of the work of the food board and delivery of the food programme will be carried out in 2018/19."

a) What is the status of this review. Has it begun to be conducted? Has it completed?

b) Please send to me a copy of any documents that have arisen from this review, such as a final report if it exists, and minutes of meetings of this review if they exist.

2) In "Climate Change Action Plan 2016-20 Quarter 4 2017/18 Progress Report" it is stated:

"The OPEN DPD study kicked off in October 2017 and was due for completion in May/June 2018. The stakeholder engagement process has been challenging, and so the study end date is likely to need to be pushed back to circa October 2018".

a) Has the study completed?

b) Please send to me a copy of the report of this study, if a report exists.

3) Please send to me a copy of the Green Events Guide (mentioned in the "Climate Change Action Plan 2016-20 Quarter 4 2017/18 Progress Report") - if it exists.

4) Please send to me a copy of the sustainable events plan (mentioned in the "Climate Change Action Plan 2016-20 Quarter 4 2017/18 Progress Report")- if it exists.

5) Please send to me minutes of the " Manchester GBI Group meeting" (mentioned in the "Climate Change Action Plan 2016-20 Quarter 4 2017/18 Progress Report"), if they exist."

6. The Council responded on 2 January 2019. It provided some information within the scope of the request, stated that it was withholding part of the information and denied holding the remainder of the information.

The Council cited regulation 12(4)(d) as its reason for withholding the information.

7. On 31 January 2019 the Council completed its internal review. It wrote to the complainant and provided him with further information within the scope of the request but maintained its position with regard to the exception it used.
8. Following the Commissioner's involvement in the complaint, the Council provided the complainant with draft sustainable events guides in July 2019.

Scope of the case

9. The complainant contacted the Commissioner on 3 January 2019 to complain about the way his request for information had been handled.
10. When the Council had completed its internal review, the complainant expressed the view that he remained dissatisfied with the response from the Council.
11. Once the Commissioner began her investigation, the Council advised that it would be in a position to release the information that it held within the scope of the complainant's request, and did so in July 2019.
12. Due to the Council releasing information to the complainant, and given that a public authority is entitled to change its position throughout the EIR process, the Commissioner considers that it would not be an appropriate use of her resources to investigate whether the Council correctly applied exceptions on which it no longer wishes to rely.
13. However, as the Council released the information many months after the 20 working day deadline, the Commissioner considers the scope of this case and the following analysis is to determine whether the Council has complied with Regulation 5(2) of the EIR.

Reasons for decision

Regulation 5 – Duty to make available environmental information on request

14. Regulation 5(1) states that: "*a public authority that holds environmental information shall make it available on request.*"

15. 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.*"
16. The request was made in November 2018 and information was provided to the complainant in July 2019.
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.
18. However, the complainant has raised the point that that the Council may have provided drafts to him in July 2019, but these drafts are more developed than they would have been if they were provided when they were requested, in November 2018.
19. On this point, the Commissioner agrees. Whilst it is clear that the information provided was reflective of what was held in July 2019, work has clearly allowed the drafts to have progressed from the state in which they would have been held at the time of the request. The Commissioner is bound to consider the state of the information held at the time of the request and so, logically, has to find a breach of the regulations in this respect.
20. As such, the Council has not provided the information that the complainant has asked for, meaning that it has also breached regulation 5(1) of the EIR and should therefore provide a fresh response to the request in respect of what was held at the time of the original consideration.

Other matters

21. The Commissioner notes that the complainant was provided the information with conditions.
22. Within the covering email the Council sent to the complainant that provided the drafts, the Council said, "*... we ask that you do not share further or release them in to the public domain.*"
23. In light of this, the Commissioner would like to advise that this is not in the spirit of the EIR as disclosure would mean that it should be disclosed

to the world at large. She has issued some guidance¹ on this and in it she advises: *"You should treat any information you release under the Regulations as if it were being released to the world at large."*

24. Within this guidance, the Commissioner also advises that this does not prevent an authority voluntarily giving information to people outside the provisions of the Regulations.
25. With this being considered, the Commissioner would recommend the Council to be mindful of clarifying whether it would be releasing the information inside or outside of the EIR, or whether any specific licencing issues are relevant before providing it to the requestor.

¹ <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/what-are-the-eir/>

Right of appeal

26. 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

27. 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.
28. 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
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Wycliffe House
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Wilmslow
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SK9 5AF