

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 11 February 2020

Public Authority: Southend-on-Sea Borough Council
Address: Civic Centre
Victoria Avenue
Southend-on-Sea
Essex
SS2 6ER

Decision (including any steps ordered)

1. The complainant requested information from Southend-on-Sea Borough Council (the Council) about a planning development.
2. The Commissioner's decision is that the Council has breached regulation 5(2) of the EIR in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation.
 - The Council must provide a substantive response to the request in accordance with its obligations under the EIR.
4. The Council must take this step 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 27 November 2019, the complainant wrote to the Council and requested information in the following terms:

"Please would you kindly arrange to provide me with copies of all of formal NPA comments on the application, including any correspondence from which the quote in Committee Report Paragraph 6.133 is derived, so I can fact check the advice received is accurately reported in the Committee Report. Please treat this as a request under FOI or EIR regulations as necessary. I believe that this already falls within my FOI Request 9165 given I requested all correspondence from NPA regarding the application.

Separately, I make a further FOI/EIR request for: Any further correspondence between the Planning Manager and yourself, or the Planning Manager, yourself, any Conservation and Design officer (including [redacted]), any Transport/Highways Officers (including [redacted]), any Environmental Health officer, or any other third party acting on the Council's behalf (including [redacted]) and the applicant and/or their agents or their consultants regarding this application or any technical matter related to this application from today's date. As the FOI team is aware, there appears to be some missing information from my previous request, particularly from NPA and Town Legal. For the avoidance of doubt, this includes any internal correspondence regarding the application."

6. The Council acknowledged the request on 28 November 2019. To date, a substantive response has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 8 January 2020 to complain about the Council's failure to respond to their request.
8. The Commissioner has considered whether the Council has complied with its obligations in relation to the time for compliance at regulation 5(2) of the EIR.

Reasons for decision

9. 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);

10. The Commissioner has not seen the requested information but has considered the wording of the request and notes that it is for information on a planning development. She believes that this is likely to be information about policies, legislation, plans, programmes, environmental agreements and activities likely to affect the elements and factors referred to in Regulation 2(1)(a) and Regulation 2(1)(b). For procedural reasons, she has therefore assessed this case under the EIR.

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

12. Regulation 5(2) of the EIR states that:

"Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."

13. On 22 January 2020 the Commissioner wrote to the Council, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
14. Despite this intervention the Council has failed to respond to the complainant.
15. From the evidence provided to the Commissioner in this case, it is clear that the Council did not deal with the request for information in accordance with the EIR. The Commissioner finds that the Council has breached regulation 5(2) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the EIR.

Right of appeal

16. 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

17. 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.
18. 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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF