ico. Information Commissioner's Office

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: **7 0ctober 2021**

Public Authority: **Vale of Glamorgan Council**
Address: **Civic Offices**
Holton Road
Barry
Glamorgan
CF63 4RU

Decision (including any steps ordered)

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1. The complainant has requested information regarding the resurfacing of a highway.

2. The Commissioner's decision is that Vale of Glamorgan Council ("the Council") has failed to respond to the request within 20 working days and has therefore breached Regulation 5(2) of the Environmental Information Regulations ("the EIR").

3. The Commissioner requires the Council 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 Act and may be dealt with as a contempt of court.

Request and response

5. On 2 July 2021, the complainant wrote to the Council and requested information in the following terms:

   "I wish to make an official request under The Freedom of Information Act as follows:

   The last date(s) when the highway in Tan Y Fron Barry Vale of Glamorgan was resurfaced; also

   A copy of any pre survey completed prior to the resurfacing taking place, and

   A copy of the subsequent survey undertaken by your highways department subsequent to the completion of these works which would have been necessary to assess the quality of the works undertaken."

6. The Council acknowledged the request on 6 July 2021, 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 16 August 2021 to complain about the way their request for information had been handled.

8. In line with her usual practice, the Commissioner contacted the Council on 13 September 2021 to highlight the outstanding response. She requested that the Council respond to the request within 10 working days. The correspondence was neither acknowledged nor responded to.

9. 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

10. 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);

11. The Commissioner has not seen the requested information but, as it is information relating to road surfacing, she believes that it is likely to be information about the state of the elements of the environment, and activities affecting or likely to affect the elements. For procedural reasons, she has therefore assessed this case under the EIR.

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

13. 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."*

14. The Commissioner considers that the request in question constituted a valid request for information under the EIR.

15. 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.

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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: 0203 936 8963
    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 ……

Michael Lea
Team Manager
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