

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 27 October 2021

Public Authority: Brighton and Hove City Council

Address: Hove Town Hall
Norton Road
Hove
BN3 3BQ

Decision (including any steps ordered)

1. The complainant requested information from Brighton and Hove City Council ("the Council") relating to hazardous sites.
2. The Commissioner's decision is that the Council has failed to carry out a reconsideration (internal review) of a response it provided, under the Environmental Information Regulations ("the EIR"), within 40 working days and has therefore breached Regulation 11 of the EIR.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Reconsider how it responded to the original request and inform the complainant of the outcome of that reconsideration in accordance with Regulation 11 of the EIR.
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 Freedom of Information Act and may be dealt with as a contempt of court.

Request and response

5. On 22 June 2021, the complainant wrote to the Council and requested information in the following terms:

"I note, from the BHCC Brownfield Land Register Update 2020, that 14 sites in Brighton and Hove have been identified as "Hazardous"

Would you please provide details of why these 14 sites are identified, in the Register, as hazardous?

I thank you for your help and look forward to your response in due course."

6. On 5 July 2021 the Council wrote to the complainant and stated that it did not hold any information within the scope of the request.
7. The complainant requested an internal review on 26 July 2021. By the date of this notice, the Council had not completed its internal review.

Scope of the case

8. The complainant contacted the Commissioner on 2 September 2021 to complain about the Council's failure to respond to their request for an internal review.
9. In line with her usual practice, the Commissioner contacted the Council on 27 September 2021 to highlight the outstanding response. She requested that the Council complete its reconsiderations within 10 working days.
10. The complainant contacted the Commissioner on 25 October 2021 to inform her that they had not received the outcome of the Council's internal review.
11. The scope of the Commissioner's investigation is to determine whether the Council has complied with regulation 11 of the EIR.

Reasons for decision

12. Regulation 11 of the EIR states that:

- (1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.*
 - (2) Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.*
 - (3) The public authority shall on receipt of the representations and free of charge—*
 - (a) consider them and any supporting evidence produced by the applicant; and*
 - (b) decide if it has complied with the requirement.*
 - (4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.*
 - (5) Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of—*
 - (a) the failure to comply;*
 - (b) the action the authority has decided to take to comply with the requirement; and*
 - (c) the period within which that action is to be taken.*
13. From the evidence presented to the Commissioner in this case it is clear that, in failing to carry out an internal review within 40 working days the Council has breached regulation 11 of the EIR.

Right of appeal

14. 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

15. 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.
16. 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

Catherine Fletcher
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