

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

Date: 23 March 2022

Public Authority: Horsham District Council
Address: Parkside
Chart Way
Horsham
West Sussex
RH12 1RL

Decision (including any steps ordered)

1. The complainant requested information about a specific piece of pre-application advice. Horsham District Council ("the Council") initially withheld the requested information before later determining that it could be disclosed as it was no longer sensitive.
2. The Commissioner's decision is that the Council 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 therefore breached Regulation 11 of the EIR.
3. The Commissioner does not require further steps.

Request and response

4. On 13 July 2021 , the complainant wrote to the Council and requested information in the following terms:

"All documents, whether in electronic or hard copy form, both external and internal, including all notes, letters, plans, emails and any other related correspondence, relating to the preapplication advice process in respect of [address redacted]."

"This request covers the entire period of the preapplication advice process which I know to have taken place in 2021, and may have begun in 2020."

5. On 4 August 2021, the Council responded to and sought an additional 20 working days in which to comply with the request due to the volume and complexity of the information sought.
6. The Council issued its substantive response to the request on 7 September 2021. It relied on Regulation 12(4)(e) – internal communications; Regulation 12(5)(d) – confidentiality of proceedings; and Regulation 12(5)(f) of the EIR – interests of the provider; respectively to withhold the information.
7. The complainant requested a review on 21 September 2021 and she challenged the Council's reliance on Regulation 12(5)(d) and 12(5)(f) of the EIR respectively. The Council completed its review on 25 November 2021. It largely upheld its original position but did disclose one paragraph from the withheld information.

Scope of the case

8. The complainant contacted the Commissioner on 4 December 2021 to complain about the way her request for information had been handled.
9. Whilst the complaint was awaiting allocation to an investigating officer, the Council contacted the Commissioner of its own volition to say that, due to the passage of time, the information which had previously engaged Regulation 12(5)(d) and Regulation 12(5)(f) was no longer sensitive and had been disclosed to the complainant.
10. When contacted by the Commissioner, the complainant was unwilling to withdraw her complaint. She was unhappy about the delay between the making of the request and the information being disclosed. She considered that this delay had prejudiced her ability to participate in a particular planning application. She further argued that information had not been confidential and the Council had deliberately delayed the process. She did not challenge the Council's reliance on Regulation 12(4)(e) of the EIR to withhold information.
11. Where a public authority originally relied on an exception to withhold information, but subsequently disclose that information the Commissioner will not usually investigate whether the exception was correctly applied. To do so would not be a responsible or proportionate use of his finite resources as the requestor could not be placed in a more advantageous position than whence they started. The Commissioner will

make no formal determination as to whether the Council was entitled to rely on any of the stated exceptions beyond noting that these exceptions have previously been cited by other councils in respect of information of this type.

12. The scope of the Commissioner's investigation is to determine whether the Council has complied with Regulation 11 of the EIR.

Reasons for decision

13. 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);*

14. The Commissioner has not seen the requested information but, as it is information relating to planning, he believes that it is likely to be information "on a "measure" affecting or likely to affect the elements of

the environment. For procedural reasons, he has therefore assessed this case under the EIR.

Reconsideration/Internal Review

15. 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.*

16. 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.

Other Matters

17. Regarding the complainant's allegations of a "deliberate delay" by the Council, the Commissioner notes the following.
18. Regulation 7 of the EIR permits a public authority to extend the deadline for compliance from 20 working days to 40 working days if more time is needed due to the volume and complexity of the information. The Council informed the complainant within 20 working days that it would need an extension and it responded before the 40 working day deadline would have expired.
19. The Council proactively disclosed the information to the complainant of its own volition and prior to the Commissioner commencing his investigation. Whilst this may not have been soon enough to have been of significant use to the complainant, it does not suggest any deliberate intent to frustrate the EIR process – beyond the procedural breach identified above.

Right of appeal

20. 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

21. 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.
22. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF