

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 27 May 2022

Public Authority: St Helens Council
Address: Wesley House
Corporation Street
St Helens
WA10 1HF

Decision (including any steps ordered)

1. The complainant has requested information held by St Helens Council (the council) relating to the funding and plans to redevelop land within the local area.
2. The Commissioner's decision is that the council has breached regulation 5(2) of the EIR, as it failed to provide a response to the complainant within the required 20 working days.
3. Furthermore, as the council failed to conduct an internal review, the Commissioner has found a breach of regulation 11(3), and regulation 11(4), of the EIR.
4. The Commissioner does not require the council to take any steps as a result of this decision notice.

Request and response

5. On 19 November 2020, the complainant wrote to the council and requested information in the following terms:

'Would you please arrange for the following information to be forwarded to me; I'm not sure to whom I should be making this request to?

The Liverpool City Region (LCR) received a government grant earlier this year of £45m for the purpose of reclaiming contaminated land for

the building of new homes. St. Helens Borough's allocation of this funding was £10m.

To what sites has this £10m pounds been allocated, please identify the Planning Application Reference Number and the amount of money allocated per site, and the outstanding balance yet to be committed to any site.

Does the Council have access to other sources of funding they can use to bring forward contaminated sites for housing development?

Does the Council apply directly to government for funding to bring forward sites for housing development without going through the Liverpool City Region?'

6. Whilst the council acknowledged receipt of the request on the same day, it did not provide its response to the complainant until 15 April 2021 (following the Commissioner's intervention).
7. The council provided some information to the complainant; however, on 29 April 2021, the complainant expressed his dissatisfaction with the council's response, stating that they were aware that additional information was held that was relevant to the request.
8. On 30 June 2022, the Commissioner wrote to the council to request that it now conduct an internal review. He received no response to this correspondence.
9. On 5 July 2021, the complainant sent a reminder letter to the council, but did not receive a response.

Scope of the case

10. On 22 March 2021, the Commissioner received a letter from the complainant which raised concerns about the council's failure to respond to their request.
11. The complainant subsequently advised that they had not received a response to their internal review request, or to a chaser letter that they sent to the council on 5 July 2021.
12. The Commissioner then wrote to both parties on 17 September 2021, to confirm that the case had been accepted for further investigation.
13. On 19 October 2021, the council queried whether the correct request had been referred to in the Commissioner's correspondence of 17 September 2021. It stated that a response to the complainant's request

was issued on 15 April 2021, and that it had been unable to locate any request for an internal review on its system. However, it stated that it had received, and responded to, two other internal review requests submitted by the complainant.

14. On the same date, the Commissioner confirmed to the council that the correct details about the complaint had been provided, and provided a further copy of the complainant's internal review request of 29 April 2021.
15. On 18 May 2021, the Commissioner contacted the complainant to discuss the current position of his complaint.
16. The complainant confirmed that they had still not received the council's internal review response. They went on to say that whilst they have now obtained part of the requested information via alternative channels, by the time it had been received, its value had diminished significantly.
17. The complainant has expressed concern about the council's handling of this request, stating that at the time of its submission, the information required was of great value to the public. The complainant has advised that they have concerns that the delays were a deliberate act by the council, intended to prevent disclosure of information to the public until a point where it would no longer have relevance.
18. Given the passage of time, the complainant has confirmed that he no longer requires the Commissioner to investigate the alleged failure by the council to provide all the information held that was relevant to the request.
19. However, the complainant has asked the Commissioner to consider the council's failure to respond to his request, and their other correspondence, in a timely manner.
20. The Commissioner will therefore only make a decision on certain procedural matters as agreed with the complainant.

Reasons for decision

Correct Access Regime

21. Information is 'environmental information' and must be considered for disclosure under the terms of the EIR, rather than the FOIA, if it meets the definition set out in regulations 2(1)(a) to 2(1)(f) of the EIR.

22. Regulation 2(1)(c) of the EIR says that any information on measures such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements or factors of the environment listed in regulation 2(1)(a) and 2(1)(b) will be environmental information.
23. The information requested relates to the plans and the funding of new housing developments. It is the Commissioner's view that the withheld information is integral to a measure (the funding for, and plans to, redevelop land) which will, or will be likely to, affect the environment.
24. Therefore, the Commissioner considers that the request is for environmental information, and that the EIR is the appropriate access regime.

Regulation 5(2) – time for compliance

25. Regulation 5(2) of the EIR states that information should be made available as soon as possible, and within 20 working days of receipt of the request.
26. In this case, it took the council almost five months to provide its response to the complainant's request, and it only took such action following the intervention of the Commissioner.
27. The Commissioner therefore finds that the council has breached regulation 5(2) of the EIR.

Regulation 11 – Internal review

28. Regulation 11(4) requires that the authority notify the applicant of its decision in relation to the applicant's representations no later than forty working days after receipt of those representations.
29. In this case, the council was given a number of opportunities to conduct the internal review before the Commissioner commenced his investigation, but failed to do so.
30. As the council has failed to conduct an internal review in this case, the Commissioner has found there to be a breach of regulation 11(4) of the EIR.
31. In most instances, where it is found that a public authority has failed to issue an internal review response as required by the EIR, the Commissioner would order that it now take such action. However, as the complainant has advised that, given the passage of time since they made their request, they no longer require any additional information

which may be held by the council, the Commissioner does not require the council to take any steps in this instance.

Other matters

32. The Commissioner is mindful that the Covid-19 pandemic may have impacted on the council's ability to deal with this request in a timely manner. However, he still has concerns about the council's general handling of this request, and, in particular, its failure to act following receipt of his correspondence of 30 June 2021, requesting that it now carry out an internal review.
33. The Commissioner records details of those cases (including those where a decision notice is not issued) where it is found that a public authority has failed to respond to a request, or an internal review request, within the prescribed time periods.
34. The council must therefore ensure that there is no repetition of these issues in relation to future information requests. A failure to do so, and the receipt of similar complaints in the future, may lead the Commissioner to revisit this matter.

Right of appeal

35. 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

36. 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.
37. 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

Suzanne McKay
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF