

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 16 June 2022

Public Authority: The Environment Agency
Address: National Customer Contact Centre
PO Box 544
Rotherham
S60 1BY
United Kingdom

Decision (including any steps ordered)

1. The complainant has requested information from the Environment Agency about flood risk assessments, flood mapping and correspondence the Environment Agency has had with planning companies.
2. The Commissioner's decision is that the Environment Agency has failed to carry out a reconsideration (internal review) of a response it provided under the EIR within 40 working days. It has therefore breached regulation 11 of the EIR.
3. The Commissioner requires the Environment Agency 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 Environment Agency 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 15 October 2021, the complainant wrote to the Environment Agency and requested information in the following terms:

"Under the Freedom of Information Act I have to ask if you will please supply me with the following information:

A copy of the Flood Risk Assessment provided and submitted by DLP Planning Limited in May 2019 in respect of the above planning application.

Details and contents of all records relating to communication, inclusive of all emails, telephone and correspondence etc. between DLP Planning Limited and the Environment Agency, Nottingham, NG2 5FA during and after May 2019

All recorded flood mappings between 1958 and 2020

All Records held relating to Chesterfield Borough Council's Enforcement query ref PS/2/600/g which should include the following:

The response made in respect of the above to the CBC by Nottingham Environment Agency in February 2018.

Records submitted by the agent for the site bringing to your attention to the above response."

6. The Environment Agency responded to the request on 23 March 2022.
7. The complainant requested an internal review on 5 April 2022, but the Environment Agency had not completed its review at the date of this notice.

Scope of the case

8. The complainant contacted the Commissioner on 8 June 2022 to complain about the way this request for information had been handled.
9. The Commissioner contacted the Environment Agency on 20 May 2022 to highlight the outstanding internal review and asked the Environment Agency to complete its reconsiderations within 10 working days.
10. Despite this intervention the Environment Agency has failed to respond to the complainant.
11. The scope of the Commissioner's investigation is to determine whether the Environment Agency has complied with regulation 11 of the EIR.

12. For the avoidance of doubt, the Commissioner has not yet considered and therefore takes no position on whether the Environment Agency was entitled to rely on the exception under which it holds further information.

Reasons for decision

13. Regulation 11¹ of the EIR states that:

“(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.”

14. 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 Environment Agency has breached regulation 11 of the EIR.

¹ <https://www.legislation.gov.uk/uksi/2004/3391/regulation/11>

Right of appeal

15. 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

16. 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.
17. 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
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Wycliffe House
Water Lane
Wilmslow
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SK9 5AF