

Environmental Information Regulations 2004 (EIR)

Decision Notice

Date: 23 January 2025

Public Authority: Westmorland and Furness Council
Address: Parkhouse Building
Carlisle
Cumbria
CA6 4SJ

Decision (including any steps ordered)

1. The complainant requested information relating to a planning application for a proposed Gasification plant submitted to Cumberland Council, but they believed to be hosted by Westmorland and Furness Council (the Council).
2. The Council provided guidance as to where publicly available information could be accessed and stated that regulation 13 and 12(4)(e) of the EIR applied to information withheld from the requester. However, after the Commissioners intervention, the Council overturned its reliance on regulation 12(4)(e) at internal review disclosing information in scope of the request.
3. The complainant raised further concerns about the Council's response, and after several months of correspondence between the requester and the Council, during the Commissioners investigation, the Council eventually relied on regulation 3(2) of the EIR as its final response.
4. The Commissioner's decision is that the Council did not hold further information falling within the scope of the request at the time the request was received. However, the Council breached regulation 5(2) of the EIR as it failed to provide its substantive response within 20 working days, and breached regulation 11 of the EIR by failing to conduct an internal review within 40 working days.
5. The Commissioner does not require any steps as a result of this decision.

Request and response

6. On 7 February 2024, the complainant requested the following information from the Council:

"My request concerns correspondence about the proposed Gasification plant at Rockcliffe, Carlisle (Cumbria planning application 1/23/9005 and screening request SCR-1/23/37)

<https://planning.cumbria.gov.uk/Planning...>

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I am making this request of Westmorland and Furness Council rather than Cumberland because I understand Westmorland Council hosts the planning team that is processing this application, and I therefore expect Westmorland Council holds the requested correspondence. Please let me know if that is not the case.

Please send me a copy of all correspondence held (such as emails, text messages and WhatsApp messages) relevant to this proposal and that took place between the planning team responsible for processing this planning application (including, but not limited to, the designated planning officer) and other Council Departments, Directors, Managers and Councillors. Please include correspondence with Departments, Directors, Managers and Councillors of both Cumberland Council and Westmorland and Furness Council. Consultation responses shown on <https://planning.cumbria.gov.uk/Planning...> do not need to be included. Correspondence with the applicant does not need to be included.

Please provide the requested information by email with PDF attachments.

Release of the requested information is in the public interest because:

1. Full transparency is in the public interest.
 2. It is important that the planning process be seen as objective, fair and not influenced by matters that are not planning considerations.
 3. The proposal is highly controversial."
7. The Council responded to the complainant on 4 April 2024, it apologised for the delay in the response, providing some information in scope of the request and citing regulation 13 – personal information and regulation 12(4)(e) – internal communications- of the EIR to withhold information.

8. The complainant requested an internal review on 10 April 2024 in which they set out their grounds for dissatisfaction with the Council's reliance on regulation 12(4)(e) stating they did not believe the information requested was internal given it was between two separate councils and pointing out the Commissioners guidance.
9. The Council eventually conducted an internal review after the Commissioner's intervention and communicated the outcome to the complainant on 10 October 2024. The Council retracted its reliance on regulation 12(4)(e) and disclosed information in scope of the request.
10. The Commissioner wrote to the complainant on 15 October 2024 in order to ascertain their position after the Council's disclosure as they had not contacted the Council or Commissioner.
11. The complainant stated they were still dissatisfied with the response and set out further arguments with regards to information they felt the Council should have held and disclosed to them.

Scope of the case

12. The complainant originally contacted the Commissioner on 14 June 2024 in order to complain about the handling of their request. During the Commissioner's investigation, the complainant disputed the Council's position that it did not hold further information in scope of the request, namely communications between Cumberland and Westmorland and Furness Council's regarding the planning application stated previously.
13. The Commissioner is of the opinion that the requested information, if held, would be environmental information within the meaning of regulation 2(1)(c) of the EIR. This is because the proposed development is an activity that would be likely to affect the elements of the environment such as land and landscape, as well as factors such as noise and waste. The requested information would be "on" the development, therefore in the Commissioner's view it would fall squarely within regulation 2(1)(c). Neither the complainant nor the public authority has disputed this, therefore the Commissioner has considered the complaint under the EIR.
14. Accordingly, the scope of the Commissioner's investigation was to determine whether or not the Council held the information requested by the complainant at the time of their request.

Reasons for decision

Regulation 3(2): information held by the public authority

15. Regulation 3(2) of the EIR states that:

(2) For the purposes of these Regulations, environmental information is held by a public authority if the information –

(a) is in the authority's possession and has been produced or received by the authority; or

(b) is held by another person on behalf of the public authority.

16. The Council advised the complainant following the internal review that it did not hold further information within the scope of their request, since it had not been provided to the Council or held by the Council in association with the planning application.

17. The Council reiterated its stance from the internal review that all information held by it in scope of the request had been disclosed to the complainant in its response to the Commissioner on 30 October 2024.

18. Following further lengthy correspondence between the Commissioner, the complainant and the Council, all attempts at resolution were exhausted. From the information the Council had provided over the course of the investigation, the Commissioner wrote to the complainant on 10 January 2025 to outline his understanding of the Council's position and the next steps and options available to the complainant.

19. The complainant argued further that they believe that the Council's stance was incorrect and that it did hold information in scope of their request which they said was evidenced within responses they had received from Cumberland and Westmorland and Furness Councils.

20. In their response they argued that the information concerns the proposal which included correspondence about the screening opinion and correspondence that took place prior to the issue of pre-application advice issued by Westmorland and Furness employees. It also contained communications with the planning team responsible for processing the planning application.

21. The complainant stated that the scope of the request was broader than just the communications involving a single Westmorland and Furness Council employee. The complainant also stated that communications within the definition and scope of the request involved more than one Westmorland and Furness Council employee.

22. The complainant further pointed out that the request was for communications with the planning team responsible for processing the planning application, not the communications with whoever determines the planning application. They said that Westmorland and Furness Council were processing the application, even though Cumberland Council would make any determination. They also stated that the processing of the application is an important matter over which Westmorland and Furness Council employees have considerable control and Cumberland Council has little control.
23. However, from the information provided to him, the Commissioner accepts that the Council does not hold further information in scope of the request. The complainant, although presenting valuable insight and arguments, has not provided the Commissioner with sufficient evidence that the Council does hold this information for the purposes of the EIR. Rather the complainant has suggested that the Council should hold the information due to its role in the planning application process.
24. To summarise the Commissioner's guidance on this issue, a public authority, when seeking to establish if it holds environmental information under regulation 3(2)(a), needs to consider whether it holds it – either physically or digitally – **and** the extent to which it holds it for its own purposes.
25. These two cumulative requirements also have the effect of excluding from the scope of the EIR information a public authority is holding exclusively on behalf of someone else. This is because what matters is whether it is holding the information to any extent for its own purposes – i.e. whether the information relates to its work and functions as a public authority.
26. The Commissioner understands that the Council provided assistance to Cumberland Council as part of a contracted agreement (IAA) which included employees of the Council providing their required services. Therefore, it appears to the Commissioner that during the period in question, the employees were working on behalf of Cumberland Council and, although employed by Westmorland and Furness Council did not undertake this work for Westmorland.
27. Following the Commissioner's guidance, it appears that any relevant information which is in the possession of the Council is not held for its own purposes, rather for the purposes of providing an administrative service under contract for Cumberland Council.
28. Since the requested information was not held by the Council as per regulation 3(2) of the EIR, as set out above, the Commissioner finds that further information in scope of the request is not held.

29. The Commissioner cannot comment on whether the Council ought to hold the information. However, he is obliged to find that the Council does not hold further information in scope of the request.

Procedural matters

30. The Council failed to issue its substantive response within 20 working days of receipt of this request, therefore is in breach of regulation 5(2) of the EIR.
31. In this case the complainant requested an internal review on 10 April 2024 and despite the Council acknowledging this request, it failed to carry out an internal review until 10 October 2024, after the Commissioners intervention.
32. The Commissioner therefore finds that the Council has breached regulation 11 of the EIR by failing to carry out an internal review within the statutory time limit of 40 working days.
33. The Commissioner notes that as Westmorland and Furnace Council did not hold information in scope of the request, but alluded that Cumberland Council could hold information relevant to the request, he considers that it would have been best practice for the Council to advise the requester accordingly, and have passed the request to the relevant department at Cumberland Council for its consideration.

Right of appeal

34. 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

35. 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.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Deirdre Collins
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