

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

Decision notice

Date: 6 January 2014

Public Authority: Basingstoke and Deane Borough Council
Address: Civic Offices
London Road
Basingstoke
RG21 4AH

Decision (including any steps ordered)

1. The complainant has requested all representations made regarding a specific planning application. The Commissioner's decision is that Basingstoke and Deane Borough Council ('the council') did not meet the requirements of regulation 5 of the EIR in that it did not provide all of the requested information within 20 working days. However, as the information has now been provided, the Commissioner does not require the public authority to take any steps.

Request and response

2. On 28 June 2013, the complainant wrote to the council via the WhatDoTheyKnow website and requested information in the following terms:

"I would like to request all representations made regarding planning application 13/00060/ful."
3. The council responded on 12 July 2013. It stated that copies of all representations made regarding planning applications are available to view in full at the council offices in Basingstoke. It also advised the complainant that if he required copies of representations then these

would be sent with redactions made for personal data in accordance with section 40(2) of the FOIA and regulation 12(3) of the EIR.

4. On 15 July 2013, the complainant wrote to the council and asked it to proceed with the request with the names removed.
5. The council responded on 16 July 2013 and provided the requested information with redactions made for personal data.
6. The complainant requested an internal review on 17 July 2013 asking it to explain why a representation from [specific individual] dated 30 April 2013 was not released.
7. On 6 August 2013, the council provided its internal review response. It confirmed that further information was held, as outlined by the complainant, and apologised that it was not originally identified and considered for release. It stated that as the request falls under the EIR, the exception at regulation 12(4)(e) was considered to apply but the conclusion of the public interest test was that the information should be released. The council therefore provided the further information with the internal review response. The council also explained why this information was not put on the publically available planning application file.

Scope of the case

8. The complainant contacted the Commissioner on 6 August 2013 to complain about the way his request for information had been handled. He explained that as a member of the public he had accessed the correspondence on the council's public computer which is how he knew that correspondence dated 30 April 2013 existed. He said that he thought a section 77 offence had been committed as he believes that the document had been deliberately excluded from the initial response and then a false reason was given to justify the exclusion.
9. As the request was for information related to a planning application, the Commissioner agrees with the council that the appropriate legislation is the EIR rather than the FOIA.
10. Regulation 19 of the EIR is the equivalent offence to that under section 77 of the FOIA. However, as required under the EIR, an internal review was carried out and the information was provided. The Commissioner considers that the internal review is an opportunity for a public authority to amend their response to ensure that the legislation is adhered to. In this case, as the council clearly amended their response to provide the

information, the Commissioner does not consider that an offence has taken place.

11. The Commissioner informed the complainant of this view in a telephone conversation on 12 November 2013. During that conversation it was agreed that the scope of the case would be limited to consideration of the time limits for providing information.

Reasons for decision

Regulation 5

12. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that this information shall be made available as soon as possible and no later than 20 working days after the date of receipt of request.
13. The complainant submitted his request for information on 28 June 2013. The council did not provide the complainant with all the requested information until 6 August 2013. Consequently the Commissioner finds that the council has breached regulation 5(2) of the EIR, in that all the requested information was not provided to the complainant within 20 working days.

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: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.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

Andrew White
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Water Lane
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