

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

Decision notice

Date: 27 May 2014

Public Authority: City of Stoke-on-Trent Council
Address: Civic Centre
Glebe Street
Stoke on Trent
ST14 1HH

Decision (including any steps ordered)

1. The complainant has requested a structural engineers' report and a completed insurance claim form relating to a listed building in Burslem, Stoke. The council did not respond to the request or to further emails chasing a response from it.
2. The Commissioner's decision is that Stoke Council has not responded to the request
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To respond to the request as required by Regulation 5
4. The public authority 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 Act and may be dealt with as a contempt of court.

Request and response

5. On 1 December 2013 the complainant wrote to Stoke Council and requested information in the following terms:

To summarise, the five reports which we require you to send to us under The Freedom of Information Act are:

- 1. The damp report compiled by the damp expert when Stoke City Council forced entry into The Wedgwood Big House.*
 - 2. The structural survey compiled by the structural engineer when Stoke City Council forced entry into The Wedgwood Big House.*
 - 3. The structural survey compiled by Thomasons structural engineers on behalf of GAB Robins (on behalf of The Zurich) in relation to The Wedgwood Big House which is in Stoke City Council's possession (see [name redacted]).*
 - 4. The structural survey completed at the request of [name redacted] of your Highways Department in relation to the crack that formed at the side of The Big House shortly after the initial exploratory trench had been dug by FMF Construction Limited. The survey was undertaken a few days after the exploratory trench had been dug ie shortly after the crack appeared.*
 - 5. The Zurich insurance policy claim form completed and submitted by your [name redacted] in relation to the damage done to The Wedgwood Big House.*
6. The complainant's complaint to the Commissioner only relates to parts 4 and 5 of the above request. The council did not respond to points 4 and 5 of the request in spite of further chaser emails from the complainant being sent on 15 December 2013, and 16 February 2014.

Scope of the case

7. The complainant contacted the Commissioner 6 March 2014 to complain about the way his request for information had been handled. He considers that the council was under a duty to provide a response as required by the Act or the Regulations.
8. The Commissioner considers that the complainant's complaint is that he has received no response from the council regarding the requests in part 4 and 5 of the above.

Reasons for decision

9. Regulation 5 of the EIR provides that:

"Regulation 5(1)

Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 5(2)

Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."

10. The Commissioner wrote to the council on 31 March 2014 outlining the basis of the complaint as above. The council responded on 15 April 2014. It confirmed that the request had been received by the council. It said that it had received over 1500 emails from the complainant since 29 June 2013. It said that due to the overwhelming amount of correspondence the council had found it unmanageable to deal with his correspondence on a day to day basis and therefore organised for all emails to be directed to a central box.
11. It clarified that the request was read and filed, but not forwarded to the Information Rights Team for action because a previous request had been refused on the grounds that section 14 (vexatious) was applied. This was issued on the 29 June 2013. It confirmed that the officer managing the central correspondence box, was aware of the vexatious notice and that it related to the property in question.
12. The Commissioner understands that by this the council intended to apply section 17 (6) to the request. This states that a where a public authority has previously issued a section 14 notice but the complainant has continue to make requests about the same issues it is not under a duty to issue a further refusal notice to the requestor where it would unreasonable for it to do so under the circumstances.
13. The Commissioner notes however that the application of this exemption is reliant upon whether the request should properly have been considered under the FOIA or the Regulations. There is no equivalent to section 17(6) of FOIA under the EIR. The Commissioner has therefore considered whether the information in question is in fact environmental information.

Is the information environmental information?

14. The requested information relates to reports on structural damage and damp in a building in Stoke and a completed insurance form relating to this.

15. Regulation 2(a) and (b) defines environmental information as 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);

16. Regulation 2(f) defines further defines that environmental information includes:

(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);

17. The information relates to the damage occurred to the building and how damp and dry rot has encroached upon areas of a grade 2 listed building. The argument submitted by the complainant is that the creation of a raised pavement by the council at the side of the property in question is the root cause of the damp and incursion of dry rot. The council contends that that is not the case.

18. As such the Commissioner's decision is that it is information 'on' the state of human health and safety or on a built structure inasmuch as it is affected by the state of the elements of the environment referred to in (a); the state of the elements of the environment such as land, water and landscape.

19. The Commissioner has therefore decided that the information is environmental information and the request falls to be considered under the Regulations.

Conclusions

20. As the information is environmental information the council was not correct in its decision to apply section 17(6) to the information. Section 17(6) is an exemption under the Act and has no equivalent under the Regulations. The council was therefore under a duty to respond to the request as required by Regulation 5.
21. Additionally, as the refusal was issued under the FOI Act incorrectly the council is under a duty to consider the request under the Regulations.

Right of appeal

22. 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

23. 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.
24. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF