

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 12 July 2017

Public Authority: East Hampshire District Council
Address: Penns Place
Petersfield
Hampshire
GU31 4EX

Decision (including any steps ordered)

1. The complainant has requested information relating to a planning application. East Hampshire District Council disclosed information to the complainant.
2. The Commissioner's decision is that East Hampshire District Council failed to conduct an internal review within the statutory time limit and breached regulation 11(4) of the EIR.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 15 August 2016, the complainant wrote to East Hampshire District Council (the "council") and requested information in the following terms:

(in relation to applications at Oakhanger Farm)

1. "Copies of any information relating to changes in the description of the proposal and in the scope of matters to be considered in detail at outline stage [i.e. the removal of Layout]

2. Copies of any information regarding the pre-application submission, including but not restricted to details [including notes] of the site visit(s), details [including notes] of any meeting[s] and Mrs Mansi's written response(s)."

5. The council responded on 12 September 2016 and disclosed some information. It suggested that other information might be subject to exceptions for confidentiality of commercial information (regulation 12(5)(e)) interests of the information provider (regulation 12(5)(f)).
6. Following an internal review the council wrote to the complainant on 5 June 2017. It disclosed further information to the complainant.

Scope of the case

7. On 16 January 2017 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. During the course of the Commissioner's investigation the council disclosed additional information to the complainant and confirmed that it was not relying on any exceptions to withhold information.
9. The complainant confirmed that they wished the Commissioner to issue a decision notice which addressed the council's handling of their request for internal review.

Reasons for decision

Regulation 11 – internal review

10. Regulation 11(4) of the EIR provides that, where a public authority has received a communication which asks it to review its handling of a request for information, it should:

“...notify the applicant of its decision... as soon as possible and no later than 40 working days after the date of receipt of the representations.”

11. In this case the complainant wrote to the council to request an internal review on 8 October 2016. The council issued its internal review response, after being prompted to do so by the Commissioner, on 5 June 2017.
12. The Commissioner finds that the council failed to issue its review response within 40 working days and breached regulation 11(4) of the EIR.

Other matters

13. Although they do not form part of this decision notice the Commissioner would like to note the following matters of concern.

Request and complaint handling

14. The Code of Practice on the discharge of the obligations of public authorities under the EIR (the "EIR code") issued under regulation 16, provides guidance to public authorities as to the practice that would be desirable for them to follow in connection with discharging their functions under the EIR¹.

15. Paragraph 1 of the EIR states:

"All communications to a public authority, including those not in writing and those transmitted by electronic means, potentially amount to a request for information within the meaning of the EIR, and if they do they must be dealt with in accordance with the provisions of the EIR. It is therefore essential that everyone working in a public authority who deals with correspondence, or who otherwise may be required to provide information, is familiar with the requirements of the EIR and this Code in addition to the FOIA and the other Codes of Practice issued under its provisions, and takes account of any relevant guidance on good practice issued by the Commissioner. Authorities should also ensure that proper training is provided."

16. In this case, the council's handling of the request has raised concerns that the council has either not provided staff with adequate training or that it does not take its responsibilities under the EIR sufficiently seriously. In suggesting that exceptions might be applicable to the request but not making it clear whether exceptions were actually being applied, the Commissioner considers that the council generated unnecessary confusion.

17. In relation to internal reviews, paragraph 61 of the EIR code states:

¹ https://ico.org.uk/media/for-organisations/documents/1644/environmental_information_regulations_code_of_practice.pdf

“The complaints procedure should be a fair and impartial means of dealing with handling problems and reviewing decisions taken pursuant to the EIR, including decisions taken about where the public interest lies. It should be possible to reverse or otherwise amend decisions previously taken. Complaints procedures should be clear and not unnecessarily bureaucratic. They should be capable of producing a prompt determination of the complaint.”

18. The severe delay involved in the council's handling of the internal review in this case raises further concerns about the council's approach to request and complaint handling under the EIR.
19. The Commissioner expects that, in its future handling of request, the council will have regard for its obligations under the EIR and, if relevant, ensure that it has allocated sufficient resources to request and complaint handling.

Right of appeal

20. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

21. 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.
22. 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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