

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

Decision notice

Date: 18 April 2019

Public Authority: Armagh Banbridge and Craigavon Borough Council

Address: Craigavon Civic and Conference Centre
66 Lakeview Rd
Craigavon
BT64 1AL

Decision (including any steps ordered)

1. The complainant has requested information regarding local planning matters including a copy of a planning report.
2. Armagh City, Banbridge and Craigavon Borough Council clarified one part of the request with the complainant before providing a copy of the report. The Commissioner's decision is that the council complied with the requirements of EIR regulation 9 – advice and assistance in this respect. Although not cited by the council, the Commissioner also finds that the council complied with the requirements of regulation 12(4)(c) – requests formulated in too general a manner.
3. However, the council breached EIR regulation 5(2) - timeframe to respond, as it failed to provide a valid response to the request within the statutory time frame of 20 working days. It also breached regulation 14(2) by not providing a valid refusal notice within 20 working days and 14(3)(a) for not citing within a refusal notice the relevant exception at regulation 12(4)(c). The council also breached regulation 10(1) for not transferring the request correctly to the appropriate public authority.
4. As the request has been now been fulfilled the Commissioner does require Armagh City, Banbridge and Craigavon Borough Council to take any steps.

Request and response

5. On 6 November 2017, the complainant wrote to Armagh Banbridge and Craigavon Borough Council ('the council') and requested information in the following terms:
- 1) *"Was there a "streamlining" process back in 2012-2013 and, if so, what was the criteria under which an application could be considered eligible for streamlining?"*
 - 2) *Regarding Planning application Q/2012/0303/F, can you confirm if there were any drawings on that application which depicted a switch room and / or electricity sub-station? We cannot find any relating to such items on the Planning portal or in the EIA information which was released to Emma Grossmith.*
 - 3) *If the switch room and sub-station related to the approved turbine have been approved, can you confirm if it/they/the foundations have been built in the correct approved location? If they have been approved, could you please confirm under which Permission this took place?*
 - 4) *With regards to the condition on the Decision Notice for the approved Overhead Line – LA08/2017/0159/F – regarding badgers, are you able to confirm if the contractor/NIE was in receipt of a license which allowed any badgers on site to be effectively ignored? Could you please advise whether NIE have confirmed that they fulfilled the requirement to immediately resurvey the area prior to the work?*
 - 5) *With regards to the badger condition, are you able to confirm if Nature Heritage Division personnel, or the PSNI's Wildlife Officer, have been in contact with your Planning office regarding the possible disturbance and /or destruction of an active sett which may have occurred during the recent erection of the Overhead Line and telegraph poles?*
 - 6) *One of ABC's Planning officers (Mr Liam McCrum) attached an addendum to the Professional Planning Report in respect of the refused broadband mast (LA08/2017/1224/F), in which he expressed concern about badger activity in the area of the hill. Are you able to confirm if the Council is, or is aware of any official, checking for badger activity in relation to the Stop Notice which was issued against work on the approved turbine?*
 - 7) *Would you be able to provide a copy of the Waringstown Report and its recommendations (relating to the destruction of a rath in Waringstown in approximately 2006)?*
6. On 4 December 2017 the council wrote to the complainant, stating that the request had been considered within the provisions of the EIR; it provided responses to questions 1 to 6. The council asked for

clarification of question 7, stating "*with regards the report you refer to as the Waringstown Report, I would be grateful if you could provide more clarity as to the report being requested.*"

7. The complainant provided further clarification by return on the same day. The complainant expressed dissatisfaction with the late request for clarification, stating that the council were well aware of what is meant by the 'Waringstown Report'.
8. The complainant requested an internal review on 4 December 2017.
9. On 22 December 2017 the council wrote to the complainant to advise that a copy of the report had been requested from the Department for Infrastructure and would be forwarded as soon as it was received.
10. The council provided the complainant with a copy of the Waringstown Report on 17 January 2018.
11. Following an internal review the council wrote to the complainant on 21 June 2018. It apologised for delays in its responses and stated that it could not provide any further information as a copy of the Waringstown Report had been provided on 17 January 2018.

Scope of the case

12. The complainant contacted the Commissioner on 11 June 2018 to complain about the way her request for information had been handled. Specifically that the council had delayed seeking clarification until the deadline for the response, and that it had not needed the clarification to process the request. The complainant states that the officer responding to the request had been directly involved with "*the processing of the planning application which was the cause for the creation of the document I requested (the Waringstown Report).*"
13. The Commissioner considers the scope of this case is to establish whether the council has complied with the requirements of EIR, namely: regulation 9 – advice and assistance; 12(4)(c) – requests formulated in too general a manner; regulation 14 – refusal notice; regulation 5(2) - timeframe to respond and regulation 10(1) – transfer of a request.

Reasons for decision

Regulation 12(4)(c) of the EIR – Requests formulated in too general a manner

14. Regulation 12(4)(c) states:

12(4) *"For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that - ...*

(c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9"

15. Determining whether a request has been framed in *"too general a manner"* will depend on the particular facts of each case. The words *"too general"* refer to a request that is too unclear or non-specific for the authority to identify and locate the information requested, or a request that is ambiguous, and therefore could be interpreted in more than one way.

16. When in doubt, the authority should seek clarification of the meaning of the request.

17. In this case the council responded to questions 1 to 6 and asked the complainant to clarify question 7. It stated *"With regards the report you refer to as the Waringstown Report, I would be grateful if you could provide more clarity as to the report being requested."*

18. The complainant maintains that the council had no need to ask for clarification of question 7, because the officer dealing with the request was aware of what is meant by the 'Waringstown Report'. The complainant stated *"the officer who dealt with my request for information was a member of the Craigavon Divisional Office at the time of the controversial Waringstown Planning applications and was highly likely to have been directly involved in at least one of them...As a member of the offending office, [redacted], like other members of that unit, should have been very much aware of the Waringstown Report (as it was known widely!)"*

19. The Commissioner asked the council to respond on this point, it stated:

- *"The requestor asked for a 'copy of The Waringstown Report and its recommendations (relating to the destruction of a rath in Waringstown in approximately 2006) but gave no further clarification as to which report this referred to.*
- *The case officer dealing with the query was aware there had been a number of historical planning applications in the vicinity of the rath in Waringstown, dating back to 1995.*

- *Each planning application would have had a Development Control Officers Report setting out the Departments consideration of the application at that time.*
 - *Furthermore, the case officer was aware that one of the applications had been referred to the Planning Management Board for consideration and a Management Board Referral Report would also have been prepared in respect of this application.*
 - *The case officer was also aware that an internal review of a number of cases in Waringstown had been undertaken and a report prepared.*
 - *In the absence of any further clarity, the case officer felt it was necessary to seek further information as to which report the requestor was referring to.*
20. The Commissioner has seen a copy of the released information and notes that it is entitled "the Waringstown Review".
21. The Commissioner cannot determine whether or not the released information was known locally as "*the Waringstown Report*". On balance, and without any evidence to the contrary, she considers that the council's explanation of why it was unable to identify the requested information is a feasible one.
22. The Commissioner therefore finds that regulation 12(4)(c) of the EIR applies in this case.

Public Interest Test

23. As with all EIR exceptions, regulation 12(4)(c) of the EIR is subject to the public interest test.
24. The council in asking for clarification of a request would cause some delay to the complainant. However, if the council did not seek to clarify the request there is a considerable chance that it is going to be providing information that is not being sought wasting both time and resources of the council and the time of the complainant.
25. Therefore the Commissioner finds that the public interest lies in the council requesting clarification of the request rather than disclosing what could be the wrong information.

Regulation 9 of the EIR - Advice and assistance

26. Regulation 9 of the EIR requires a public authority to provide advice and assistance "so far as it would be reasonable to do so" when it receives a request that is formulated in too general a manner.
27. In this case, the Commissioner has viewed the council's response and it clearly identified to the complainant which part of the request it required clarity on before it could proceed with that part of the request.
28. Regulation 9(2) stipulates that the authority must provide advice and assistance before or at the same time as it issues its refusal notice.
29. The complainant has expressed dissatisfaction with the late request for clarification, which the Commissioner notes was 21 working days after the initial request.
30. The council advised that "*The Council acknowledges the case officer should have sought clarification sooner in the process. However, the case officer was working through the queries raised in the letter in order and preparing a response to the issues raised. This coupled with the high level of correspondence being dealt with at that time resulted in a delay in seeking the clarification with regards the report being requested.*"
31. The Commissioner considers that it would have been more effective, and helpful to the complainant, if the council had sought clarification sooner. She notes that the council has acknowledged this issue in its internal review, and stated it would remind officers to seek clarification at an early stage.
32. However, the Commissioner finds that the council has complied with the requirements of regulation 9 and therefore she does not require any further steps to be taken.

Regulation 14 of the EIR – Refusal Notice

33. The initial request was made on 6 November 2017. The council requested clarification to question 7 on 4 December 2017. The complainant provided clarification on the same day. The response to question 7 was subsequently provided on 17 January 2018.
34. When a public authority receives a request that it thinks is formulated in too general a manner, it must issue a formal refusal notice specifying that it is refusing the request under regulation 12(4)(c) of the EIR.
35. Regulation 14(1) requires a public authority to issue a valid refusal notice within 20 working days, and regulation 14(3) requires the relevant exemption to be cited in the refusal notice.

36. In this case, although the council responded to seek clarification, it did not issue a valid refusal notice as it did not cite regulation 12(4)(c) of the EIR.
37. The Commissioner therefore finds that the council has breached regulation 14(1) and 14(3) of the EIR.
38. In summary, although the Commissioner has found the council has breached regulation 14(1) and (3) of the EIR the Commissioner has found that regulation 12(4)(c) of the EIR is engaged. The Commissioner does not require the council to take any steps.

Regulation 5(2) of the EIR – timeframe to respond

39. Regulation 5(2) of the EIR requires a public authority to respond to a request for environmental information within 20 working days following its receipt.
40. In this case the request was made on 6 November 2017 and the council responded on 4 December which is just outside the required 20 working days.
41. In her guidance '*Interpreting and Clarifying a Request*'¹ the Commissioner states that following the provision of regulation 9, advice and assistance, if the requester provides sufficient detail to enable the authority to identify and locate the information, then the authority should treat the clarified request as a new one.
42. The complainant clarified question 7 on 4 December 2017, the council advised that it had requested the report from the Department for Infrastructure on 22 December 2017, it then provided a copy of the report on 17 January 2018. This was also over the required 20 working days and therefore the council also breached regulation 5(2) in terms of the clarified request for question 7.
43. As all the requested information has been provided, no steps are required.

Regulation 10(1) – transfer of the request

¹ <https://ico.org.uk/media/for-organisations/documents/1162/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf>

44. Regulation 10(1) of the EIR states that:

"Where a public authority that receives a request for environmental information does not hold the information requested but believes that another public authority... the public authority shall either—

a. transfer the request to the other public authority; or

b. supply the applicant with the name and address of that authority, and inform the applicant accordingly with the refusal sent under regulation 14(1)."

45. On 22 December 2017 the council wrote to the complainant to advise that a copy of the report had been requested from the Department for Infrastructure and would be forwarded as soon as it was received.

46. As previously described the council subsequently breached regulation 5(2) by providing the report outside of the requisite 20 working days.

47. According to the EIR regulation 10(1) the council should have provided a refusal notice on 22 December 2017 and either transferred the request or supplied the complainant with details of the public authority holding the information.

48. However, the council did not provide a refusal notice nor redirect the request therefore it breached regulation 10(1) of the EIR. As the request has subsequently been fulfilled no steps are required.

49. Although the Commissioner has found the council in breach of regulation 10(1), she believes that in obtaining the report the council was attempting to resolve the outstanding request for the complainant.

50. The council should be aware, however, that in future similar scenarios it must comply with regulation 10(1) such that the responsibility for responding is transferred to the correct authority. This avoids the risk of any unnecessary delay being introduced into the progression of an information request.

Right of appeal

51. 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

52. 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.
53. 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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