

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 17 February 2020

Public Authority: Aylesbury Vale District Council

Address: The Gateway
Gatehouse Road
Aylesbury
HP19 8FF

Decision (including any steps ordered)

1. The complainant has requested copies of correspondence held by Aylesbury Vale District Council (the Council) concerning a particular property and planning matter.
2. The Commissioner's decision is that the Council has failed to respond to the request within 20 working days and has therefore breached Regulation 5(2) of the Environmental Information Regulations ("the EIR").
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the EIR, to the request.
4. The Council 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 Freedom of Information Act and may be dealt with as a contempt of court.

Request and response

5. On 7 October 2019, the complainant wrote to the Council and requested information in the following terms:

*"[...] please may I request copies of **all correspondence** (inc bcc) from 1st January 2019 to 7th October 2019 with relation to:*

1. Complaints, concerns and issues re: [address redacted]

2. The PN notices : [redacted] and also [redacted]

This should include all email and written correspondence between members of the public, and all AVDC departments.

Kindest Regards

[redacted]"

6. In lieu of a response, the complainant contacted the Council again on 5 December 2019, chasing a response and modifying their request:

"I appear not to have had acknowledgement of an FOI request (as per my email below.) If it was, for some reason lost in transit, I would be most grateful if it could be expedited and due to the delay, I would be grateful if (point2) could also now refer to the most recent PN which is: [redacted]."

7. The Council acknowledged the request on 13 December 2019, apologised for the delays, and sought to double check one of the "PN" numbers cited by the complainant:

"I just wanted to checked whether [redacted] is new or is there a typo (due to its similarity to [redacted])? Could you please clarify this point. In the meantime, I'll chase the above-mentioned departments."

8. From the evidence presented to the Commissioner, it is not clear if the complainant further clarified their request following this acknowledgement from the Council.

9. In either case, following a further 18 December 2019 chaser email from the complainant, the Council responded on 30 December 2019 stating:

"This is just to confirm that I'm still chasing a response to your information request.

Please rest assured that your request was not blocked in any way. We're just experiencing a very high volume of information requests as well as staff changes etc.

Please accept our apologies for any inconvenience caused."

10. The Council has failed to provide a substantive response by the date of this notice.

Scope of the case

11. The complainant contacted the Commissioner on 15 January 2020 to complain about the way their request for information had been handled.
12. In line with her usual practice, the Commissioner contacted the Council on 29 January 2020 to highlight the outstanding response. She requested that the Council respond to the request within 10 working days, or otherwise confirm that a response had been issued. Her correspondence was neither acknowledged nor responded to.
13. The Complainant contacted the Commissioner on 13 February 2020 to confirm that they had still not received a response to their request, despite the Commissioner's intervention. The Commissioner therefore considers that a decision notice is appropriate in this instance.
14. The Commissioner considers that the scope of her investigation is to determine whether the Council has complied with Regulation 5(2) of the EIR.

Reasons for decision

15. Regulation 2(1) of the EIR defines environmental information as being 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);*

- (c) *measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;*
 - (d) *reports on the implementation of environmental legislation;*
 - (e) *cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
 - (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);*
16. The Commissioner has not seen the requested information but, as it is information relating to a planning matter, she believes that it is likely to be information about measures (plans and activities), which in turn are likely to affect the elements of the environment. For procedural reasons, she has therefore assessed this case under the EIR.
17. Regulation 5(1) states that: "*a public authority that holds environmental information shall make it available on request.*"
18. Regulation 5(2) states that such information shall be made available "*as soon as possible and no later than 20 working days after the date of receipt of the request.*"
19. The Commissioner considers that the request in question constituted a valid request for information under the EIR. Whilst the Council sought to double-check one element of the request, from the wording of their correspondence it is clear that the request was not considered to be formulated in too general a manner. The Council simply wished to be sure which particular PN number the complainant intended to refer to.
20. On the above point, the Commissioner notes that the complainant's 5 December 2019 modification of their request was relatively unambiguous. It was modified to "**also** [...] refer to **the most recent PN which is: [redacted]**" (emphasis added).
21. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the Council has breached Regulation 5(2) of the EIR.

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: 0870 739 5836

Email: grc@justice.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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF