

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 10 November 2021

Public Authority: West Midlands Combined Authority

Address: 16 Summer Lane
Birmingham
West Midlands
B19 3SD

Decision (including any steps ordered)

1. The complainant has requested information from West Midlands Combined Authority (WMCA) relating to the development of a specific site.
2. The Commissioner's decision is that WMCA has failed to carry out a reconsideration (internal review) of a response it provided, under the Environmental Information Regulations ("the EIR"), within 40 working days and has therefore breached regulation 11 of the EIR.
3. The Commissioner requires WMCA to take the following steps to ensure compliance with the legislation.
 - Reconsider how it responded to the original request and inform the complainant of the outcome of that reconsideration in accordance with regulation 11 of the EIR.
4. WMCA 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 18 July 2021, the complainant wrote to WMCA and requested information in the following terms:

"I am writing to make an open government request for all the information to which I am entitled under the freedom of information act and the environmental information regulations. In order to assist you with this request, I am outlining my query as specifically as possible. If however this request is too wide or too unclear, I would be grateful if you could contact me as I understand that under the act, you are required to advise and assist requesters.

Land registry documents for titles [reference redacted] Land lying to the North side of [address redacted] and [reference redacted] show that this site is owned and has been since 10/9/2003 by a firm known as [company name redacted]. This site was a former historic landfill site containing an infilled former Accles and Pollock acid waste lagoon, with "inert materials", to which no one appears to know of what type- least of all in any planning applications associated with the site.

I refer to the following link

Agenda for Investment Board on Monday 11th November 2019, 10.00 am: WMCA
<https://governance.wmca.org.uk/ieListDocuments.aspx?CId=135&MId=290&Ver=4>

At minute 70.

Proposed Investment at [address redacted] ([company name redacted].) it is stated that "West Midlands Development Capital presented a report that sought grant funding from the WMCA's Brownfield Land Property Development Fund to fund remediate the ground conditions at the property to deliver either a 115,000 square foot industrial unit (Option A) or, a 55,000 square foot purpose built Ambulance Hub (Option B); the scheme which would be delivered would be dependent on progress made with the pre-let of the Ambulance Hub and if not success, then the industrial unit would be built speculatively.

Resolved: That a maximum allocation of grant funding as set out in the report from the Brownfield Land and Property Development Fund to fund remediation costs at [address redacted] to deliver the development at the site, as referred to

above, subject to the conditions detailed in the report be approved.

- (i) Please supply this report presented at this meeting in full.*
- (ii) Disclose how much public money from the remediation fund was approved for this Jersey owned site, (noting WMCA Mayor Andy Street's previous outspoken comments concerning funding for tax haven registered companies).*
- (iii) Disclose if [company name redacted] were involved in anyway with this application.*
- (iv) Please provide the application for funding for this site, from WMCA's Brownfield Land & Property Development Fund.*
- (v) Please provide the WMCA's approved assurance framework for this type of funding.*

I understand that under the act, I should be entitled to a response within 20 working days. I would be grateful if you could confirm that you have received this request. I look forward to hearing from you in the near future via the what do they know website address."

- 6. On 6 August 2021 WMCA wrote to the complainant and provided some information within the scope of the request. However, it refused part of the request citing regulation 12(5)(e) (confidentiality of commercial or industrial information) of the EIR.
- 7. The complainant requested an internal review on 8 August 2021. By the date of this notice, WMCA had not completed its internal review.

Scope of the case

- 8. The complainant contacted the Commissioner on 14 October 2021 to complain about the way his request for information had been handled.
- 9. On 22 October 2021 the Commissioner wrote to WMCA to highlight the outstanding response. She requested that WMCA complete its reconsiderations within 10 working days. Despite this intervention WMCA has failed to provide a review to the complainant.
- 10. The scope of the Commissioner's investigation is to determine whether WMCA has complied with regulation 11 of the EIR.

Reasons for decision

11. Regulation 11 of the EIR states that:

- (1) *Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.*
- (2) *Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.*
- (3) *The public authority shall on receipt of the representations and free of charge—*
 - (a) *consider them and any supporting evidence produced by the applicant; and*
 - (b) *decide if it has complied with the requirement.*
- (4) *A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.*
- (5) *Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of—*
 - (a) *the failure to comply;*
 - (b) *the action the authority has decided to take to comply with the requirement; and*
 - (c) *the period within which that action is to be taken.*

From the evidence presented to the Commissioner in this case it is clear that, in failing to carry out an internal review within 40 working days, WMCA has breached regulation 11 of the EIR.

Right of appeal

12. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

13. 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.
14. 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

Michael Lea
Team Manager
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