

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

Date: 6 May 2021

Public Authority: Fareham Borough Council
Address: Civic Offices
Civic Way
Hampshire
PO16 7AZ

Decision (including any steps ordered)

1. The complainant requested information about two housing developments.
2. The Commissioner's decision is that Fareham Borough Council ("the Council") failed to respond to either request within 20 working days and has therefore breached Regulation 5(2) of the Environmental Information Regulations ("the EIR") in respect of both requests.
3. As responses have now been issued, no further steps are required.

Request and response

4. On 12 November 2020, the complainant wrote to the Council and requested information in the following terms:

"Provide all information; documents, emails, reports, diagrams (but not limited too) in relation to the proposed 'Winnham Farm, Downend Road' housing development (Portchester, Fareham).

"Provide all emails, letters, and memos (but not limited too) which has been forwarded / sent / received or even CC'd by the following councillors regarding the 'Winnham Farm, Downend Road' housing development (Portchester, Fareham):

Roger Price

Susan Bell

Nick Walker

Shaun Cunningham."

5. On the same day, he also made a second request in the following terms:

Provide all information; documents, emails, reports, diagrams (but not limited too) in relation to the proposed 'Romsey Avenue' housing development (Portchester, Fareham).

Provide all emails, letters, and memos (but not limited too) which has been forwarded / sent / received or even CC'd by the following councillors regarding the 'Romsey Avenue' housing development (Portchester, Fareham): -

Roger Price

Susan Bell

Nick Walker

Shaun Cunningham

6. The Council replied separately to both requests on 3 December 2020. It noted that both the requests were particularly voluminous or complex and relied on Regulation 7(1) of the EIR to extend the deadline for responding to each one from 20 working days to 40 working days.
7. The Council issued its formal response to the second request on 10 March 2021 and responded to the first request on 23 April 2021.

Scope of the case

8. The complainant first contacted the Commissioner on 22 March 2021 to complain about the late responses. At that point, the first request had still not been responded to. The Commissioner dealt with that request under case reference IC-96244-H0V4 and the second request (which had been responded to under case reference IC-96243-J4B2).
9. In line with her usual practice, the Commissioner contacted the Council on 26 April 2021 to highlight the outstanding response to the first request. She requested that the Council respond to that request within 10 working days.

10. The Council responded on 30 April 2021 to note that it had now responded to the request, but admitted that this was outside of the statutory deadline. It also explained the broader issues facing the FOI team – which are recorded below.
11. The complainant contacted the Commissioner on 4 May 2021 to request a decision notice considering the Council's compliance with the EIR in respect of both requests.
12. 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

13. 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);

14. The Commissioner has not seen the requested information but, as it is information relating to two housing developments, she believes that it is likely to be information about "measures" (construction) affecting the elements of the environment (particularly landscape and soil). For procedural reasons, she has therefore assessed this case under the EIR.
15. Regulation 5(1) states that: *"a public authority that holds environmental information shall make it available on request."*
16. 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."*
17. The Commissioner considers that the requests in question constituted valid requests for information under the EIR.
18. In its response the Council explained that:

"during the past year, we have experienced a rise in requests being made under Freedom of Information, some of which have been complex in nature with a high number of associated documentation which has resulted in an increase in work to respond to these. The Information Team is a small team and, where ordinarily we may have been able to seek support and assistance from elsewhere in the Council, this was not possible due to the overall increase in work in response to the pandemic. Where responses were likely to be overdue, we have kept requesters informed and have also kept our FOI status under review and identified where we could support service areas to obtain the information which on some occasions, whilst assisted them and kept the workflow moving, increased the overall workload for the Information Team.

"We are in no way trying to excuse ourselves of the late response this requester experienced, but only to give an outline of the experiences of the Council during the pandemic."

19. The Commissioner has sympathy for public authorities attempting to meet their responsibilities during the pandemic. Whilst the resources necessary to respond to requests have often not been available (as public authorities re-prioritise scarce resources to critical services), the volume of requests has shown no corresponding decrease. As a reasonable and proportionate regulator, the Commissioner has attempted to be as pragmatic and flexible as she can be in applying the law.

20. Nevertheless, the statutory deadlines have not been altered and, although no remedial steps will be necessary, the Commissioner is obliged to record that these requests were not responded to within the statutory deadline. In failing to issue a response to either request within 20 working days, the Council has breached Regulation 5(2) of the EIR in respect of both requests.

Right of appeal

21. 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

22. 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.
23. 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

Pamela Clements
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Wycliffe House
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