

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

Date: 19 October 2011

Public Authority: Mid Suffolk District Council
Address: Council Offices
131 High Street
Needham Market
Ipswich
IP6 8DL

Decision (including any steps ordered)

1. The complainant requested copies of correspondence between a named developer and Mid Suffolk District Council (MSDC) regarding two planning decision notices which he alleged had been altered after publication.
2. The Information Commissioner's decision is that MSDC did not deal with the request under the correct legislation. Access to environmental information should be considered under the Environmental Information Regulations 2004 (the 'EIR').
3. The Information Commissioner, therefore, requires the public authority to take the following steps to ensure compliance with the EIR:
 - provide the information requested in compliance with regulation 5(1), or;
 - issue a valid refusal notice in compliance with regulation 12 or regulation 14.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Information Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. On 28 January 2011, the complainant wrote to MSDC and requested information in the following terms:

"On this subject I would like copies of the correspondence between MSDC and NKSP relating to the exchanges of the notices please."

6. MSDC responded on 18 February 2011. It provided copies of the relevant correspondence.
7. The complainant contacted MSDC on 21 February 2011 to request an internal review. The complainant believed that more information pertaining to his request was held by MSDC.
8. Following the completion of an internal review MSDC wrote to the complainant on 13 April 2011. It stated that all the information held had been supplied to the complainant in accordance with the request.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He did not accept that he had been provided with all the information he had requested.
10. Although the complainant did not complain about which regime had been used to handle his request, due to the nature of the information sought and the information that had already been provided, the Information Commissioner has considered whether the remainder of the requested information is governed by the EIR.

Reasons for decision

11. MSDC originally processed the complainant's request for information under FOIA and considered that it had provided all the information held. However, the Information Commissioner has considered whether the requested information in this case constitutes environmental information and whether the correct access regime is, therefore, the EIR.
12. Environmental information is defined in regulation 2(1) of the EIR as:

"any information in written, visual, aural, electronic or any other material form on –

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites...*
- (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) and (b)...*
- (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...".*
13. The Information Commissioner's approach is to interpret "*any information... on*" fairly widely. He does not consider it necessary for the requested information itself to have a direct effect on the environment in order for it to be environmental information. It will usually include information concerning, about, or relating to measures, activities and factors likely to affect the state of the elements of the environment.
14. Having considered the nature and context of the request, the Information Commissioner has concluded that it constitutes a request for environmental information as defined by regulation 2(1)(c) of the EIR. This is because the information in this case (the requested correspondence) relates to information on a measure or activity (ie the planning decision notices) which affects, or is likely to affect, the environment or is designed to protect it.
15. The Information Commissioner notes that although some information has been provided to the complainant in answer to his request, the complainant still considers that further information related to his request is held. The Information Commissioner, therefore, requires MSDC to reconsider the request with regards to the remaining information under the correct regime and advise the complainant accordingly.

Right of appeal

16. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

17. 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.
18. 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

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