

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 9 July 2014

Public Authority: Chesterfield Borough Council

Address: Town Hall
Rose Hill
Chesterfield
Derbyshire
S40 1LP

Decision (including any steps ordered)

1. The complainant has made a request to Chesterfield Borough Council ("the council") for information about the management of asbestos. The council did not provide a response to part 2 of this request within the time for compliance allowed by the Environmental Information Regulations ("the EIR").
2. The Commissioner's decision is that the council has therefore breached regulation 5(2) in respect of part 2 of the request.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 2 September 2013, the complainant wrote to the council and requested the following:

- 1) *All below information relating to the Fire on the 25th June 2013 at Stone Lane, New Wittington with regards asbestos:*

Copy of all asbestos testing done by who ever the Council bought in to establish the type of asbestos released by the fire across the area and the relevant documentation. This would include the documentation with regards the affected play area and surrounding area, stating that indeed all areas affected by the fire and asbestos, is without doubt SAFE. Including all soil and air samples carried out by the asbestos specialists bought in by Chesterfield Council re this incident.

Full name and contact details of the asbestos specialists bought in to clean up and asses the risks and environmental damage done to the area.

All correspondence between the HSE and the Council relating to this fire.

All correspondence between the environment agency and the Council relating to this fire.

Copy of ALL waste management documents relating to the disposal of this waste (waste picked up by Council officers re the fire) name and contact details of the specialist waste carrier employed by Chesterfield Borough Council to pick up and remove this waste.

Please note I have the verbatim re the meeting of the Council dated Wednesday the 24th June 2013 and have grave concerns regarding the statements there in pages 44 and 45 relating to this fire and asbestos.

- 2) *As you have not replied to my previous requests I will re format the question relating to my requests for further information per my original requests some of which are with the ICO.*

Please provide me with the asbestos policy documents, asbestos management plan (relating to housing) and any other asbestos documents. Please ensure you provide me with all these documents from Jan-Feb 2013 (ie in force Jan-Feb 2013. Not the new ones formed in June 2013.

- 3) *Any documents, data, information, transcripts the Council hold from last request to date from the HSE to the Council or the Council to the HSE with regards my name and address in part or full and anything asbestos related.*
5. The council responded on the 30 September 2013. It provided held information in respect of parts 1 and 3 of the request, and requested clarification in respect of part 2.
6. The complainant responded on 30 September 2013. He disputed that clarification was required for part 2, and requested an internal review of the council's total response.
7. The council provided its internal review on 16 October 2013. It maintained its response to parts 1 and 3 was correct, and maintained that clarification was still required in relation to part 2.
8. The complainant responded on 16 October 2013 and provided the clarification.

Scope of the case

9. The complainant contacted the Commissioner on 27 February 2014 to complain that the council had not provided a response to his clarified request of 16 October 2013. The Commissioner subsequently wrote to the council on 10 March 2014 to request that it provided a response under the terms of the EIR. The council subsequently provided a response to the complainant on 20 March 2014.
10. The complainant then contacted the Commissioner on 20 March 2014 to request a decision about whether the council had acted within the time for compliance for the entirety of his request.

Reasons for decision

Is the information environmental?

11. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR. Under regulation 2(1)(f), any information about the state of human health and safety, as affected by the state of the elements referred to in 2(1)(a), or through those elements, by any of the matters referred to in 2(1)(b) or 2(1)(c), will

be environmental information. The requested information relates to the management of asbestos. The Commissioner therefore considers that the request should be dealt with under the terms of the EIR.

Regulation 5(2) – Time for compliance

1. Regulation 5(2) requires that environmental information, unless subject to any exceptions or exclusions that may apply, should be disclosed as soon as possible following receipt of a request and, in any event, within twenty working days following the date of receipt.
2. Regulation 9(4) specifies that where a public authority has requested further particulars to clarify a request in accordance with regulation 9(2), the twenty working days will commence on the date after which the clarification is received.
3. In the circumstances of this case, the council provided its response to parts 1 and 3 of the request on the twentieth working day following the date of receipt, and therefore complied with the requirement of regulation 5(2).
4. However, in respect of part 2 of the request, the Commissioner has reviewed the communications that took place between the parties, and considers that the complainant provided the council with the necessary clarification on 16 October 2014. However, the council did not provide its response to this clarified request until the 20 March 2014. The response was therefore outside the twenty working days, and as such breached the requirement of regulation 5(2).

Right of appeal

5. 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: GRC@hmcts.gsi.gov.uk

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

6. 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.
7. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF