

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

Decision notice

Date: 13 February 2014

Public Authority: Stoke-on-Trent City Council
Address: Civic Centre
Glebe Street
Stoke-on-Trent
ST4 1HH

Decision (including any steps ordered)

1. The complainant has requested information relating to the European Regional Development Fund. Stoke-on-Trent City Council provided some information and withheld other information under the regulation for adverse affect to the course of justice (regulation 12(5)(b) of the EIR).
2. The Commissioner's decision is that Stoke-on-Trent City Council:
 - Did not issue a response to the request within 40 working days and breached regulation 7(1) of the EIR;
 - failed to issue a refusal notice in accordance with regulation 14;
 - failed to conduct an internal review in accordance with regulation 11 of the EIR.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 23 June 2013, the complainant wrote to Stoke-on-Trent City Council (the "council") and requested information in the following terms:
 - *"How much European Regional Development Fund (ERDF) money has been provided to Stoke-on-Trent CC (or any body it is / was the*

responsible body for/ partnership) in the last five years and what was it spend on? Please give details.

- *How much was returned unspent and for what reason / when?*
 - *Please provided (sic) any audit or performance reports in relation to ERDF and Stoke-on-Trent over the last three years by any external (non-Stoke-on-Trent city council_ body or organisation (including partners)."*
5. The council acknowledged receipt of the request on 23 June 2013. On 19 July 2013 the council wrote to the complainant and stated that it was extending the time for compliance to 40 working days because of the complexity and volume of the request. In doing so, the council stated that it was relying upon regulation 7 of the EIR.
 6. The council issued a substantive response to the request on 31 October 2013. The council provided some of the requested information and withheld other information under the exemption for prejudice to the effective of public affairs (section 36 of the FOIA).
 7. Following an internal review the council wrote to the complainant on 2 January 2014. It provided further information and confirmed that information was being withheld under the exception for adverse affect to the course of justice (regulation 12(5)(b) of the EIR).

Scope of the case

8. On 26 September 2013 the complainant contacted the Commissioner to complain about the way their request for information had been handled. The complainant specifically raised concerns that the council had not provided a substantive response to their request.
9. Subsequent to the complainant being made to the Commissioner the council responded to the request. The Commissioner confirmed with the complainant that this decision notice would consider whether the council had responded to the request within the time for compliance.

Reasons for decision

Regulation 5 (2) – time for compliance and regulation 7(1) – extension of the time for compliance

10. Regulation 5(2) of the EIR provides that, where a request for environmental information is made:

"Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

11. Regulation 7(1) of the EIR states:

"Where a request is made under regulation 5, the public authority may extend the period of 20 working days referred to in the provisions in paragraph (2) to 40 working days if it reasonably believes that the complexity and volume of the information requested means that it is impracticable either to comply with the request within the earlier period or to make a decision to refuse to do so."

12. In this instance, the council acknowledged receipt of the request and stated that it was extending the time for compliance under regulation 7(1) within 20 working days. However, the council did not inform the complainant of the outcome of its deliberations until 31 October 2013 which exceeded the additional 20 working days it was allowed to take.

13. The Commissioner has concluded that the council failed to comply with the requirements of regulation 7(1) by failing to respond to the request within 40 working days.

Regulation 14 – refusal to disclose information

14. Under regulation 14 of the EIR, where a request for information is refused by a public authority the refusal should comply with the following provisions, set out in regulation 14(2) and 14(3) of the EIR:

"(2) The refusal shall be made as soon as possible and not later than 20 working days after the date of receipt of the request.

(3) The refusal shall specify the reasons not to disclose the information requested, including-

(a) any exception relied on under regulations 12(4), 12(5) or 13; and

(b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3)."

15. In this case, the council's initial refusal notice cited an exemption under the FOIA as grounds for withholding some of the requested information. Despite, initially invoking regulation 7 of the EIR to extend the time for responding to the request, the council failed to specify which exception it was relying upon until the time of the internal review.
16. At the internal review, in citing regulation 12(5)(b) as grounds for withholding the information the council failed to specify which matters it had considered in reaching its decision with regard to the public interest.
17. In view of the above, the Commissioner has concluded that the council's refusal notice was late and that it failed to comply with regulation 14 of the EIR.

Regulation 11 – internal review

18. Under regulation 11 of the EIR, requesters have a right to ask a public authority to review its handling of a request for information. Under regulation 11(4), an authority should notify a requester of its internal review decision within 40 working days of the date of receipt of the review request.
19. In this case the complainant requested an internal review on 31 October 2013 and the review response was issued on 2 January 2014.
20. As it failed to communicate its internal review response within the 40 working days set in the EIR the Commissioner has concluded that the council breached regulation 11(4).

Other matters

21. Although they do not form part of this decision notice the Commissioner would like to note the following matters of concern.

Request Handling

22. The code of practice issued under regulation 16 of the EIR (the "EIR" code) provides guidance to public authorities as to the practice that would be desirable for them to follow in connection with discharging their functions under the EIR.
23. Paragraph 1 of the EIR code states:

*"All communications to a public authority, including those not in writing and those transmitted by electronic means, potentially amount to a request for information within the meaning of the EIR, and if they do they must be dealt with in accordance with the provisions of the EIR. It is therefore essential that everyone working in a public authority who deals with correspondence, or who otherwise may be required to provide information, is familiar with the requirements of the EIR and this Code in addition to the FOIA and the other Codes of Practice issued under its provisions, and takes account of any relevant guidance on good practice issued by the Commissioner. Authorities should also ensure that proper training is provided."*¹

24. In this case the council initially stated that it was handling the request under the EIR. At the refusal notice stage it invoked an exemption under the FOIA. At the internal review stage, no reference was made to this exemption but the council cited an EIR exception as grounds for withholding information.
25. In light of the confusing nature of these responses, which appear to oscillate between the two information access regimes without due explanation, the Commissioner has concerns that the council might not have provided staff handling requests with proper training.
26. In future, the Commissioner expects that the council will handle requests in accordance with the EIR and with the EIR code.

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http://ico.org.uk/~media/documents/library/environmental_info_reg/detailed_specialist_guides/environmental_information_regulations_code_of_practice.ashx

Right of appeal

27. 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

28. 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.
29. 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
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