

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 28 April 2014

**Public Authority:** Wigan Metropolitan Borough Council

**Address:** Town Hall  
Library Street  
Wigan  
WN1 1YN

#### **Decision (including any steps ordered)**

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1. The complainant has made two requests for information; the first for information relating to environmental site inspections and the conditions imposed in respect of a planning approval; and the second, for information relating to an environmental site survey.
2. The Information Commissioner's decision is that Wigan Metropolitan Borough Council (WMBC) breached regulation 5(2) by failing to respond within 20 working days.
3. The Commissioner does not require WMBC to take any further action in respect of this matter.

#### **Request and response**

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4. The Complainant in this case made two requests for information to Wigan Metropolitan Borough Council.

##### **Request 1**

On 12 July 2013 the complainant made the following request:

"...please provide me with all documents relating to environmental site investigations as originally by and in 2000 and also the remediation conditions imposed on Morris Homes included in the resulting planning approval. I would also like any later documentation in relation to the remediation revisions that were made after Morris Homes failed to fulfil

their obligations. I believe your reference numbers in relation to some (if not all) of these documents are as follows;

28070/A/R1-1993 – Allott and Lomax Consulting Engineers  
1858 – September 2000 – AIG Consultants Ltd  
ENC1858/3/REV2 – July 2005  
1858/3/Rev1 – July 2005  
1858/3/Rev2 – July 2005”

## **Request 2**

On 24 July 2013 the complainant made her second request for information:

“...I would also like to request under the Freedom of Information Act 2000, the most recent environmental site survey (borehole test) undertaken by GRM Development Solutions recently.”

5. On 20 September 2013, WMBC, following a number of chaser-emails from the complainant, informed her that:

“I have all the documents in my possession at last. Given the size of some of these and the cost of postage I am waiting for the documents to be scanned so I can send them to you by email. I expect this to be completed early next week at which point I will email them to you. Given attachment restriction this may be over a number of emails.”

## **Scope of the case**

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6. The complainant contacted the Commissioner on 26 September 2013 to complain about the way her request for information had been handled.
7. The complainant informed the Commissioner that she had not received the information she had requested, despite the assurances given her by WMBC. She advised the Commissioner that she had received a further email from WMBC, on 28 October 2013, in which it apologised for not sending her the documents she seeks and again promising to send them without delay.

## Reasons for decision

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### Is the requested information 'environmental information'?

8. Regulation 2(1) of the EIR defines what constitutes 'environmental information'. Subsections (a) to (c) state –
- '(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 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) as well as measures or activities designed to protect those elements.'*
11. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.
12. In the Commissioner's opinion the information sought by the complainant, is likely to constitute environmental information. The information request therefore falls to be considered under the EIR.

### Duty to make environmental information available on request

13. Regulation 5(1) of the EIR states that –
- "...a public authority that holds environmental information shall make it available on request."
14. During the course of the Commissioner's investigation WMBC informed him that it believed it had complied with the complainant's request and had sent her all the information she had requested.
15. The Commissioner spoke with the complainant on 10 April 2014. He asked the complainant to confirm whether the council had provided the information she seeks and to confirm the date this was received. The complainant accepted that she had received the information from WMBC, subsequent to making her complaint to the Commissioner. She

expressed her concern that WMBC had not complied with her request until November 2013.

16. Regulation 5(2) of the EIR states that:

“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.”

17. The facts of the case indicate that WMBC has failed to comply with regulation 5(2) by not providing a response within the statutory time limit of ‘within 20 working days’.

## Right of appeal

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18. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

19. 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.

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**