

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

Decision notice

Date: 25 November 2015

Public Authority: Maidstone Borough Council

Address: Maidstone House
King Street
Maidstone
Kent
ME15 6JQ

Decision (including any steps ordered)

1. The complainant requested information relating to a planning application. Maidstone Borough Council ("the council") supplied some information but said that it wished to withhold other information using the exceptions under regulation 12(5)(b) and 12(4)(e) of the Environmental Information Regulations 2004 ("the EIR"). These exceptions concern legal professional privilege and internal communications. During the Commissioner's investigation, the council decided to disclose all of the information to the complainant on an informal basis. The Commissioner did not consider whether the information was correctly withheld at the time of the request as a result however he has recorded a breach of regulation 5(2) of the EIR in view of the late disclosure. The Commissioner also considered that the council had breached regulation 11(4) of the EIR for not completing its internal review as soon as possible. There are no steps to take.

Request and response

2. On 24 April 2015, the complainant requested information from the council in the following terms:

"Subject: Planning application 14/505197"

Please provide the following information (-electronic form is acceptable) regarding this Planning case:

- 1. A schedule of all communications between the Council and the applicant or their agent after 1 November 2014*
 - 2. Copies of all written communications between the Council and the applicant or their agent after 1 November 2014, not already published on the Council's website at the date of this request*
 - 3. Copies of all written communications between Planning officers and the Council's internal legal advisors after 24 December 2014, not already published on the Council's website at the date of this request.*
 - 4. Copies of all written communications between the Council's internal legal advisors and any external legal advisors and representatives after 24 December 2014, not already published on the Council's website at the date of this request.*
 - 5. Copies of any file notes or meeting notes concerning the validity of this application under any Permitted Development Rights Procedures*
 - 6. Copies of all written communications between the Planning officers and the Council's internal legal advisors after 24 December 2014, regarding the scope and interpretation of Permitted Development Rights under Class MB as may apply to this application.*
 - 7. Copies of all written communications between Planning officers, the Council's internal legal advisors or representatives after 24 December 2014, regarding the scope and interpretation of Permitted Development Rights under Class MB as may apply to this application.*
 - 8. Copies of all papers considered in the decision making process not already published on the Councils website at the date of this request, and specifically the Officers report seeking approval to the Decision and any written communications flowing from that report".*
3. The council responded on 21 May 2015. The council supplied some information, in particular, communications between the council and the applicant/agent (covered by points 1 and 2 of the request) and the officer delegated report (covered by point 8). The council said that it had decided that the information covered by points 3 to 7 of the request could not be supplied because it was excepted under regulation 12(5)(b) and 12(4)(e) of the EIR. The council said that the public interest did not favour disclosure.
 4. The complainant wrote to express dissatisfaction with the council's refusal on 26 May 2015.
 5. The council responded on 17 July 2015. The council decided to uphold its refusal to supply any further information.

Scope of the case

6. The complainant contacted the Commissioner on 14 July 2015 to complain about the way his request for information had been handled. He complained about the council's decision to withhold some information and that it had taken more than 20 working days to complete its internal review.

Reasons for decision

Regulation 5(2) – Duty to make environmental information available within 20 working days

7. In this case, the council decided to disclose the information on an informal basis. The Commissioner has therefore not considered whether the information was correctly withheld at the time of the complainant's request. However, the Commissioner will record a breach of regulation 5(2) of the EIR in view of the late disclosure.

Regulation 11(4) of the EIR – Internal review

8. The complainant expressed dissatisfaction in this case because the council took longer than 20 working days to complete the internal review. Under regulation 11(4) of the EIR, a public authority is obliged to complete an internal review as soon as possible and within 40 working days. In this case, the public authority completed its internal review within 40 working days and it said that it wished to maintain that it did complete the review as soon as possible, alongside a separate complaint being pursued by the complainant at the same time.
9. In this case, the complainant requested an internal review of the handling of his requests on 26 May 2015. On 28 May 2015, the council received a separate complaint about the planning matter, which was the focus of the particular requests. The council completed stage 1 of its complaint process on 11 June 2015. On 6 July 2015, the complainant asked for the background complaint to be escalated to stage 2. The council completed its internal review of the handling of the EIR request on 17 July 2015. It completed its stage 2 response to the background complaint on 23 July 2015.
10. The Commissioner notes that when the council completed its internal review, it wrote the following comments:

"I am sorry that I have not responded sooner to your complaint. The delay was caused by some initial confusion within my service about who was dealing with the matter".

11. When the Commissioner initially informed the council that he had received a complaint about the time taken to conduct the review, the council responded as follows:

"We recognise that the request for review was not dealt with within the appropriate timescale. This was because those responding dealt with the complaint without realising that a request for review should have been logged and responded to".

12. In view of the above comments, the Commissioner contacted the council and explained that it appeared to him that the council may have breached its obligation under regulation 11 to complete an internal review "as soon as possible". At this point, the council denied that this was the case, stating that the comments made had been referring to its own internal complaints process timescales. It said that it was important to acknowledge in this case that the review was not received in isolation, but was submitted alongside a planning complaint which the council considered at the same time. The council said that in the circumstances, it was of the view that it had responded as soon as possible.
13. The Commissioner was not persuaded on this occasion by the authority's representations. The comments that the council made to the complainant when it completed its internal review, coupled with those made to the Commissioner, indicate in the Commissioner's view that the receipt of a background complaint at the same time as the request for an internal review caused some delay. The council has acknowledged that there was some confusion about who should deal with the matter, and it appears that the background complaint was pursued without the clear understanding that a review should be logged and responded to separately as soon as possible and within the statutory timescale.
14. In view of the above circumstances, the Commissioner considers that it is more likely than not that on this occasion the council could have conducted its internal review earlier than it did if it had handled the receipt of the background complaint and the internal review at the same time more efficiently. The Commissioner has therefore found a breach of regulation 11(4) of the EIR.

Other Matters

15. The complainant also alleged that the council may have deliberately delayed the completion of the internal review for its own benefit, which would be an offence under regulation 19 of the EIR. The council acknowledged that the review took place at a time when the threat of legal proceedings had passed however it denied that there was a deliberate delay as alleged by the complainant. In the absence of sufficient evidence to the contrary, the Commissioner accepts the council's position.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

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