

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

### **Decision notice**

**Date:** 28 July 2020

**Public Authority:** Eden District Council  
**Address:** Town Hall  
Penrith  
CA11 7QF

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

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1. The complainant has requested a copy of planning pre-application advice. Eden District Council (the council) refused the request under regulation 12(5)(f) of the EIR – Interests of the person who provided the information to the public authority. During the Commissioner’s investigations, the council amended its position and provided the information to the complainant.
2. The Commissioner’s decision is that the council has breached regulation 5(2) of the FOIA as it provided the information outside the required 20 working days, following receipt of the request.
3. As the information has been provided, the Commissioner does not require the council to take any steps.

## **Request and response**

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4. On 15 September 2019 the complainant made the following request for information under the EIR for:

*"...would you be so kind as to email me the pre-application advice for the above application [redacted] for which you are the planning officer.*

*It is my understanding that such advice is private UNTIL such time as the recipient makes a formal planning application at which time it falls into the public domain.*

*I hope that you can simply email a copy over for expediency, however if for whatever reason you do not feel able to do this, please then consider this a formal application under the Freedom of Information Act."*

5. The council responded on 20 November 2019 refusing the request under regulation 12(5)(f) of the EIR.
6. The complainant requested an internal review on 27 November 2019 which the council provided on the 11 December 2019 in which it maintained its original position.

## **Scope of the case**

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7. The complainant contacted the Commissioner 17 December 2019 to complain about the refusal of his request.
8. During the Commissioner's investigations the council amended its position and determined that the information could instead be provided to the complainant, and it sent him the information he requested on 23 June 2020.
9. The complainant has advised the Commissioner that although he is satisfied with the information provided, he is not satisfied with the time frame that the council took.
10. The Commissioner considers the scope of the case is to determine whether the council has breached regulation 5(2) of the EIR – response time.

## Reasons for decision

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### Regulation 5(2) of the EIR

11. Under the EIR, a public authority has a duty to inform the requester whether it holds the information and if so, to communicate the requested information to them *'as soon as possible, and no later than 20 working days after the date of receipt of the request.'*
12. In this case the complainant made his request on 15 September 2019 and the information was not provided to the complainant until 23 June 2020, during the Commissioner's investigations.
13. This is clearly outside the required 20 working days and therefore the Commissioner finds that the council has breached regulation 5(2) of the EIR.
14. As the information has now been provided, the Commissioner does not require the council to take any steps.

## Right of appeal

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15. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

16. 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.
17. 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**  
**Interim Head of FOI Casework and Appeals**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**