

Environmental Information Regulation 2004 (EIR)

Decision notice

Date: 17 July 2023

Public Authority: Mid Ulster District Council

Address: Ballyronan Road
Magherafelt
BT45 6EN

Decision (including any steps ordered)

1. The complainant requested a report into the design of lands acquired by Mid Ulster District Council ("the Council"). The Council cited section 22 of FOIA and refused to provide the requested information because it was intended for future publication.
2. The Commissioner has considered the requested information and has concluded that the Council handled the complainant's request under the incorrect regime. The Council should have handled it under the EIR and as such has not complied with regulation 5 of the EIR.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant under the EIR.
4. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 23 September 2022 the complainant requested information in the following terms:-

“We would like to request a copy of the report, undertaken by Outdoor Recreation NI, into the design of lands acquired by Mid Ulster District Council, off the Mullagh Road in Maghera. We understand the consultation closed on March 11th, 2022, and that ORNI completed and forwarded their report to the Council in July 2022.”
6. The Council responded to the complainant on 19 October 2022. It stated that it was withholding the requested information, citing section 22 of FOIA as a basis for non-disclosure
7. In its internal review response to the complainant on 27 March 2023 the Council upheld the original decision.

Scope of the case

8. The Council handled the request under FOIA. Having perused the requested information, the Commissioner is not satisfied that this was the correct regime and considers that the request should have been handled under the EIR.

Reasons for decision

Is the requested information environmental?

9. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (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, affecting or likely to affect the elements of 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)...as well as measures or activities designed to protect those elements;

- (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
10. The Commissioner has perused the requested information. As it is information relating to the proposed development of lands, complete with description of the plans for these lands together with costings, the Commissioner considers that the information constitutes information on measures affecting the landscape. As such he considers that the Council should have handled the complainant's request under the EIR and has therefore breached regulation 5 of the EIR.

Right of appeal

11. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

12. 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.
13. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF