

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 13 December 2010**

**Public Authority:** Department of the Environment (Northern Ireland)  
**Address:** 10-18 Adelaide Street  
Belfast  
BT2 8GB

#### Summary

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The complainant requested minutes of meetings relating to two planning applications. The Department advised that it did not hold this information as no minutes were taken, but the complainant was not satisfied with this response. The complainant requested that the Department conduct an internal review. Despite the Commissioner's intervention the Department failed to conduct an internal review.

Therefore the Commissioner's decision is that the Department has failed to comply with the requirements of regulations 11(3) and 11(4) of the EIR. Accordingly, the Commissioner requires the Department to conduct an internal review which meets the requirements of the EIR.

#### The Commissioner's Role

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1. The Environmental Information Regulations (the EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the Commissioner). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the Act) are imported into the EIR.
2. This Notice sets out the Commissioner's decision in respect of the complainant's request.

## The Request

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3. The complainant made the following request to the Department of the Environment (Northern Ireland) on 3 December 2009:

*"Can I please be supplied with the minutes of internal meetings which took place in relation to the following applications:*

- a) site of townhouse development with access to Farm Lodge Road (amended concept); V/2000/02130/0, and*
- b) lands to the east of Farm Lodge Park, Greenisland and south of the proposes.*

*I request a hard copy of the minutes are supplied to me".*

4. The Department responded to the complainant on 14 December 2009. The Department advised that it did not hold any minutes of meetings in relation to either of the planning applications specified. The Department advised that it did hold a Development Control Officer's Professional Planning Report in relation to the first application, and it provided this to the complainant. The Department redacted some personal information from this report but did not cite an exception under the EIR.
5. On 15 December 2009 the complainant wrote to the Commissioner to complain about the Department's response. The Commissioner advised the complainant that he should request an internal review of the Department's response.
6. On 13 February 2010 the complainant wrote to the Department seeking an internal review of its response to his request of 3 December 2009. The complainant did not accept that the Department did not hold minutes of internal meetings in relation to planning applications.
7. On 6 April 2010 the complainant contacted the Department to complain that he had not yet received either a response or an acknowledgement of his request for an internal review.
8. The complainant did not receive any further correspondence relating to his request for an internal review.

## The Investigation

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### Scope of the case

9. On 24 April 2010 the complainant contacted the Commissioner to complain about the way the Department had handled his request. The complainant advised the Commissioner that he had been in correspondence with the Department for a number of years, in an effort to obtain information relating to certain planning applications.
10. On considering the correspondence provided by the complainant, the Commissioner noted that the Department had not advised the complainant of the outcome of the internal review he had requested on 13 February 2010. The Commissioner wrote to the Department on 11 May 2010 to remind it of its obligations.
11. The complainant contacted the Commissioner again on 22 July 2010 to advise that he had still not received the outcome of the internal review.

### Chronology

12. On 24 September 2010 the Commissioner wrote to the Department. The Commissioner advised that he had already reminded the Department that it was required to conduct an internal review, but despite the Commissioner's intervention it appeared that the Department had failed to do so.
13. The Department acknowledged receipt of this correspondence on 28 September, but did not provide any substantive response.

### Analysis

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#### Internal review – regulation 11

14. Regulation 11(1) of the EIR provides that an applicant may make representations to a public authority, if he considers that the authority has failed to comply with the requirements of the EIR in relation to his request.
15. Regulation 11(3) requires that the authority consider the complainant's representations, along with any supporting evidence provided by the complainant, and to decide whether it has complied with the requirements of the EIR. Finally, regulation 11(4) requires that the authority notify the applicant of its decision in relation to the

applicant's representations no later than forty working days after receipt of those representations.

16. The Commissioner notes that the complainant in this case clearly requested an internal review in his letter of 13 February 2010.
17. The Commissioner is concerned that the Department has not provided any explanation as to its failure to conduct an internal review. The Commissioner considers that regulation 11 of the EIR provides a clear statutory right for an applicant to have his or her request reconsidered by the public authority in question. This in turn provides the authority with an opportunity to rectify any procedural or handling issues, as well as an opportunity to explain to the complainant how their request was handled.
18. In any event the Department has failed to conduct an internal review, adequate or otherwise, and therefore the Commissioner must find that the Department failed to comply with regulation 11(3) of the EIR. Consequently, in failing to provide the complainant with notice of its decision in response to the complainant's representations within the appropriate time period the Department failed to comply with regulation 11(4) of the EIR.

## **The Decision**

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19. The Commissioner's decision is that the Department did not deal with the request in accordance with the EIR in the following respects:
  - Regulations 11(3) and 11(4) in that the Department failed to consider the representations put forward by the complainant.

## **Steps required**

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20. The Commissioner requires the Department to undertake an internal review which complies with the requirements of regulation 11(3).

## **Failure to comply**

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21. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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22. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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 served.

**Dated the 13<sup>th</sup> day of December 2010**

**Signed .....**

**Steve Wood  
Head of Policy Delivery**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex: Relevant statutory obligations

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### Environmental Information Regulations 2004

#### Regulation 11: representations and considerations

**Regulation 11(1)** Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

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**Regulation 11(3)** The public authority shall on receipt of the representations and free of charge –

- (a) consider them and any supporting evidence produced by the applicant; and
- (b) decide if it has complied with the requirement.

**Regulation 11(4)** A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.