

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

### **Decision notice**

**Date:** 25 July 2013

**Public Authority:** Bolton Metropolitan Borough Council

**Address:** Town Hall  
Civic Centre  
Bolton, Lancashire  
BL1 1RU

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

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1. The complainant has requested information relating to detergents discharged into rain water drains as a result of wheelie bin cleaning. Bolton Metropolitan Borough Council (the "council") confirmed that it did not hold any relevant information.
2. The Commissioner's decision is that Bolton Council correctly confirmed (under regulation 5 of the EIR) that it did not hold the requested information. However, it failed to respond to the request or issue an appropriate refusal notice within 20 working days and, in doing so, breached regulation 5(2) and regulation 14(1) of the EIR. In failing to conduct an internal review within 40 working days the council also breached regulation 11(4).
3. The Commissioner does not require the public authority to take any steps.

#### **Request and response**

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4. On 21 December 2012, the complainant wrote to the council and requested information in the following terms:

*"If you are expecting me to believe that low levels of detergent can be discharged into the rain water drains which feed the local brook would you now please provide the following information as a Environmental Information Regulations Act 2004 request:-*

*1) Provide any data or information or policy or anything else which*

*states the minimum and maximum amount of detergent which may be discharged by a person into the surface water drains which feed the local brook.*

*2) Provide any information which states that no detergent should be discharged into the surface water drains.*

*3) Provide any information which relates to the discharge of detergents into the surface water drains.*

*4) Provide any information which the environmental health department used to determine their comment you attributed to them 'that bin cleaning generally uses high power wash and the levels of detergent used is relatively low and uses 'controlled' substances. Pollution levels are generally not an issue.'"*

5. The council provided an initial response on 6 February 2013. This advised the complainant that the information would be held by United Utilities.
6. On 25 March 2013 the council wrote to the complainant and confirmed that it did not hold the requested information and advised them to redirect their request to the Environment Agency.
7. Following an internal review the council wrote to the complainant on 4 July 2013. The council maintained its position as set out in its letter of 5 March 2013.

### **Scope of the case**

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8. On 7 February 2013 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. The Commissioner confirmed with the complainant that his investigation would consider the delays involved in the handling of the request and whether the council correctly confirmed that the requested information was not held.

## **Reasons for decision**

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### **Regulation (5)(2) – time for compliance**

10. Under regulation 5(2) of the EIR, public authorities must provide information within 20 working days of the date of the request or, where relevant, issue a refusal notice.
11. The complainant submitted their request on 21 December 2012 and the council responded on 25 March 2013.
12. As the council failed to issue an appropriate response within 20 working days the Commissioner finds that it breached regulation 5(2) of the EIR.

### **Regulation 14 – refusal of request**

13. Where an authority is refusing a request for information made under the EIR, it must, under regulation 14, issue a refusal notice in writing within 20 working days.
14. In cases where requested information is not held, an authority should issue a refusal notice which confirms this.
15. The request was submitted on 21 December 2012 and the council confirmed that the information was not held on 25 March 2013.
16. The Commissioner has concluded that the council failed to issue a refusal notice within 20 working days and that it breached regulation 14(2) of the EIR.

### **Regulation 5 – duty to provide environmental information**

17. Under regulation 5, public authorities are obliged to provide environmental information which is held at the time a request is made.
18. In this case the council confirmed that it does not hold the requested information. The complainant has disputed this.
19. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
20. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds

any information which falls within the scope of the request (or was held at the time of the request).

21. To assist with this determination the Commissioner wrote to the council and sought clarification.
22. The council first noted that, in this case, all of the questions contained within the request related in some way to information held about the discharge of detergent into surface water drains.
23. The council clarified that it approached its Environmental Health section and asked whether it held any information on this subject. The section in question confirmed that they did not hold this information and had no business need to, as the control and regulation of detergent discharges was the remit of the Environment Agency rather than the local authority, and that this is the correct body to which requests of this nature should be referred.
24. The fourth question of the request asked for any information that the council's Environmental Health section used to determine a comment attributed to it by the complainant.
25. The council confirmed that, in order to trace this, a search was undertaken to locate how the comment was made. Staff who dealt with your query confirmed that they recalled only a 'general conversation' regarding the cleaning of Wheelie bins. The council explained that, for completeness, deleted emails were restored, however no emails were found containing this comment or similar advice.
26. The council confirmed that it was satisfied that any relevant information was not held in a written or other recorded format. It reaffirmed that, as the Environmental Health team do not have responsibility for the control and regulation of detergent discharges, and have no business need to hold any information about this subject, they would be unlikely to and, in reality, do not hold any information that could have been used to provide the basis for this comment.
27. Having considered the council's explanations, the enquiries it conducted in establishing whether relevant information was held and, in particular, having noted that the council does not have responsibility for the matters referred to in the request, the Commissioner has concluded that, on the balance of probabilities, it is likely that the council has correctly confirmed that the requested information is not held.

**Regulation 11 – internal review**

28. Under regulation 11, where a public authority receives a request for it to review its handling of a request for information, any such internal review should be completed within 40 working days.
29. The complainant requested an internal review on 25 March 2013 and the council sent the outcome of its review on 4 July 2013.
30. As the council did not conduct its review within 40 working days the Commissioner finds that it breached regulation 11 of the EIR.

## Right of appeal

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31. 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: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

32. 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.
33. 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**