

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

Decision notice

Date: 29 October 2013

Public Authority: North Devon District Council
Address: Civic Centre
North Walk
Barnstaple
Devon
EX31 1EA

Decision (including any steps ordered)

1. The complainant requested financial information in relation to a planning application by a third party. The council withheld the information on the basis that Regulations 12(5)(e) and 12(5)(f) applied. However during the course of the Commissioner's investigation the council disclosed the information to the complainant. This was because the third party sought to use the information as part of his evidence during a planning appeal. The planning inspector in charge of the appeal said to the third party that if he chose to use the information in his evidence in the appeal then he would order the information to be made available to the public. This therefore destroyed any confidentiality which the information was held under and so the council relinquished the exceptions it had been relying upon.
2. The Commissioner's decision is that North Devon District Council has breached Regulation 5(2) in that it did not disclose the information to the complainant within 20 working days.
3. However under the circumstances of the case the Commissioner requires no steps to be taken.

Request and response

4. On 10 January 2013 the complainant wrote to the council and requested information of the following terms:

"I am seeking a copy of the case made by the applicants for a proposed dwelling within North Devon's AONB and Heritage Coast on the grounds that their alpaca business has generated and would generate sufficient income to support one agricultural worker (application no 54744). This information has been withheld."

5. On 22 January 2013 the council responded. It refused to provide the information applying the exceptions in Regulation 12(5)(e) (commercial confidentiality) and 12(5)(f) (information supplied on a voluntary basis).
6. Following an internal review the council wrote to the complainant on 5 March 2013. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 26 April 2013 to complain about the way his request for information had been handled.
8. The Commissioner considers that the complainant's complaint is that the council withheld information from him which he was entitled to under the Regulations.
9. During the course of the Commissioner's investigation the council contacted the Commissioner and informed him that in an ongoing planning appeal the planning inspector had indicated that if the third party wished the withheld information to be taken into account in his decision he would require a disclosure of that information to the public. The third party did ask for the information to be taken into account, and the council then wrote to the complainant on 11 October 2013, 2 days after the hearing and provided him with a copy of the withheld information.
10. The Commissioner therefore asked the complainant if he would be willing to withdraw his complaint to the Commissioner as he now had the information which he had asked for. The complainant however said that he was not willing to do so.

Reasons for decision

11. Regulation 5(2) of the EIR states that where information is to be disclosed under the Regulations then the information should be communicated to the applicant 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 for the information on 10 January 2013.
13. The complainant received the withheld information from the council on 11 October 2013. This falls outside of the 20 working days required by the Regulations.
14. The Commissioner's decision is therefore that the council breached the requirements of Regulation 5(2) in that it did not disclose the withheld information to the complainant within 20 working days.

Right of appeal

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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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