

Environmental Information Regulations 2004 (EIR)

Decision Notice

Date: 16 February 2015

Public Authority: Department of the Environment
Address: 10-18 Adelaide Street
Belfast
BT2 8GB

Decision (including any steps ordered)

1. The complainant requested documents submitted by a company in connection with its request to carry out exploratory drilling at Woodburn Forest, Carrickfergus. The Department failed to provide the complainant with all the relevant information it held until the Commissioner intervened. The Commissioner's decision is that the Department failed to comply with regulations 5(1) and 5(2), 11(3) and 11(4) of the EIR. As the Department has now complied with the request no further steps are required.

Request and response

2. On 1 July 2014 the complainant requested the following information from the Department:

"Please would you provide me with all documents submitted by InfraStrata in their request to carry out exploratory drilling at Woodburn Forest, Carrickfergus."
3. The Department responded on 8 July 2014. The Department confirmed that it had been consulted by InfraStrata and disclosed a copy of the Department's response to that consultation. The Department also suggested that the complainant contact the Department of Enterprise, Trade and Investment for further information.
4. On 22 July 2014 the complainant wrote to the Department, asking it to confirm that it had in fact provided all the relevant information held, or to review the request and provide any outstanding information.

5. The Department responded to the complainant on 5 August 2014 and provided a copy of a document it described as "the only further information held by the Department", although it did not explain why this had not been provided in its initial response. The Department did not indicate that any information had been withheld under any provision of the EIR.

Scope of the case

6. On 27 August 2014 the complainant contacted the Commissioner to complain that the Department had not dealt with his request in accordance with the EIR. Specifically the complainant expressed concern that the Department may hold further information, relevant to the request, which had not been provided or properly withheld.
7. The Commissioner wrote to the Department on 6 October 2014, requesting further details as to how the Department had handled the request. The Commissioner also asked the Department to check whether it held any further information relevant to the request, and if so, provide it to the complainant.
8. The Commissioner set a deadline for the Department to respond by 3 November 2014. The Commissioner did not receive a response to this correspondence. The Commissioner wrote to the Department on 6 November 2014 to advise that an information notice would be issued if a response was not forthcoming.
9. The Commissioner telephoned the Department on 18 November 2014. The Department apologised for the delay in responding but advised that it had resourcing issues. The Department indicated that it would respond to the Commissioner within a week. However the Commissioner did not receive any further response, and he issued an information notice on 8 December 2014.
10. The Department responded to the Commissioner on 29 December 2014. At this late stage the Department claimed that the complainant had not requested an internal review, but following the Commissioner's correspondence the Department was now taking action to identify any "further relevant information".
11. The Department wrote to the complainant on 9 January 2015 providing its final position with regard to the request. The Department confirmed that it did in fact hold further information relevant to the request, and provided this information to the complainant.

12. The complainant has confirmed to the Commissioner that he is content to accept the Department's revised response of 9 January 2015. However he remains dissatisfied with the Department's handling of the request and has asked that the Commissioner make a decision in the matter.

Reasons for decision

Regulation 5: duty to make environmental information available

13. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that the authority must make the requested information available as soon as possible and no later than 20 working days after the date of receipt of the request.
14. The Department initially provided one document, and provided a further document when the complainant expressed dissatisfaction with the response. It was not until the Commissioner issued an information notice that the Department finally provided the complainant with all the relevant information it held.
15. The Commissioner is of the view that the Department clearly failed to deal with the request in accordance with the requirements of the EIR as set out above. The Department responded to the complainant's request in a piecemeal fashion, which is wholly unacceptable. Had the complainant not challenged the Department he would not have been provided with the information held.
16. The Commissioner is disappointed that the Department failed to respond to his enquiries until an information notice was issued. The Commissioner has seen no evidence to suggest that the Department deliberately blocked access to the requested information, or deliberately failed to respond to the Commissioner's correspondence. However the Department has failed to provide a reasonable explanation for its failure to comply with the requirements of the EIR and engage with the Commissioner's investigation. The Commissioner would expect that the Department review its procedures and improve its performance in handling future requests.

Regulation 11: internal review

17. Regulation 11 of the EIR sets out the right of internal review. Regulation 11(1) states that an applicant may make representations to a public

authority if he considers that the authority has failed to comply with a requirement of the EIR. Regulation 11(3) states that the authority must consider the applicant's representations and regulation 11(4) states that the authority must advise the applicant of the outcome of this consideration no later than 40 working days after the date of receipt.

18. In this case the Department's Departmental Information Manager (DIM) argued to the Commissioner that no request for internal review had been made to him. The Commissioner notes that the Department's response to the complainant dated 8 July 2014 said that an internal review could be requested by writing to the DIM. However the Commissioner would remind the Department of the Code of Practice issued under regulation 16 of the EIR. Paragraph 60 of the Code recommends that:

"60. Any written reply from the applicant (including one transmitted electronically) expressing dissatisfaction with an authority's response to a valid request for information should be treated as a complaint... These communications should be handled in accordance with the authority's review procedure pursuant to Regulation 11, even if the applicant does not state his or her desire for the authority to review their decision or the handling of their application."

19. The complainant's correspondence of 22 July 2014 explicitly requests that the Department "review this information request". Regulation 11 does not allow public authorities to insist that requests for internal review can only be made to specific individuals or business areas. Therefore the Department ought to have recognised the correspondence of 22 July 2014 as a clear and valid request for internal review and if necessary directed it to the DIM for processing.
20. Consequently the Commissioner does not accept the Department's claim and finds that the Department failed to comply with regulations 11(3) and 11(4) of the EIR.

Right of appeal

21. 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 123 4504
Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

22. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Tribunal website.
23. 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

Alexander Ganotis
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