

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

### **Decision notice**

**Date:** 8 July 2015

**Public Authority:** Royal Borough of Windsor and Maidenhead  
**Address:** Town Hall  
St Ives Road  
Maidenhead  
SL6 1RF

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

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1. The complainant made a request for information to the Royal Borough of Windsor and Maidenhead (RBWM) for copies of notes and records of a site visit at a particular property. RBWM initially refused the request under the exception in regulation 12(5)(d) of the EIR (Confidentiality of proceedings). However, during the course of the investigation RBWM overturned its decision and disclosed the information to the complainant.
2. The Commissioner has found that RBWM breached regulation 5(2) by failing to make requested information available within 20 working days. The Commissioner also found that it breached regulations 11(4), 14(3)(b), 14(5)(b) and 11(4) in its handling of the complainant's request but he requires no steps to be taken.

#### **Request and response**

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3. On 9 September 2014 the complainant made a request for information to RBWM which asked for the following:

*"...a copy all notes and records of the site visit carried out by your Enforcement Officer, Arron Hitchen to the land at Blacknest Park Whitmore Lane Sunningdale in May 2012."*

4. RBWM responded to the request on 6 October 2014 when it explained that it held the information but that it was being withheld under the exception in regulation 12(5)(d) of the EIR (Confidentiality of proceedings). No explanation on why the exception applied or the public interest test was given.
5. On 11 November 2014 the complainant asked RBWM to carry out an internal review of its handling of the request.
6. On 13 November 2014 RBWM replied to say that it would complete an internal review within 40 working days.
7. On 2 March 2015 the complainant contacted RBWM again to complain that they had yet to receive the internal review. At the time of making their complaint to the Commissioner an internal review had not been completed.

### **Scope of the case**

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8. On 28 March 2015 the complainant contacted the Commissioner to complain about the way their request for information was handled. In particular, they complained about RBWM's decision to withhold the requested information, its failure to explain why the requested information was being withheld and its failure to carry out an internal review.
9. During the course of the Commissioner's investigation RBWM disclosed the information to the complainant. Therefore, the Commissioner has not carried out an assessment of the application of the regulation 12(5)(d) exception in this decision notice. The Commissioner has, however, considered RBWM's handling of the request and whether there were any procedural breaches of the EIR.

### **Reasons for decision**

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#### **Regulation 5 – Duty to make available environmental information on request**

10. Regulation 5(1) provides that a public authority that holds environmental information shall make it available on request. Regulation 5(2) provides that requested information shall be made available as soon as possible and not later than 20 working days after the date of

receipt of the request. In this case the complainant made their request on 9 September 2014 but the information was not disclosed until June 2015, after the Commissioner had commenced his investigation. Therefore the Commissioner finds that RBWM breached regulation 5(2) of the EIR.

### **Regulation 14 – Refusal to disclose information**

11. Regulation 14(3) of the EIR provides that where a public authority refuses a request for environmental information the refusal shall specify the reasons not to disclose the requested information including-

*(a) any exception relied on under regulations 12(4), 12(5) or 13; and  
(b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).*

12. In this case RBWM's refusal failed to explain why it considered that the public interest favoured maintaining the exception. This amounts to a breach of regulation 14(3)(b).

13. Regulation 14(5) also requires that where a public authority refuses a request it must inform the applicant of their right to make representations to the public authority under regulation 11, and of their right to complain to the Information Commissioner as set out in regulation 18 of the EIR. Whilst RBWM advised the complainant of their right to request an internal review, it did not inform them of their right to complain to the Information Commissioner and this is a breach of regulation 14(5)(b).

### **Regulation 11 – Representations and reconsideration**

13. Regulation 11 of the EIR allows an applicant to make representations to a public authority if it appears to the applicant that the authority has failed to comply with a requirement of the EIR in relation to their request. A public authority should then consider the representations and decide if it has complied with the requirement, more commonly known as an internal review. Regulation 11(4) makes it clear that a public authority shall notify the applicant of its decisions within 40 working days of receiving the representations.

14. RBWM failed to carry out an internal review in this case and therefore breached regulation 11(4).

## Right of appeal

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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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

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 .....**

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