

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 17 February 2015

Public Authority: Newcastle Under Lyme Borough Council

Address: Civic Offices
Merrial Street
Newcastle Under Lyme
ST5 2AG

Decision (including any steps ordered)

1. The complainant has requested building and planning information with regards to a business premises. Newcastle Under Lyme Borough Council (the council) provided the complainant with information it held. However the complainant was not satisfied with the time it took the council to respond to him.
2. The Commissioner's decision is that the council provided the complainant with the information it held within the timeframe permitted by the EIR, but has breached regulation 14(2) of the EIR as it did not issue a refusal notice for the information it did not hold within the required timeframe.
3. As the council has now advised the complainant that it does not hold the remaining information, the Commissioner does not require it to take any steps.

Request and response

4. On 2 December 2013 the complainant requested the following information from the council:

"Please urgently provide me (via e mail) with copies of the applications for planning and/or building regulations for the building work currently being undertaken at the business premises at [address redacted] which is being used as [redacted

business type] premises; I understand that the work may well require such applications and if it does then I wish to know whether such applications have been made and granted.

Please also provide me (via e mail) with copies of all planning and/or building regulations relating to the current use of [address redacted](including all applications that are necessary to ensure it complies with all relevant hygiene, health and safety regulations”

5. The council responded on the 19 December 2013. It provided a copy of the Certification for the Registration. It also provided a link to view details of the application.
6. On the 23 December 2013 the complainant requested an internal review. He advised that he was unable to open the attachment and the information requested had not been provided.
7. The council responded on the 3 January 2014. It asked the complainant to confirm whether it was the attachment he could not view, and if so, it could send a copy by post if he provided his address. It also provided another link to view the planning application.
8. The complainant responded on the 3 January 2014. He advised that the attachment will not open and the web links provided did not work. He also advised that he had contacted the Information Commissioner's Office about the time for providing the information.
9. The council responded again on the 3 January 2014. It attached the document again. It also advised that it can post a copy if the complainant still could not open it. As there was a problem with the web link, the council provided instructions on how to access the application from www.newcastle-staffs.gov.uk
10. The complainant responded on the 3 January 2014 and advised that he had managed to open the attachment, but the registration certificate was not signed. He asked where the application made was and where the signed copy of the registration was. The complainant advised that the alternative way of accessing the application online does not provide the information requested, it just provided a summary.
11. On 6 January 2014 the council responded advising how to look at all the documents once at the summary screen. However the complainant advised there were still documents missing.
12. On the 16 January 2014 the council advised that it did not hold an original copy of the registration form as one had not been retained.

13. The council provided an internal review response on the 23 January 2014. In its review it advised the following:
- a) The complainant has now been able to gain access to the online planning application. Following two unsuccessful web links, he was given instructions on how to access it from the website.
 - b) The unsigned Certificate of Registration is not relevant to this request as it was not asked for. The request asked for copies of all relevant applications necessary to ensure the business complies with all relevant hygiene, health and safety regulations.
 - c) The council's response should have referred to the application form. It failed to advise whether or not it held this information in its original response. However it advised in an email dated 16 January 2014 that a copy of the original application form for registration has not been retained by the council.
 - d) The council lastly stated that there are no relevant Building Regulation applications relating to what the premises is used for or relating to works that were being undertaken to the property at the time of your request.
14. The complainant has advised the Commissioner that he is not satisfied with the time it has taken the council to respond the information request.

Scope of the case

15. The complainant has contacted the Commissioner to advise that he is not satisfied with the time scale it took the council to provide its response to his request.
16. The Commissioner has determined that the scope of the case is to firstly establish whether the information request is environmental information and therefore fall within the EIR and then go on to determine if the council has failed to respond to the request within the timeframes permitted by the EIR.

Reasons for decision

Is the information Environmental Information

17. Regulation 2(1) of the EIR define environmental information as, among others, information on:

- a) *"The state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;"* and
- c) *"Measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements and factors preferred to in (a) and (b) as well as measures or activities designed to protect those elements;"*
18. The requested information, which is to do with planning applications and regulations, in the Commissioner's view would fall within the definition of regulation 2(1)(c) as 'measures or activities' likely to affect the elements of the land and landscape defined in regulation 2(1)(a) of the EIR.

Regulation 5(2) of the EIR

19. Regulation 5(2) of the EIR states:

"Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."

20. The request for information was made on the 2 December 2013, the council's initial response was on the 16 December 2013, and due to links to the information provided not working, the council did not provide the information it held to the complainant until the 3 January 2014.
21. As this request and response ran over the Christmas and New Year period, the Commissioner has taken into account any bank holidays that fell within the period from 2 December 2013 to 3 January 2014.
22. The Commissioner's guidance¹ at paragraph 14 states:

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[http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Environmental info reg/Detailed specialist guides/time-for-compliance-eir-guidance.pdf](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Environmental%20info%20reg/Detailed%20specialist%20guides/time-for-compliance-eir-guidance.pdf)

"A working day can be defined as any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom."

23. Therefore the bank holidays between the 2 December 2013 and 3 January 2014 are 25th & 26th December 2013, and 1st and 2nd of January 2014. The 2nd of January being a public holiday in Scotland.
24. Therefore the 20 working day after the receipt of the request, which was made on the 2 December 2013, is 3 January 2014. The council provided the complainant with the information that it held on this date.
25. Therefore the Commissioner finds that the council provided the information it did hold within the required timeframe as set out in the EIR.

Regulation 14 of the EIR – Refusal to disclose information

26. Regulation 14 of the EIR states:

- (1) *If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.*
- (2) *The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.*
- (3) *The refusal shall specify the reasons not to disclose the information requested, including-*
 - (a) *any exception relied on under regulations 12(4), 12(5) or 13"*

27. Regulation 12(4) of the EIR states:

"For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that-

- (a) *It does not hold that information when an applicant's request is received;"*

28. On consideration of the above, the request was made on the 2 December 2013, the initial response was made on 16 December 2013 and a further response on the 3 January 2014. The council did not state that some of the information requested was not held until the 16 January 2014 and the internal review of 23 January 2014.

29. As the council did not refuse the information it did not hold within the required 20 working days following the receipt of the request, the Commissioner's decision is that regulation 14(2) of the EIR has been breached by the council.
30. As the council has now advised the complainant that it does not hold the remaining information, the Commissioner does not require it to take any steps.

Right of appeal

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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