

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 25 June 2015

Public Authority: Chesterfield Borough Council
Address: Town Hall
Rose Hill
Chesterfield
S40 1LP

Decision (including any steps ordered)

1. The complainant has requested works and maintenance records for a property. Chesterfield Borough Council (the council) responded to the request, but the complainant was not satisfied with the time in which it took to do so.
2. The Commissioner's decision is that the council breached regulation 5(2) of the EIR as it responded outside of the required 20 working day timeframe.
3. As the council has provided its response, the Commissioner does not require it take any steps.

Request and response

4. On 9 February 2015 the complainant wrote to the council and within his correspondence he requested the following information:

"I would also be grateful you provide the Councils work/maintenance records for [address redacted] from Jan 2014 – Nov 2014. Thank you."

5. The complainant contacted the Commissioner on the 9 March 2015 as he had not received a response to his request.
6. The council responded on the 20 March 2015.

Scope of the case

7. The complainant has advised the Commissioner that he is not satisfied with the time it has taken the council to respond to his request.
8. The Commissioner therefore considers that the scope of the case is to firstly consider whether the request falls within the FOIA or the EIR and then determine whether the council has breached section 10 of the FOIA or regulation 5(2) of the EIR.

Is the information Environmental Information?

9. Regulation 2(1) of the EIR defines 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 referred to in (a) and (b) as well as measures or activities designed to protect those elements;"*
 - f) *the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are affected by the states of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)"*
10. The requested information is in relation to works carried out on a property and from the Commissioner reading the complainant's correspondence, the request appears to be with regards to an issue of damp and mould in the bathroom. In the Commissioner's view, this request would fall within the definition of regulation 2(1)(f) of the EIR as 'the state of human health and safety' and 2(1)(c) as the requested maintenance/ works records would fall under 'administrative measures'.

Reasons for decision

Regulation 5(2) of the EIR

11. 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."

12. The request for information was made on the 9 February 2015 and the council did not provide a response until the 20 March 2015. This being outside the required 20 working days permitted by the EIR by 9 working days.

13. Therefore the Commissioner finds that the council breached regulation (5)(2) of the EIR.

Other matters

14. The council has acknowledged to the Commissioner that this request was not responded to inside the required timeframe permitted by the EIR, but has feels that it needs to add context to the overall issue. It has told the Commissioner that it has been in ongoing correspondence with the complainant since 2013 and it has received in excess of 100 emails from him on a range of matters and he frequently makes multiple requests. Some correspondence containing in excess of 30 to 40 issues.

15. The council has stated that it is attempting to deal effectively and proportionately with the many matters the complainant raises, and considered that the response to this request should form part of its Stage 3 letter rather than opening a further stream of correspondence.

16. The council therefore feels it appropriate to advise the Commissioner that it is not a case of the council not engaging with the complainant, it is more the fact that due to the sheer volume, complexity and range of issues being raised by the complainant the council considered it more appropriate to respond in a single decision letter addressing all the various concerns.

17. The council has also raised the fact that the complainant's requests are imbedded in long letters to the council and this can make it difficult to sift these out from the other issues being raised in his correspondence which can add to a delay in responding. The council recognises that there is no requirement for requests to be identified as such, but feels

that if the complainant were to do so, this would help in him receiving more prompt responses in the future.

18. The Commissioner on these other matters sympathises with the fact that information requests may be more difficult to identify when they are embedded within a large body of correspondence. And the complainant may choose, on reading this, to separate out future information requests from his other correspondence in order to help the council in providing more timely responses.
19. However, as the council has pointed out, the onus is on it to identify and respond to a request for information within the required timeframes not the complainant. But the Commissioner has published a list of 'Do's and Don'ts' to help people make effective information requests which can be found at the following link: <https://ico.org.uk/for-the-public/official-information/> that both parties may wish to refer to.

Right of appeal

20. 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

21. 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.
22. 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
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