

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 14 June 2016

Public Authority: Milton Keynes Council
Address: Civic Offices
1 Saxton Gate East
Central Milton Keynes
MK9 3EJ

Decision (including any steps ordered)

1. The complainant has made a request to Milton Keynes Council ("the council") for information about the development of an area of land. The council provided a response. The complainant requested that the council provide an internal review. Despite the Commissioner's intervention the council failed to conduct an internal review.
2. The Commissioner's decision is that the council has failed to comply with the requirements of regulation 11(3) and 11(4) of the Environmental Information Regulations ("the EIR").
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation:
 - Conduct an internal review in respect of the request made on 14 July 2015 that complies with the requirements of regulation 11(3).
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 14 July 2015 the complainant wrote to the council and requested information in the following terms:

I have now done some research of my own on this and believe that the viability statement submitted to MKC can and should be made public. I would therefore appreciate if you could arrange for the viability statement to be put online as part of the planning documentation.

If for reason you are unable to do this, please treat this as a formal request under FOIA for disclosure of all documents held by MKC in relation to discussions held or issues raised in any form with Brickhill, their directors, agents or representatives about viability of their planning application for the Agora site and the adjacent public car park with any officers, members, agents or representatives of MKC. Note that my FOIA request is deliberately case wider than the request for the viability statement, but if the viability statement is made available online now (today or early tomorrow) then I do not pursue a FOIA request now but may pursue a similar request in the future.

6. On 22 July 2015 the council provided a response in which it disclosed some held information.
7. On 30 July 2015 the complainant disputed the completeness of the council's response and correspondence ensued between the two parties.
8. On 4 August 2015 the complainant requested an internal review in the following terms:

I have checked what information is online and the rental information is still redacted as it was before. Please therefore treat this as a request for a formal review of the EIR decision on the rental information and the refusal/failure to issue the information held which assesses the existing retail space etc.

I have also rechecked for the Connell's appraisal - as sent to me by [redacted name] - and cannot find this online? If it is there where is it? Hence I still do not have Appendices 2 to 7, so please again treat this as a formal review request of the EIR decision not to release the appendices.

9. On 24 August 2015 the complainant reiterated his request for an internal review, and correspondence ensued between the two parties.
10. On 8 January 2016 the complainant further reiterated his request for an internal review.

Scope of the case

11. The complainant initially contacted the Commissioner on 11 January 2016 to complain about the way his request for information had been handled and specifically that the council's disclosure was incomplete.
12. The Information Commissioner's Office ("the ICO"), having considered the complexity of the correspondence between the two parties, subsequently invited the council to undertake an internal review, as required by regulation 11 of the EIR, so that the council's final position was clarified and an appropriate investigation could be undertaken if still required. The council subsequently informed the ICO that it expected to provide its internal review by 11 May 2016. No internal review was provided by this date, and the council subsequently advised the ICO on 27 May 2016 that information had been identified which fell under an EIR exception, and that a public interest test was being undertaken.
13. Since this time, and despite the Commissioner's intervention, the council has not provided any evidence that an internal review has been conducted and the outcome of this provided to the complainant.

Reasons for decision

Is the information environmental?

14. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered under the terms of the EIR. Under regulation 2(1)(c), any measures that will affect, or be likely to affect, the elements referred to in 2(1)(a), will be environmental information. The requested information relates to the development of land. The Commissioner therefore considers that the request should be dealt with under the terms of the EIR.

Regulation 11 – Internal review

15. Regulation 11(1) provides that an applicant may make representations to a public authority, if he considers that the authority has failed to comply with the requirements of the EIR in relation to his request.
16. Regulation 11(3) requires that the public authority consider the complainant's representations, along with any supporting evidence provided by the complainant, and to decide whether it has complied with the requirements of the EIR. Finally, regulation 11(4) requires that the authority notify the applicant of its decision in relation to the applicant's

representations no later than forty working days after receipt of those representations.

17. In this case, the council received the request for an internal review on the 4 August 2015. Despite providing subsequent assurances to the Commissioner that an internal review outcome would be provided so as to enable any required investigation to then proceed, no outcome has since been provided.
18. The Commissioner considers that regulation 11 provides a clear statutory right for an applicant to have his or her request reconsidered by the public authority in question. This in turn provides the authority with an opportunity to rectify any procedural or handling issues, as well as an opportunity to explain to the complainant how their request was handled.
19. In any event the council has failed to conduct an internal review, adequate or otherwise, and therefore the Commissioner must find that the council failed to comply with regulation 11(3). Consequently, in failing to provide the complainant with notice of its decision in response to the complainant's representations within the appropriate time period the council failed to comply with regulation 11(4).

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