

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

### **Decision notice**

**Date:** 24 October 2018

**Public Authority:** Hambleton District Council  
**Address:** Civic Centre  
Stone Cross  
Northallerton  
North Yorkshire  
DL6 2UU

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

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1. The complainant has requested information from Hambleton District Council (the Council) on traffic mitigation in relation to development sites known as NM5E and NM5C. The Council's position is that the complainant has not requested recorded information, therefore it cannot be considered as a valid information request.
2. The Commissioner's decision is that the complainant's request is a valid information request and the Council should have dealt with it in compliance with the EIR.
3. The Commissioner also found that the Council breached Regulation 5(2) by failing to respond to the complainant's request within the twenty day compliance period.
4. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
  - issue a fresh response to the complainant under the EIR, treating the request as a valid request for information.
5. The Council 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 FOIA and may be dealt with as a contempt of court.

## Request and response

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6. On 18 August 2017, the complainant wrote to the Council and requested information in the following terms:

*"...Please could you answer the following questions-?"*

- 1. For the traffic model for the Northallerton and the link road, does the link road allow for sufficient traffic mitigation to allow development on sites NM5E and NM5C?*
- 2. There is usually a year on year increase in traffic. At what point (year) does the link road fail to provide sufficient traffic mitigation for development sites NM5E and NM5C?"*

7. The Council acknowledged receipt of the request on 21 August 2017.
8. Due to the lack of a substantive response, on 15 October 2017 the complainant requested the Council to conduct an internal review on the handling of his information request.
9. On 18 October 2017, the Council provided the complainant with a response. It stated that *"The data for these requests is contained within publically held information attached to the submissions for the North Northallerton Planning Application, Reference No. 15/01083/HYB. Published information is exempt from disclosure under section 21 of the FOIA, as it is reasonably accessible otherwise than under the Act."*
10. On 19 October 2017, the complainant requested the Council to conduct a second internal review, this time asking the Council to reconsider its response of 18 October 2017.
11. On 10 November 2017, the Council provided the complainant with the outcome of its internal review. It upheld the original position.

## Scope of the case

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12. The complainant initially contacted the Commissioner on 20 September 2017 to complain about the lack of response to his information request submitted on 18 August 2017. At that time, however, the complainant had not yet exhausted the internal review procedure. Therefore he was advised to request the Council to review the handling of his case.

13. The complainant, upon receiving the outcome of the internal review which did not satisfy his request, on 10 November 2018 requested the Commissioner to investigate the case.
14. During the Commissioner's investigation the Council clarified that it no longer wished to rely on section 21 of the FOIA to withhold the requested information. Instead it now stated that it actually did not hold further information beyond what had already been provided to the complainant.
15. In light of the above, the Commissioner considered the matter to be decided is whether the Council complied with regulation 5(1) of the EIR, specifically whether it was correct when it stated that it did not hold further information to what had already been provided.
16. However, when asked to ensure that the necessary searches had been conducted to confirm that no further information was held, the Council stated that it considered that no searches were needed because it did not consider the complainant's questions to be a valid information request because they did not request recorded information.
17. The complainant provided to the Commissioner an explanation in relation to the information that he was seeking to receive. He stated that *"...the traffic model for Northallerton is a dynamic traffic model relying on proprietary mathematics belonging to the consultants who were contracted to do it and in order for the planning officers and councillors to understand it, the results had to be converted into words."*
18. The Commissioner forwarded this further explanation to the Council and asked it to conduct the necessary searches in order to ensure that no information is held, as per its position. However, the Council insisted that it still considers that the complainant's request does not ask for recorded information, therefore, the Council does not consider it to be a valid information request.
19. The scope of this decision notice is to confirm whether the initial request submitted by the complainant can be considered as a valid information request under the EIR.

## **Reasons for decision**

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### **Is the requested information environmental?**

20. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR.

21. Under regulation 2(1)(c), information on any measure that will affect, or be likely to affect, the elements of the environment referred to in 2(1)(a) or the environmental factors referred to in 2(1)(b) will be environmental information. In the present case, the requested information relates to the Council's activities related to traffic mitigation at specific development sites. The matters are likely to be measures that may affect environmental elements and factors listed in regulations 2(1)(a) and (b). The Commissioner, therefore, considers it appropriate to consider the requests as seeking environmental information under the terms of the EIR.

### **Is the request a valid information request under the EIR?**

22. Unlike the Freedom of Information Act, the EIR do not specify how a valid request must be made. Requests can be made verbally or in writing, so a request could be made by telephone, letter or email, or using social media sites.

23. With that in mind, the Commissioner considers that in order to conclude whether the complainant's request is a valid information request under the EIR, the request should be examined as to whether it provides a contact address to which the Council could respond and whether it describes the information requested.

24. Based on the submissions by both parties, it is evident that the complainant submitted the request via email and further communication between the parties was conducted in this mode. Therefore, the Commissioner considers that the complainant provided an address for correspondence.

25. In the course of the Commissioner's investigation, the Council argued that the complainant's questions were not requests for recorded information. It stated that *"The Council is adamant that the questions ... asked are not requests for recorded information and therefore do not fall within the scope of Freedom of Information Act...The information was not created by the Council in the first instance and therefore no searches would take place to find it and the information would be covered in a retention policy."*

26. The Commissioner reiterated that her guidance to the EIR<sup>1</sup> provides an explanation on whether a question can amount to a valid information request. In this guidance the Commissioner stated that a public authority may initially respond to questions informally, but she will expect public authorities to consider their obligations under the EIR "...as

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/guide-to-the-environmental-information-regulations-2-5.pdf>

*soon as it becomes clear that the requester is dissatisfied with this approach."*

27. From the submissions provided and during the course of the complainant's communication with the Commissioner, it is clear that the complainant was not content that the request was being treated informally. In addition, the complainant provided further explanations on what he expected to receive as a result of his information request (see Paragraphs 17 of this decision notice).
28. Therefore, the Commissioner is satisfied that the complainant sufficiently described the requested information.
29. In light of the above, the Commissioner considers that the complainant's questions submitted to the Council on 18 August 2017 amounted to a valid information request. Consequently, the Commissioner considers that the Council has failed to discharge its obligations under the EIR. At paragraph 4 above the Council is now required to respond to the complainant's request under the EIR.

#### **Regulation 5(2) – Time for compliance with the request**

30. Regulation 5(2) provides that:

*"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."*

31. The complainant submitted his request for information to the Council on 18 August 2017. The Council, despite acknowledging receipt of the request on 21 August 2018, did not provide a substantive response to the complainant until 18 October 2018.
32. This falls outside of the 20 working days required by Regulation 5(2). The Commissioner has therefore decided that the Council did not comply with Regulation 5(2) in this respect.

## Right of appeal

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33. 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)

34. 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.
35. 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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**