

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 14 January 2019

Public Authority: Rochdale Metropolitan Borough Council

Address: Municipal Offices
Smith Street
Rochdale
OL16 1YD

Decision (including any steps ordered)

1. The complainant has requested information regarding the discharge of planning conditions on a particular site.
2. The Commissioner's decision is that Rochdale Metropolitan Borough Council ("the Council") has failed to carry out a reconsideration (internal review) of a response it provided, under the Environmental Information Regulations ("the EIR"), within 40 working days and has therefore breached Regulation 11 of the EIR. The Council also failed to respond to the request within 20 working days and therefore also breached Regulation 5(2) of the EIR.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Reconsider how it responded to the original request and inform the complainant of the outcome of that reconsideration in accordance with Regulation 11 of the EIR.
4. 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 Freedom of Information Act and may be dealt with as a contempt of court.

Request and response

5. The Council and the complainant had previously exchanged correspondence which discussed a document containing handwritten comments that had been published on the Council's website.
6. On 15 March 2018, the complainant wrote to the Council and requested information in the following terms:
 1. *How do you (or how does anyone within RMBC) know that the handwritten annotations referred to in our letter of 27.04.17 were written prior to the May 2016 decision to discharge?*
 2. *Who wrote those handwritten comments?*
 3. *Why was enforcement action not taken when the development was, according to those annotations, not in accordance with the planning permission?*
 4. *Why was the decision (subsequently as you claim) taken to discharge the conditions, despite the content of the annotations?*
 5. *Please supply copies of all communications electronic or otherwise between the Council and Barratt/CRSL regarding the site between October 2014 and May 2016.*
 6. *Please also supply copies of all internal communications within the Council relating to the development and compliance with/discharge of planning conditions.*
 7. *The Council is welcome to supply the 'actual statutory planning file' referred to in your letter as well or instead of any of the information requested above, provided that in totality all of the information requested above is supplied."*
7. The Council responded to the request on 12 July 2018. It refused the request in its entirety and cited Regulation 12(5)(b) (Course of Justice) as its reason for doing so.
8. The complainant requested a review on 13 September 2018, but the Council had not completed its review at the date of this notice.

Scope of the case

9. The complainant initially contacted the Commissioner on 12 June 2018 to complain that the Council had not issued a response. The Commissioner contacted the Council to highlight the outstanding response – which was subsequently provided. Having requested an internal review, the complainant contacted the Commissioner again on 12 December 2018 to highlight the fact that no internal review had been carried out.
10. In line with her usual practice, the Commissioner contacted the Council on 12 December 2018 to highlight the outstanding response. She requested that the Council complete its reconsiderations within 10 working days. The Council acknowledged the correspondence and stated that its review was underway, but had yet to provide the complainant with the outcome of that review at the date of this notice.
11. The complainant contacted the Commissioner on 7 January 2019 to note that the review outcome remained outstanding.
12. The Commissioner considers that the fact that this review remains outstanding despite her previous interventions means that a decision notice is appropriate in this case.
13. The scope of the Commissioner's investigation is to determine whether the Council has complied with Regulations 11 and 5(2) of the EIR.
14. For the avoidance of doubt, the Commissioner has not yet considered and therefore takes no position on whether the Council was entitled to rely on Regulation 12(5)(b) to refuse to provide information.

Reasons for decision

15. Regulation 2(1) of the EIR defines environmental information as being 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;*
 - (b) *factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other*

releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(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)...as well as measures or activities designed to protect those elements;

16. The Commissioner has not seen the requested information but, as it is information relating to Planning, she believes that it is likely to be information about measures affecting the elements of the environment. For procedural reasons, she has therefore assessed this case under the EIR.
17. Regulation 5(1) states that: *"a public authority that holds environmental information shall make it available on request."*
18. Regulation 5(2) states that such information shall be made available *"as soon as possible and no later than 20 working days after the date of receipt of the request."*
19. The Commissioner considers that the request in question constituted a valid request for information under the EIR.
20. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the Council has breached Regulation 5(2) of the EIR.

Reconsideration/Internal Review

21. Regulation 11 of the EIR states that:

- (1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.*
- (2) Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.*
- (3) The public authority shall on receipt of the representations and free of charge—*

- (a) consider them and any supporting evidence produced by the applicant; and*
 - (b) decide if it has complied with the requirement.*
 - (4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.*
 - (5) Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of—*
 - (a) the failure to comply;*
 - (b) the action the authority has decided to take to comply with the requirement; and*
 - (c) the period within which that action is to be taken.*
22. From the evidence presented to the Commissioner in this case it is clear that, in failing to carry out an internal review within 40 working days the Council has breached Regulation 11 of the EIR.

Right of appeal

23. 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

24. 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.
25. 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