

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 17 January 2020

Public Authority: City of York Council
Address: West Offices
Station Rise
York
YO1 6GA

Decision (including any steps ordered)

1. The complainant requested information from the City of York Council ("the Council") relating to breaches of planning conditions.
2. The Commissioner's decision is that the Council has failed to respond to the request within 20 working days and has therefore breached regulation 5(2) of the EIR.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - The Council must issue a substantive response to the request in accordance with its obligations under 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 Act and may be dealt with as a contempt of court.

Request and response

5. On 29 August 2019, the complainant wrote to the Council and requested information in the following terms:

"Finally I would like you to provide me for the calendar years of 2017 and 2018 the number of breaches of planning conditions that were reported to CYC together with the corresponding number of enforcements taken by CYC in relation to these reported breaches."

6. The Council acknowledged the request on 16 September 2019 and informed the complainant that his request had been forwarded to its FOI department.
7. The complainant has stated that he wrote to the Council on 18 November 2019 and requested an update on his request but did not receive a response.

Scope of the case

8. The complainant contacted the Commissioner on 8 December 2019 to complain about the Council's failure to respond to his request.
9. The Commissioner contacted the Council on 12 December 2019 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
10. The Commissioner informed the complainant on the same day that the Council had been given 10 working days from 12 December 2019 within which to provide a response to their request.
11. The Commissioner received neither an acknowledgement nor a response to this correspondence from the Council.
12. The complainant contacted the Commissioner on 12 January 2020 and stated that he had not received a response from the Council.
13. The Commissioner discussed this matter with the Council via telephone on 13 January 2020. However, it was unable to confirm that a response had been issued to the complainant.
14. The scope of this notice and the following analysis is to consider whether the Council has complied with regulation 5(2) of the EIR.

Reasons for decision

Was the requested information environmental?

15. Regulation 2(1)(c) of the EIR defines environmental information as being information on:

"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;"

16. The Commissioner considers the wording of the request to be for information about planning conditions. She believes that this is likely to be information about policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in regulation 2(1)(a) and regulation 2(1)(b). For procedural reasons, the Commissioner has therefore assessed this case under the EIR.

Regulation 5

17. Regulation 5(1) of the EIR states that:

"a public authority that holds environmental information shall make it available on request."

18. Regulation 5(2) of the EIR states 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."

19. The Commissioner considered that the request in question fulfilled the above criteria and therefore constituted a valid request for recorded information under the EIR.
20. From the evidence provided to the Commissioner in this case, it is clear that the Council did not provide a substantive response to the request within 20 working days of receipt. Therefore, the Commissioner's decision is that the Council has breached regulation 5(2) of the EIR.

Right of appeal

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

22. 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.
23. 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
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