

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 13 October 2020

Public Authority: Wembdon Parish Council
Address: C/O 11 Wyvern Mews
Churchill Road
Weston-super-Mare
North Somerset
BS23 3GZ

Decision (including any steps ordered)

1. The complainant asked a series of questions relating to a set of gates placed in a country park. The council said that the questions were not EIR requests for information, and also that it did not hold relevant information as regards a second part of the request. The complainant was unsatisfied with the format in which the response was issued to him.
2. The Commissioner's decision is that the council's response complied with the requirements of Regulation 6 in that the request did not specifically state the format with which the response should be issued. She also considers that Regulation 6 refers to the format of the disclosed information, not to the format of any response sent to a requestor. She has decided however that the council did not comply with the requirements of Regulation 11(4) in that it did not issue its review response within 40 working days.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 5 November 2019 the complainant wrote to the council and requested information in the following terms:

"RE: New Paths Across the Parklands/badger foraging area

Information being requested, which should be known by the designer of the paths:

- 1. Do the new paths comply with the guidelines for Part III of the Disability Discrimination Act 1995 (DDA)?*
- 2. Does the current and possible future gate(s) on the parkland/badger foraging area comply with the guidelines for Part III of the Disability Discrimination Act 1995 (DDA)?*
- 3. Do the new paths comply with Part III of the Disability Discrimination Act 1995 (DDA)?*
- 4. Does the current and future gate(s) on the parklands/badger foraging area comply with British Standard BS 8300?*

In relating to the proposed gates:

- 1. Has Wembdon Parish Council applied to Somerset Highways for permission to place a gate across the Right of Way BW34/1?*

I am not aware if the information being requested has already been the subject of a Freedom of Information request. I can find no record.

If it has already been requested could you point me to the relevant document.

I will be satisfied with an electronic reply.

I expect a reply within 20 working day unless you tell me otherwise."

5. The council responded on 26 November 2019 by recorded delivery, however the complainant did not initially receive this response. In its response it said that parts 1–4 of part one of the request were not requests for information under the FOI Act, and that it did not hold any information in respect of the question regarding the application for the proposed gates.

6. On 3 December 2019 the complainant emailed the council complaining that he had not received a response. On the same day the council responded by email. It told the complainant that it had provided its response by recorded delivery on 26 November 2019 and it provided a certificate of posting demonstrating that it had issued it. It also provided a copy of the council's response of 26 November 2019 to the complainant in electronic form.
7. The Commissioner notes that the council issued the response electronically on 3 December 2019 therefore fell on the 20th working day following the date of receipt of the request. Even had the information not been sent by recorded mail on 26 November 2019, the council's response of 3 December 2019 would have complied with the time for response requirements of Regulation 5(2), therefore.
8. Later that same day the council provided evidence that it had tracked the letter and found that it had not been delivered. A card had been posted through the complainant's letter box informing him that he could pick it up from the local post office.
9. There followed further correspondence between the parties as the complainant expressed his view that he was unhappy at the fact that the requested information was not provided by email, and because he was also unhappy with the way in which the council had handled his, and other parties, personal data. This latter point relates to a data protection issue and has been dealt with separately by the Commissioner.
10. On 3 August 2020, following the Commissioner contacting the council and providing advice as to what it needed to do to comply with the request, the council issued a further response to the complainant. This response provided the council's reasons for issuing the response of 26 November 2020 by recorded mail rather than by electronic means. It explained that the wording of the complainant's request did not specifically request the information by electronic means. The complainant's request had simply said that he would be satisfied with a response by that method. The council had therefore decided that recorded delivery was the best means to provide its response in this case.
11. Following a further telephone conversation with the Commissioner's Office the council wrote again to the complainant on 23 September 2020. The Commissioner had informed the council that its initial response to the request was incorrect in that it needed to consider whether any information was held which could respond to the questions asked by the complainant. The council's response confirmed that, as regards the first part of his request for information, it held no

information at the time of the request which could answer the complainant's questions. It also reiterated that it holds no information in respect of the second part of the request.

12. It did however clarify that it does now hold relevant information and informed the complainant that if he wished a copy of this, he could make another request for the information.

Scope of the case

13. The complainant contacted the Commissioner 18 December 2019 to complain about the way his request for information had been handled. This was initially dealt with as a data protection complaint, however the complainant confirmed he also wished it to be considered as a complaint about the council under the EIR/FOI Act. His complaint purely related to the fact that the council had not responded via the format he believes that he requested it in. He did not complain that the contents of the response were incorrect.
14. In short, following correspondence and discussion between the parties, on 3 August 2020 the council wrote to the complainant and explained why it had issued its response by recorded delivery. The complainant remained unhappy about this and made a further complaint to the council.
15. Although the complainant had not requested this, the Commissioner noted that the council's initial response was incorrect and asked the council to rectify this by confirming whether any information had been held which could respond to the complainant's questions. Following advice from the Commissioner the council also issued a full review of its response (as regards whether it held any information at the time of the request) on 23 September 2020.
16. The Commissioner then contacted the complainant by telephone to ascertain the complainant's position now that further correspondence had been exchanged. He said that he does not dispute the council's response that no information was held. However, he considers that the council was not correct to respond by recorded delivery when he had asked for information to be provided by email, and he remains concerned at other matters relating to data protection issues. As noted above, the Commissioner has considered the data protection aspects of this case separately to this decision notice.

17. The Commissioner therefore views the remaining issues to be considered within this decision notice are whether the council was correct to respond to the request by recorded delivery, and whether the council complied with the time requirements of the EIR in carrying out the actions it took.

Reasons for decision

18. Section 50(1) of the Freedom of Information Act 2000 provides the right for any person to make a complaint to the Commissioner. It states that
*"Any person (in this section referred to as "the complainant") may apply to the Commissioner for a decision whether, **in any specified respect**, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I."*
19. Part 5 of the EIR imports the provisions of section 50(1) of the FOI Act to provide a right for requestors to make a complaint to the Commissioner where he or she considers that the EIR have not been complied with.
20. The complaint specified by the complainant to the Commissioner is whether the council complied with its obligations under the EIR in failing to provide the information in the form and format in which he considers he requested it.
21. Regulation 6 of the EIR addresses this issue. It states that:

Regulation 6(1)

Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless –

(a) it is reasonable for it to make the information available in another form or format; or

(b) the information is already publicly available and easily accessible to the applicant in another form or format.

22. The complainant's central issue with the council's response was that it responded by recorded delivery rather than by email. Regulation 6 of the EIR states that, where an applicant 'requests' that the information be made available in a particular form or format, a public authority shall make it available in that format unless it is reasonable for it to make it available in another form or format.

23. In his request for information of 5 November 2019 the complainant said that he would *'be satisfied'* with an electronic reply. The term, "I will be satisfied with" does not however clearly request that the response **is** sent in that specific format. It is an ambiguous statement, which could equally mean that the complainant was expressing a view that an electronic copy of the information would suffice if providing a hard copy was a more difficult option for the council. The Commissioner therefore considers that the complainant did not therefore specifically request the information in this format.
24. That being said, the Commissioner recognises that this was the only method which the complainant did name specifically. As the statement is ambiguous, she considers that it would have been helpful if the council had sought clarification from the complainant as to whether the sentence was expressing a preferred format as it was intending to respond via a different format.
25. More importantly, Regulation 6 explicitly states that it is the requested information which should be provided in the format requested. The council's response did not however provide any of the information requested. The response was a refusal to respond to the first part of the request, and confirmation that no information was held falling within the second part. Nevertheless, she accepts that if the preferred form and format expressed was by electronic means, it may have been reasonable for the complainant to expect that the council's response would also have been sent by that means.
26. In essence, therefore, although the council could have asked the complainant about his preferred format for receiving the response prior to sending it out in the format it did, that oversight was not a failure to comply with the Regulations. The complainant had not specifically requested that the information was sent via electronic means, and none of the requested information was in fact provided by the council in response to the request. Regulation 6 was not therefore engaged by the council's response as none of the requested information was provided in response to the request.

Regulation 11

27. Regulation 11(1) provides that

11.—(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.

28. Regulation 11(4) requires that where an applicant requests that an authority reviews its response to a request for information under Regulation 11(1) that the authority notifies the applicant of its decision as soon as possible and no later than 40 working days after the date of receipt of the representations.

29. The complainant wrote to the council on 3 December 2019 indicating that he was unhappy with the council's response to his request for information as it had sent it via recorded delivery.

30. The council did provide a response by electronic means on the same date and explained that it had done so based upon advice received from the District Council. It did not however carry out a review and provide the complainant with its full reasons for replying by recorded delivery until its response to the complainant of 3 August 2020. This falls outside of the requirement of Regulation 11(4).

31. The Commissioner has therefore decided that the council did not comply with the requirements of Regulation 11(4) in that it did not provide the outcome of its review within 40 working days.

32. Given that the council has now rectified the position, however, the Commissioner does not require the council to take any steps.

Right of appeal

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@justice.gov.uk
Website: 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

Andrew White
Head of FoI Casework and Appeals
Information Commissioner's Office
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