

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 1 December 2021

Public Authority: South Hams District Council

Address: Follaton House
Plymouth Road
Totnes
TQ9 5NE

Decision (including any steps ordered)

1. The complainant has requested from South Hams District Council (SHDC) information about enquiries it said it had made about the running of a local stables. In responding to the request, SHDC conflated it with an earlier request the complainant had submitted, and its response addressed only that earlier request. At internal review, SHDC said part of the current request had already been answered and it again concerned itself only with responding to the earlier request.
2. The Commissioner's decision is that SHDC has breached regulation 5(2) of the EIR in that it failed to provide a valid response to the request which is the subject of this complaint within the statutory time frame of 20 working days.
3. The Commissioner requires SHDC to take the following steps to ensure compliance with the legislation.
 - Provide a substantive response to the request contained in the letter of 7 December 2020, under the EIR.
4. SHDC 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 2000 and may be dealt with as a contempt of court.

Request and response

5. On 7 December 2020, the complainant wrote to SHDC and, referring to previous correspondence regarding a local stables, requested information in the following terms (numbering added by ICO for convenience):

"Reference: Alleged Re: Unauthorised Business Use in breach of condition at [name and address of stables] - Enforcement Case: [redacted]

On 19 May Senior Case Manager Enforcement [council officer's name] informed me "the site has been visited and photographs taken. This showed no evidence of any commercial livery use at the time of inspection earlier this year."

- 1. On what date did this visit take place?*
- 2. How many horses were present on the site on the day of the visit?*
- 3. Was the ownership of each of those horses established and, if so, were all the horses owned by the site owners?*

...

Subsequently, on 9 October, [council officer] emailed me and informed me that he had "written to the owners of the stables asking for details of the horses kept at the stables" and had requested a response by 23 October.

- 4. On what date did [council officer] write his letter requesting those details*
- 5. Did he receive a response to his request and, if so,*
 - a) on what date*
 - b) how many horses was he informed were being kept on the site and*
 - c) were all those horses the property of the owners of the site*
- 6. Did [council officer] succeed in managing to establish the basis on which the horses owned by the owners of cars registration numbers are [redacted] and [redacted] were being kept on the site and, if so, what was that basis?*
- 7. Has [council officer] now concluded his investigation and, if so, what has he concluded?"*

6. The complainant sent several follow-up emails, asking for a response. Having received no response, on 15 February 2021 he wrote to the Commissioner, complaining about SHDC's failure to respond.
7. Prior to the Commissioner's intervention, on 19 February 2021 SHDC replied to the complainant. However, when doing so it quoted a different request, submitted by the complainant on 6 October 2020, which it gave the reference number RP/26210. It referred the complainant to a letter it had sent to him on 14 December 2020, which it considered had answered the questions in RP/26210.
8. On 21 February 2021, the complainant requested an internal review of SHDC's handling of his request of 7 December 2020, stating that parts 1, 2, 3, 4, 5, 5a, and 6 had not been addressed by SHDC's letter of 14 December 2020 and that a response regarding them was still outstanding.
9. SHDC provided the internal review on 10 March 2021. It said that, "*A reply to the first three questions was provided...on the 19 May*", (ie several months prior to the request being submitted). The remainder of the internal review again addressed SHDC's response to RP/26210. It did not show how it had responded to parts 4, 5, 5a, and 6 of the complainant's request of 7 December 2020.

Scope of the case

10. The complainant contacted the Commissioner on 15 March 2021 to complain about the way his request for information had been handled. He explained to the Commissioner that SHDC had failed to address the points in his request of 7 December 2020.
11. The Commissioner wrote to SHDC on 10 November 2021, explaining why its responses had not addressed the information request of 7 December 2020. He asked it to issue a fresh response to that request, by 24 November 2021.
12. The Commissioner received no response to his letter and on 25 November 2021, the complainant informed him he had received no further communication from SHDC.
13. The analysis below considers SHDC's compliance with regulation 5 of the EIR.

Reasons for decision

Is the information environmental information?

14. Environmental information must be considered for disclosure under the terms of the EIR. Regulation 2(1)(b) and (c) of the EIR define environmental information as any information on:

"(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 [regulation 2(1)] (a) and (b) as well as measures or activities designed to protect those elements".

15. The request in this case is for information relating to the use and operation of a stables. The Commissioner has not seen the requested information but, in view of the nature of the business, he believes that it is likely to be information about factors and activities affecting or likely to affect the state of soil and land. For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 5 – Duty to make environmental information available on request

16. Regulation 5(1) of the EIR states that: "a public authority that holds environmental information shall make it available on request."
17. 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."
18. The complainant submitted his request on 7 December 2020. The Commissioner considers that the request constituted a valid request for information under the EIR. Despite entering into correspondence with the complainant about related matters, SHDC did not provide a response to the specific information requested in that letter which complied with the EIR. Rather, it focussed on his earlier request for information, RP/26210, even when he clarified he wished it to respond to his request of 7 December 2020.
19. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request of 7 December 2020

within 20 working days, SHDC has breached regulation 5(2) of the EIR. It must now take the action specified in paragraph 3.

20. The Commissioner uses intelligence gathered from individual cases to inform his insight and compliance function. This aligns with the goal in his draft "Openness by design"¹ strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting systemic non-compliance, consistent with the approaches set out in his "Regulatory Action Policy"².

¹ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

² <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

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: 0203 936 8963
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

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF