

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 21 November 2022

Public Authority: West Lancashire Borough Council

Address: 52 Derby Street
Ormskirk
West Lancashire
L39 2DF

Decision (including any steps ordered)

1. The complainant requested information from West Lancashire Borough Council ("the Council") about a strategic flood risk assessment (SFRA) and a complaint relating to the SFRA. The Council's response did not clearly state whether the information requested in each part of the request was held or whether it was withholding any information that was held. The Commissioner therefore asked the Council to carry out an internal review. The Council then issued a further response to the complainant, but this did not constitute an internal review.
2. The Commissioner's decision is that the Council has failed to carry out a reconsideration (internal review) of a response it provided under the EIR within 40 working days. It has therefore breached regulation 11 of the EIR.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation:
 - complete an internal review which confirms explicitly whether it holds information within scope of each part of the request and then either provide that information or issue a refusal notice that complies with regulation 14 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. On 20 July 2021, the complainant wrote to the Council. They made a number of requests, the following of which constitute requests for recorded information under the EIR (the numbering used reflects that used by the complainant in their letter of 20 July 2021):

Request 2

"My request is for information that was used to meet the requirement of Par 3.39 and 3.40 and this information would have been on the council documents until they were removed in January 2020. If the information is not available can you please provide a reason why it is not being made available? This is a request under the Environmental Information Regulations.

(...)

This should involve providing information related to Par 3.39 and 3.40 and include reference to the following points for the production the 2010 SFRA L1;

- Flooding information collected and assessed and the consequences in line with the PPS25 Guidance.
- Details of the Transparent Sequential Tests undertaken during the development of the SFRA Level1.
- When was information obtained from EA regards undertaking the Transparent Sequential tests and why is this not evidenced in the SFRA L1 in 2010
- Were the Plans found to be Sound or were Unsound plans withdrawn under regulation, provide supporting information and did they follow the process shown in 3.39 & 3.40
- What potential development sites did not meet the Level1 requirements as a result of 3.39 & 3.40?
- Why is all this information not shown in the SFRA Level1?

- Was the WLBC SFRA L1 signed off by the EA, if so please provide a copy of the sign off."

Request 3.1

Regarding a stage 1 complaints process commenced by the Council: "copies of all information that was produced, collected and used by all those involved in the process, this should include legal advice statements made. Any supporting evidence presented by individuals, interviews and considerations etc."

Request 3.2

"Reference has been made that, "the council has tried on a number of occasions to offer a very clear explanation of what procedures were followed". I request that all this information on the documents is made available to me". The complainant added that they were seeking information from 17 May 2020 onwards.

Request 3.3

"The council being entirely satisfied with its approach on the SFRA documents and its approach to sequential tests, submitted both Level 1 and Level 2 documents as evidence with the now adopted Local Plan for examination by an independent Planning Inspector...Please provide evidence that the above Inspector had the ability to change the content and status of the SFRA L1 and to be able to backdate this by 3.5 years?"

6. The Council responded to the complainant's letter of 20 July 2021 on 6 October 2021. It did not clearly state whether the information requested in each part of the request was held or whether it was withholding any information that was held.
7. The complainant requested an internal review on 20 October 2021.
8. The complainant contacted the Commissioner on 6 December 2021 to complain about the way this request for information had been handled, including about the fact that no internal review had been provided.
9. The Commissioner contacted the Council on 14 February 2022. He advised the Council that its original response of 6 October 2021 did not comply with the provisions of the EIR as it did not:
 - state whether or not the information is held in a recorded form
 - supply the applicant with a copy of the information

- issue a refusal notice which complies with the legislation.
10. The Commissioner also highlighted the outstanding internal review and asked the Council to complete its reconsiderations within 10 working days. This deadline was subsequently extended to within 10 working days of 24 February 2022.
 11. The Council issued a further response to the complainant on 11 March 2022, however, for the reasons set out below, this did not constitute an internal review.

Reasons for decision

Regulation 11 – representations and reconsideration

12. The following analysis sets out why the Commissioner has concluded that the Council has failed to carry out a reconsideration (internal review) of a response it provided under the EIR within 40 working days and therefore breached regulation 11 of the EIR.
13. Having been asked by the Commissioner to provide an internal review, the Council issued a further response to the complainant on 11 March 2022, however the Commissioner's decision is this did not constitute an internal review.
14. Regulation 11¹ 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—

¹ <https://www.legislation.gov.uk/ukxi/2004/3391/regulation/11>

(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.”

15. The further response sent to the complainant by the Council on 11 March 2022 did not clearly confirm whether the information requested in each part of the request was held and supply the applicant with a copy of the information or issue a refusal notice which complies with the legislation, despite the clear guidance provided to the Council on 14 February 2022 that it should do so.
16. In addition, the response of 11 March 2022 did not inform the complainant of the Council's position as to whether its original response had complied with the EIR as is required under regulation 11(4). It contained no comment on its handling of the request.
17. The Commissioner's decision is therefore that the Council has failed to reconsider the request as required under regulation 11 of the EIR.

Right of appeal

18. 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

19. 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.
20. 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

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