

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

Decision notice

Date: 1 March 2022

Public Authority: Hampshire County Council
Address: The Castle
Winchester
Hampshire
SO23 8UJ

Decision (including any steps ordered)

1. The complainant has requested information regarding a proposal for a Materials Recovery Facility in the county. Hampshire County Council ("the Council") responded to the request, but the complainant sought a reconsideration (internal review) of that response – which the Council had yet to complete at the date of this notice.
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 Environmental Information Regulations ("the EIR"), within 40 working days and has therefore breached Regulation 11 of the EIR. As the Council failed to respond to the request within 20 working days, it 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.

Background

5. Prior to making his request, the complainant attempted to access information on several occasions, being required to refine his request several times in order to focus on the recorded information actually held by the Council.

Request and response

6. On 22 September 2021, the complainant wrote to the Council and requested information in the following terms:

"I would like to request the following information please:

"Information dated after July 2020 relating to any possible proposals for any new "Materials Recovery Facility" (MRF) or similar recycling facilities, in Hampshire. This includes, but is not limited to, the topic of planning.

"The above information may include communications, emails, letters, documents, presentations or minutes within the Council, with or within Project Integra or its partners, or with the waste contractor Veolia or other third parties. I am aware of the minutes of the Project Integra Strategic Board published on the HCC website, and thank you for your responses to my previous requests, your response dated 16th August pointing me to the July 2020 decision that I was aware of to not proceed with the Chickenhall Lane MRF proposal from Veolia (ref EIR 19473), and a letter from the Waste Management department dated 9th September explaining the Council's approach to developing its waste management strategy (ref EIR 19534)."

7. On 6 October, the complainant further clarified his request:

"Information dated after July 2020 relating to any possible proposals for any new "Materials Recovery Facility" (MRF) or similar recycling facilities, in Hampshire. The above information may include communications, emails, letters, documents, presentations or minutes within the Council, with or within Project Integra or its partners, or with the waste contractor Veolia or other third parties."

8. The Council responded to the request on 5 November 2021. It disclosed some information but relied on Regulation 12(4)(e) of the EIR (internal communications) and Regulation 12(5)(e) of the EIR (commercial interests) to withhold some documents. It also relied on Regulation 13 of the EIR to redact some personal information.

9. The complainant requested a review on 9 November 2021, but the Council had not completed its review at the date of this notice.

Scope of the case

10. The complainant contacted the Commissioner on 9 January 2022 to complain about the way his request for information had been handled.
11. In line with his usual practice, the Commissioner contacted the Council on 1 February 2022 to highlight the outstanding response. He requested that the Council complete its reconsiderations within 10 working days. The correspondence was neither acknowledged nor responded to.
12. The Complainant contacted the Commissioner on 17 February 2022 to request a decision notice considering the Council's compliance with the EIR.
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. Or the avoidance of doubt, the Commissioner has not yet considered and therefore takes no position on whether the Council was entitled to rely on the exceptions which it has done.

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;*

- (d) *reports on the implementation of environmental legislation;*
 - (e) *cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
 - (f) *the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);*
16. As it is information relating to the construction of a waste processing facility, the Commissioner believes that it is likely to be information on a "measure" affecting the elements of the environment. For procedural reasons, he 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF