

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 3 January 2023

**Public Authority:** South Somerset District Council

**Address:** Council Offices  
Brympton Way  
Yeovil  
Somerset  
BA20 2HT

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from South Somerset District Council ("the Council") about a specified area of land.
2. The Commissioner's decision is that the Council should have considered the request in this case under the EIR rather than FOIA and accordingly it has failed to carry out a reconsideration (internal review) within 40 working days of the complainant making a complaint to it about the initial response provided. The Council has therefore breached regulation 11 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.

## Request and response

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5. On 1 July 2022, the complainant wrote to the Council and requested information in the following terms:

"Ref: Development of Car Park at former [redacted].

The land for the proposed car park was purchased in 2014. Planning application [reference redacted] concerned the change of use to a car park and full permission was granted for this on [date redacted].

A report was submitted to the District Executive on [date redacted] that proposed an alternative approach to the provision of the car park which involved some land exchange with the owners of the adjacent land. The report was not discussed at the meeting as it was inappropriate.

The report states that following purchase 'a considerable period of time was spent exploring the potential to amend the development approach so that our new land could help unlock the adjoining parcel in separate ownership'.

Can you please provide details of meetings, including any minutes taken, between any SSDC members or officers with any of the owners of the adjacent land or their representatives and any 'development partners' between 2014 and the present day.

The report also mentions a 'development partner working with the owners' [of the land adjacent to the [redacted] site] approaching SSDC in 2021.

Can you please provide the name of this development partner and details of any meetings, including any minutes taken, between any SSDC members or officers and this development partner or their representatives from 2021 up to the present day."

6. The Council responded to the request on 5 October 2022.
7. The complainant wrote to the Council on 7 October 2022, raising concerns about the response provided. This was acknowledged by the Council on 12 October 2022, when it confirmed that it would undertake an internal review of the request to address the points raised by the complainant. As at the date of this notice, the Council had not completed its review.

## Scope of the case

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8. The complainant contacted the Commissioner on 6 December 2022 to complain about the way this request for information had been handled.
9. The Commissioner contacted the Council on 7 December 2022 to highlight the outstanding internal review and asked the Council to complete its reconsiderations within 10 working days.
10. Despite this intervention, the Council has failed to respond to the complainant.
11. The scope of the Commissioner's investigation is to determine whether the Council has complied with regulation 11 of the EIR.
12. For the avoidance of doubt, the Commissioner has not yet considered and therefore takes no position on whether the Council holds further information in scope of the request.

## Reasons for decision

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13. This reasoning covers why the requested information is environmental information that the Council should have considered under the EIR.
14. Regulation 2(1) of the EIR describes 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...”  
  
    and  
  
    ...(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...”
15. The requested information in this case is associated with the planning of the development of land.

16. The Commissioner is therefore satisfied that this information falls within scope of the above two subsections of regulation 2(1) of the EIR and is environmental information. The Council should therefore have handled the request under the EIR and not FOIA.
17. Regulation 11<sup>1</sup> of the EIR states that:
  - “(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.”
18. 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.

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

## Right of appeal

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19. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

20. 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.
21. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**