

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

### **Decision notice**

**Date:** 25 April 2023

**Public Authority:** Lisburn & Castlereagh City Council  
**Address:** Civic Headquarters  
Lagan Valley Island  
Lisburn  
BT27 4RL

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

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1. The complainant has requested information with regards to correspondence between an MP and specific departments in Lisburn & Castlereagh City Council (the council). The council provided some information, but stated that it was "unable to search" for the remainder.
2. The Commissioner's decision is that the council has breached regulation 5(2) of the EIR as it has not issued a valid response within the required 20 working days.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
  - With regards to the part of the complainant's request for information relating to the Building Control Department, the council must respond afresh. This fresh response should either comply with the request by disclosing the requested information, or be in the form of a refusal notice that specifies a valid ground under the EIR as to why that information will not be disclosed.
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 FOIA and may be dealt with as a contempt of court.

## **Request and response**

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5. On 28 October 2022 the complainant made the following information request to the council:

“Please provide details of all correspondence to and from Sir Jeffrey Donaldson MP received by or sent from LCCC Building Control Department and LCCC Planning Department from January 2020.”

6. The council responded on 19 January 2023 providing the information it held in its Planning Department.
7. With regards to the Building Control Department it advised it was unable to search for the requested correspondence across multiple applications received from January 2020 to present. But said it would withhold any information it may hold under regulation 12(3) and 13 of the EIR as it would be third party personal data.
8. The complainant requested an internal review on 19 January 2023 with regards to the council’s response to the Building Control section of the request.
9. The council provided its internal review on 9 February 2023 upholding its initial response.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 23 February 2023 to complain about the council refusing to provide the information requested with regards to its Building Control Department.
11. The following analysis covers whether the council has complied with regulation 5 of the EIR with regards to its response to the Building Control Department section of the complainant’s request.

## **Reasons for decision**

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### **Regulation 5 of the EIR – Duty to make available environmental information on request**

12. Regulation 5(1) of the EIR states that a public authority that holds information shall make it available on request and regulation 5(2) requires a public authority to provide that information within 20 working days following receipt of a request.

13. In this case, although the council has asserted that any information it may hold in Building Control and that is within the scope of the request would be exempt from disclosure under regulation 12(3) and 13 of the EIR, as it would be third party personal data, it has not identified whether it actually holds any such information, stating that it was "unable to search for any such correspondence across multiple applications... as correspondence received... are not categorised by correspondent but simply attached to the application."
14. It is not sufficient for a public authority to simply state that it is "unable to search" for the requested information. There are various valid grounds for refusing a request set out in the EIR. The requirement on the council is to either comply with the request, or cite a valid ground for not doing so. In this case in relation to the Building Control element of the request it did neither.
15. Public authorities must carry out appropriate searches to determine what information they actually hold before refusing to provide the requested information. Alternatively they should issue a valid refusal notice as to why those searches cannot be carried out.
16. Therefore, the Commissioner finds that the council has breached regulation 5(2) of the EIR as it has not issued a valid response within the required 20 working days.
17. The Commissioner requires the council to comply with the step in paragraph 3 of the decision notice.

## Right of appeal

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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: 0300 1234504

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)

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 .....**

**Ben Tomes**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**