

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 17 December 2013

Public Authority: South Hams District Council

Address: Follaton House
Plymouth Road
Totnes
Devon
TQ9 5NE

Decision (including any steps ordered)

1. The complainant requested information from South Hams District Council (the council) about concerns of a possible flood risk to his property.
2. The Commissioner's decision is that the council has breached regulation 5(2) of the EIR as it did not supply the information within 20 working days from the date of the request.
3. As the council has now provided the information to the complainant, the Commissioner does not require the council to take any steps. However, he feels it appropriate to highlight his concern about the length of time it took the council to provide all of the information to the complainant, that being 21 months, and that the final part of the information only came to light because of a separate investigation from the Local Government Ombudsman (LGO).

Request and response

4. On 22 February 2012, the complainant wrote to the council and requested information in the following terms:

"Correspondence (all). Notes of site meeting with Drainage Engineer et al., dates and contents of e-mails sent to Environment agency and telephone communication dates, times, transcripts (if any) or notes made by SHDC staff regarding issues raised concerning flood risk to my property in respect of upstream property developments and pollution of stream waters. Notes of site meeting with Mr. Allen (Drainage Officer) & comments esp."

5. The council wrote to the complainant to acknowledge receipt of the request on 29 March 2012.
6. The complainant wrote to the council on the 29 April 2012 and 5 June 2012 to advise that he had not received a response to his information request.
7. The complainant then wrote to the Commissioner on the 7 August 2012 to complain that the council had not provided him with a response to his information request.
8. Following the Commissioner's involvement, the council provided its response to the complainant on 4 September 2012. It provided some of the information and relied on section 21 of the FOIA to not supply the remainder as it was readily accessible to the public.
9. The complainant requested an internal review on the 10 September 2012.
10. Following an internal review the council wrote to the complainant on 18 October 2012 and provided further information that it had located.
11. The complainant contacted the council on 23 October 2012 advising that he considered that there was more information held by the council.
12. On the 3 January 2013 the council provided further information and confirmed that this was everything it held.
13. On 27 June 2013 the complainant wrote to the Commissioner to advise that following a separate investigation from the LGO, further information had come to light that the complainant believed should have been provided at the time of his information request.
14. The Commissioner contacted the council with regards to this further information to investigate whether it should have been supplied to the complainant at the time of the request.

15. The council confirmed that it should have been supplied to the complainant and also located additional information that it considered should also have been provided at the time of the request.
16. The council supplied this further information to the complainant on the 25 November 2013.

Scope of the case

17. The complainant has advised the Commissioner that he is not satisfied with the time that it has taken the council to provide him with all of the information it held within the scope of his request.
18. The Commissioner considers the scope of the case to be whether the council breached section 10 of the FOIA or regulation 5(2) of the EIR.

Reasons for decision

Are the EIR relevant?

19. The appropriate regime for information that is "environmental" is the EIR. Environmental information is defined by regulation 2 of the EIR. Regulation 2(1)(c) of the EIR provides that any information affecting or likely to affect the elements and factors of the environment will be environmental.
20. In the Commissioner's view, this request should be considered under the EIR, as it is a request for information about concerns of flood risk to the complainant's property, upstream property developments and pollution of stream waters. These are matters that affect the environment.

Regulation 5 of the EIR

21. Regulation 5(1) of EIR requires a public authority to make available environmental information on request, subject to exceptions in regulation 12 of the EIR.
22. Regulation 5(2) of the EIR states:

"Information shall be made available under paragraph (1), as soon as possible and no later than 20 working days after the date of receipt of the request."

23. The complainant requested the information on the 22 February 2012. The council did not provide a response until 4 September 2012, and subsequently did not provide all of the information it held until 25 November 2013.
24. It took 21 months for the council to provide all the information it held to the complainant. Therefore the Commissioner finds that the council has breached regulation 5(2) of the EIR as it did not comply with the request within 20 working days of its receipt.

Right of appeal

25. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. 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

Andrew White
Group Manager
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Wycliffe House
Water Lane
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Cheshire
SK9 5AF