

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 7 December 2022

Public Authority: Armagh City Banbridge & Craigavon Borough Council

Address: Craigavon Office
Craigavon Civic & Conference Centre
Lakeview Road
Craigavon
BT6 4AL

Decision (including any steps ordered)

1. The complainant submitted two separate requests for information held by Armagh City, Banbridge & Craigavon Borough Council (the council) relating to a particular planning application.
2. The council agreed to provide the information relevant to Request 1. However, as it took over two years for the complainant to receive this information, the Commissioner has found a breach of regulation 5(2) of the EIR.
3. Furthermore, as the council failed to comply with the complainant's request for this information to be made available in a particular format, it has also breached regulation 6(1) of the EIR.
4. With regard to Request 2, the council initially withheld the information under regulation 12(5)(b) – course of justice, of the EIR. At the internal review stage the council then confirmed that, with the passage of time, it was now in a position to release the information in its entirety.
5. However, as the council failed to issue a refusal notice in response to Request 2 within 20 working days, and then failed to carry out an internal review within 40 working days, the Commissioner has found a breach of regulation 14(2), and regulation 11(4), of the EIR respectively.
6. The Commissioner does not require the council to take any steps as a result of this decision notice.

Request and response

7. On 9 March 2020, the complainant submitted two separate requests for information to the council, which are as follows:

Request 1

"I am contacting you with a request under the Freedom of Information Act 2000 for any information that is held in connection to the Planning Application LA08/18/0683/F that is not already available online at the Planning Portal NI.

In particular I would like any information relating to an agreement between the applicant and the planning department in regard to extending the statutory determination period.

Can you also verify of the Planning Application LA/18/0683/F is independent of the Planning Application LA08/2020/0060/F.

I would prefer this information in paper form. If you could advise me of any possible cost that this will incur I will forward that to you."

Request 2

"Under the Freedom of Information Act 2000 I am requesting any information held in relation to the breach of planning control connected to the planning application LA/18/0683/F

I am specifically looking for any information that is held in connection to the date which the application would become invalid under the Planning Act NI 2011.

I am also looking for any evidence which would support this claim.

I would prefer this information in paper form. If you could advise me as to any cost incurred, I will forward this to you."

8. The council received Request 1 and Request 2 on 10 March 2020; it then provided one response to both requests on 29 April 2020.
9. With regard to Request 1, the council advised that, due to the Covid-19 pandemic, its staff were working from home, and it was therefore unable to provide information held within the planning file at that time. However, it went on to say that the requested information would be provided once its offices had reopened.

10. The council then went on to say in response to Request 2 that there was currently an enforcement investigation ongoing, and that it was withholding the information under regulation 12(5)(b) of the EIR.
11. In correspondence sent to the council on 27 May 2020, the complainant advised that they understood the issues with Covid-19, and that it was reasonable to wait for Request 1 to be attended to when the office reopened.
12. With regard to Request 2, the complainant asked that an internal review be carried out, stating that they believed that it was in the public interest that the withheld information be released.
13. On 14 January 2021, the complainant chased the council for a response, and on 22 January 2021, the council stated that its internal review response would include any information that could be disclosed. It also advised that this would include any information that had been added to the 'application file' since the request was made.
14. On 4 July 2022, the complainant contacted the council for a further update.
15. On 8 July 2022, the council provided the complainant with a copy of its internal review decision of 8 June 2021; it confirmed that it had found that it had not sent this correspondence at the time that the decision was made, and apologised for the oversight.
16. The internal review response confirmed that the council was now able to access, and release, all the information held relevant to Request 1.
17. The council also advised that, as the enforcement case had now concluded, it was also in a position to release all the information relevant to Request 2.

Scope of the case

18. As the complainant has now received the information relevant to both Request 1 and Request 2, the Commissioner only intends to consider the timeliness of the council's responses to the requests, and other procedural matters, as requested by the complainant.

Reasons for decision

Request 1

19. Regulation 6(1) of the EIR states that where an applicant requests that the information be made available in a particular form or format, the public authority should comply, unless it is reasonable to make it available in another form or format, or it is already publicly available or reasonably accessible.
20. If the public authority decides that it is reasonable to make the information available in a different form, then it should advise the complainant of this within 20 working days of the request.
21. In this case the council did not acknowledge or consider the complainant's request that the relevant information be provided in 'paper form', and sent it by email. The Commissioner has therefore found a breach of regulation 6(1) of the EIR.
22. The council also failed to provide the complainant with the information relevant to Request 1 within the required 20 working days. As a result, the Commissioner has also found a breach of regulation 5(2) of the EIR.

Request 2

23. The council failed to issue a refusal notice in response to Request 2 within 20 working days, and has therefore breached regulation 14(2) of the EIR.
24. As the council also failed to provide its internal review response within 40 working days it has breached regulation 11(4) of the EIR.

Additional matters

25. The council advised the complainant that it would also provide the information which had been added to the planning file since they made their requests, but then failed to do so. However, as such information would not fall within the scope of Request 1 or Request 2, the Commissioner has advised the complainant that they should submit a new request to the council, if they require this information.
26. The Commissioner is sympathetic to the difficulties which public authorities have faced as a result of the Covid-19 pandemic, and acknowledges the impact that this has had on resources and services.

27. However, it is the Commissioner's view that the council's handling of Request 1 and Request 2 has highlighted some poor information rights practices.
28. The complainant was given an assurance that they would receive the information relevant to Request 1, once the council offices had reopened. They were then subsequently advised that they would only receive the information once the internal review was complete. This was despite the fact that the complainant did not request an internal review in respect of Request 1.
29. The council then failed to ensure that its internal review response of 8 June 2021, was issued to the complainant; as a result, the requested information was then only received by the complainant in July 2022, over two years after Request 1 and Request 2 were submitted. The Commissioner is mindful of the fact that the value to the public of the release of this planning information is likely to have diminished significantly over this prolonged period of time.
30. In addition, the council recently provided the Commissioner with a copy of its response to the complainant of 8 June 2021, as evidence that it had dealt with Request 1 and Request 2; however, it did not go on to explain that the complainant had actually only received copies of the information in July 2022.
31. Given the outcome of this decision notice, the Commissioner expects the council to now conduct a full review of its information rights practices. This is a matter that may be revisited should similar outcomes be noted by the Commissioner in any future cases relating to this council.

Right of appeal

32. 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

33. 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.
34. 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

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