

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 8 February 2012

Public Authority: Health Protection Agency
Address: 61 Colindale Avenue
London NW9 5EQ

Decision (including any steps ordered)

1. The complainant asked the Health Protection Agency ("HPA") for digital copies of maps showing areas of Northern Ireland where homes are most likely to be at risk from Radon. The HPA had previously provided these in hard copy, but indicated that there would be a charge to provide them in digital format. The complainant indicated his dissatisfaction with this. He also requested an internal review of the HPA's decision, which to date the HPA has not conducted.
2. The Information Commissioner's decision is that the HPA has failed to comply with the requirements of regulations 11(3) and 11(4) of the EIR in that it failed to consider the complainant's representations and notify him of its decision.
3. The Information Commissioner ("the Commissioner") requires the HPA to take the following steps to ensure compliance with the legislation.
 - Conduct an internal review of the complainant's request which meets the requirements of the EIR.
4. The HPA 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 (or the Court of Session in Scotland) pursuant to section 54 of the Freedom of Information Act 2000 ("the FOIA") and may be dealt with as a contempt of court.

Request and response

5. On 18 December 2009 the complainant asked HPA via telephone for Northern Ireland Radon maps in a suitable GIS electronic format ("the

- requested information"). The HPA had previously provided them in hard copy
6. The HPA responded on 24 February 2010. It stated that it had already fulfilled its obligations under the EIR by providing hard copies of the requested information and was entitled to charge for the provision of the information in digital format.
 7. Over the following months, the complainant tried to resolve the issue with the HPA, as evidenced by an email trail between him, the HPA and other relevant parties, which he provided to the Commissioner. However, having failed to obtain a satisfactory response from the HPA regarding the issue of charging for the information, the complainant requested an internal review of the matter on 20 May 2011.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. There is a limitation on the obligation to provide an internal review under regulation 11, which is that it applies only if the requester has made representations to the public authority in writing and within 40 working days of "*the date on which the applicant believes that the authority has failed to comply with*" a requirement of the EIR.
10. The code of practice under regulation 16 of the EIR states that any written expression of dissatisfaction should be treated as a complaint. The "representations" do not need to be in any particular form, although they must be in writing. Therefore, where there is correspondence subsequent to the refusal, it is likely that the requester has exercised their right under regulation 11 even if it has not been recognised as such by the public authority.
11. In this case, there was clearly further correspondence subsequent to the HPA's refusal, in which the complainant expressed his dissatisfaction in writing with the HPA's handling of his request, within 40 working days of becoming aware of grounds for complaint. Therefore, although he did not formally request an internal review until 20 May 2011, the Commissioner still considers that the HPA's obligation under regulation 11 of the EIR has been triggered.

Reasons for decision

Regulation 11 of the EIR – internal review

12. Regulation 11(1) of the EIR provides that an applicant may make representations to a public authority, if he considers that the authority has failed to comply with the requirements of the EIR in relation to his request.
13. Regulation 11(3) requires the authority to consider the complainant's representations, along with any supporting evidence provided, and decide whether it has complied with the requirements of the EIR. Regulation 11(4) requires that the authority notify the applicant of its decision no later than 40 working days after receipt of the representations.
14. The Commissioner notes that the complainant in this case made representations within 40 working days to the HPA, which were not responded to. He formally requested an internal review in his letter of 20 May 2011, however, despite the Commissioner's subsequent intervention, the HPA has still not carried out an internal review.
15. The Commissioner is concerned that the HPA has not provided any explanation as to its failure to conduct an internal review. The Commissioner considers that regulation 11 of the EIR provides a clear statutory right for an applicant to have his or her request reconsidered by the public authority in question. This in turn provides the authority with an opportunity to rectify any procedural or handling issues, as well as an opportunity to explain to the complainant how their request was handled.
16. As the HPA has failed to conduct an internal review, the Commissioner must find that it failed to comply with regulation 11(3) of the EIR. Consequently, in failing to provide the complainant with notice of its decision in response to his representations within the appropriate time period, the HPA failed to comply with regulation 11(4) of the EIR.

Right of appeal

17. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

18. 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.
19. 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

Faye Spencer
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