

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 12 June 2013

Public Authority: Department of the Environment
Address: Room 6-20
Clarence Court
10-18 Adelaide Street
Belfast
BT2 8GB

Decision (including any steps ordered)

The complainant has requested copies of all correspondence and communications within the Planning Service (an agency of the DOE) together with other information regarding a specific planning application. The DOE refused part of the complainant's request, citing regulations 12(4)(d) and 12(5)(b) as a basis for non-disclosure. The complainant indicated his dissatisfaction with this and requested an internal review of the DOE's decision, which to date the DOE has not conducted. The Information Commissioner's decision is that the DOE 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.

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.

The DOE 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

1. On 21 August 2012 the complainant wrote to the DOE and requested information in the following terms:-

"Please supply a hard copy of all correspondence, e-mail, fax, text messages, handwritten notes of meetings, transcripts of all verbal conversations between the Minister of Environment's office or any other party or individuals and the Planning Service. This request includes hard copies of your office's responses to any requests or directions to planning staff made as a result of any meeting or communication (by any of the means stated above) with regard to the above application."

The complainant also asked a number of further questions, however these are not included in this Notice as they do not amount to requests under the EIR.

2. The DOE responded on 20 September 2012. It provided the complainant with answers to the questions which did not amount to requests under the EIR, however it stated that it was refusing to disclose the information requested as outlined above ("the withheld information") as it considered the withheld information to be exempt from disclosure under regulations 12(4)(d) and 12(5)(e) of the EIR.
3. On 12 October 2012 the complainant requested an internal review of the DOE's response. The DOE acknowledged that request on 17 October 2012 stating that an internal review would be carried out. However, to date the DOE has not sent the complainant the results of any internal review, which suggests that one has not been carried out. The complainant subsequently complained to the Commissioner.

Scope of the case

4. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
5. 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.
6. 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

7. In this case, there was clearly further correspondence subsequent to the DOE's refusal, in which the complainant expressed his dissatisfaction in writing with the DOE's handling of his request and specifically requested an internal review within 40 working days of becoming aware of grounds for complaint. Therefore, the Commissioner considers that the DOE's obligation under regulation 11 of the EIR has been triggered.

Reasons for decision

Regulation 11 of the EIR – internal review

8. 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.
9. 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.
10. The Commissioner notes that the complainant in this case made representations within 40 working days to the DOE, which consisted of a formal request for an internal review. Despite the DOE having acknowledged that request on 17 October 2012 and stating that an internal review would be carried out, the DOE has still not carried out an internal review.
11. The Commissioner is concerned that the DOE 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.
12. As the DOE 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 DOE failed to comply with regulation 11(4) of the EIR.

Right of appeal

13. 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

14. 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.
15. 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

Rachael Cragg
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