

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 17 February 2015

Public Authority: Mid Devon District Council

Address: Phoenix House
Phoenix Lane
Tiverton
EX16 6PP

Decision (including any steps ordered)

1. The complainant has made a request to Mid Devon District Council ("the council") for information relating to pre-application advice for solar parks and farms. The council refused the request under section 43(2) of the Freedom of Information Act ("the FOIA"). The complainant subsequently requested that the council conduct an internal review. On failing to receive an internal review, the complainant submitted the matter to the Commissioner. On receipt of the complaint, the Commissioner decided that the request fell under the terms of the Environmental Information Regulations ("the EIR"), which requires the council to conduct an internal review when this is requested. However, despite the Commissioner's intervention the council has since failed to undertake this.
2. The Commissioner's decision is that the council failed to comply with the requirements of regulations 11(3) and 11(4) of the EIR.
3. The Commissioner requires the council to conduct an internal review which meets the terms of the EIR.
4. The public authority 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 22 October 2013, the complainant wrote to the council and requested the following:

"Copies of the written pre-application advice provided by Mid Devon District Council Planning Authority regarding all solar parks/farms covering more than 1 ha, since 1st January 2012. I would like this regardless of whether or not a formal planning application followed and for applications still to be determined or submitted."
6. The council responded on 6 November 2013. For pre-application advice that had yet to be used by a third party as part of an application, the council withheld the information under section 43(2) of the FOIA. For pre-application advice for submitted applications, it advised that the information was available on the council webpages, but with some information remaining redacted under section 43(2).
7. The complainant requested an internal review on 16 December 2013. However, the council failed to conduct an internal review in response.

Scope of the case

8. The complainant contacted the Commissioner on 8 May 2014 to contest the council's response. On receipt of the complaint, the Commissioner identified that the requested information is environmental in nature, and that the relevant access regime is the EIR.
9. During the Commissioner's investigation, and following the council's discovery that retrieving the request information may be manifestly unreasonable (for the reason of cost) under regulation 12(4)(b) of the EIR, the council offered to undertake an internal review in an effort to informally resolve the matter with the complainant.
10. To date, the Commissioner is aware that no internal review is not been provided.

Reasons for decision

Is the information environmental?

11. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR. Under regulation 2(1)(b), any

information about factors that will affect, or be likely to affect, the state of the elements referred to in 2(1)(a), will be environmental information. The requested information relates to the development of solar parks or farms. The Commissioner therefore considers that the request should be dealt with under the terms of the EIR.

Internal review – regulation 11

12. Regulation 11(1) of the EIR provides that an applicant may make representations to a public authority, if he/she considers that the authority has failed to comply with the requirements of the EIR in relation to his/her request.
13. Regulation 11(3) requires that the authority consider the complainant's representations, along with any supporting evidence provided by the complainant, and to decide whether it has complied with the requirements of the EIR. Finally, regulation 11(4) requires that the authority notify the applicant of its decision in relation to the applicant's representations no later than forty working days after receipt of those representations.
14. The Commissioner notes in this case that the complainant in this case clearly requested an internal review on 16 December 2013, and that the council was advised of the applicability of the EIR on the matter being referred to the Commissioner, who has since given the council the opportunity to undertake this step.
15. As the council has therefore failed to conduct an internal review, the Commissioner must find that the council has 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 the complainant's representations within the appropriate time period, the council also failed to comply with regulation 11(4).

Right of appeal

16. 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@hmcts.gsi.gov.uk

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

17. 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.
18. 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
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Water Lane
Wilmslow
Cheshire
SK9 5AF