

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004 (EIR)**

**Decision notice**

**Date:** 16 March 2015

**Public Authority:** East Hampshire District Council

**Address:** Penns Place  
Petersfield  
Hampshire  
GU31 4EX

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to how the council used a delegated decision on a planning application.
2. The Commissioner's decision is that the council has breached the requirements of Regulation 11(4) in that it did not respond to a request for review within 40 working days. He has also decided that the council did not comply with the requirements of Regulation 14(3) in that it applied Regulation 12(5)(f) in its initial refusal notice without explaining how or why the exception was appropriate.
3. The Commissioner does not however require any steps.

## **Request and response**

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4. On 7 July 2014 the complainant wrote to the council and requested information in the following terms:

*"Please provide the following information:*

- *details of how these powers (of officer and district councillor) were made known to the public, and*
- *confirmation that this process is no longer in use by the EHDC and details of when and how its use was officially brought to an end."*

5. The council responded on 13 August 2014. It provided the complainant with a copy of the council's constitution, directing him to the relevant section. It also applied Regulation 12(5)(f) although it did not clarify what information it was withholding under this exception.
6. The complainant requested an internal review on 14 August 2014. He said that the relevant section of the constitution did not seem to provide the powers which he had referred to.
7. He also asked the council to clarify what information was being withheld under Regulation 12(5)(f) and to explain why and how the exception was applicable.
8. When the council did not respond to this request he sent a further email to the council on 20 September 2014 reminding it of its obligation to respond. When no further response was received from the council the complainant made a complaint to the Commissioner.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 29 October 2014 to complain about the way his request for information had been handled. His complaint was that the council had failed to carry out a review of its response when requested to do so.
10. After the intervention of the Commissioner the council did carry out a review of the request, and it provided the complainant with a response on 16 December 2014, and further responses to clarification requests in January 2015.

11. Whilst the complainant has other issues with the responses he received from the council these are not issues which the Commissioner is able to consider as part of this decision notice. The complainant did however ask the Commissioner to question the application of Regulation 12(5)(f) as it had initially been used by the council but no information had been provided to him to explain why it was relevant or appropriate. This is dealt with in the section relating to Regulation 14(3) below.
12. The Commissioner considers that the complaint is that the council failed to carry out a review of its response to the request when asked to do so.

### **Reasons for decision**

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#### Is the information environmental information

13. The first question which the Commissioner must consider is whether the information is environmental information for the purposes of the EIR.
14. Regulation 2 of the EIR provides the definition on environmental information for the purposes of the Regulations.
15. Regulation 2 provides that environmental information can be defined as:

*"(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*

*(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*

*(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;"*
16. The Commissioner notes that the request is not for information on the environment, nor is it on a planning application which is likely to have an effect upon the environment per se. Nevertheless he notes that the section of the information requested relates to the council's constitution and specifically its process for council officers making delegated

decisions on planning applications where objections to the applications have been received.

17. The Commissioner therefore considers that the information falls within the scope of Regulation 2(c). The information is on an administrative measure which is likely to affect the elements and factors referred to in Regulation 2(a) and (b). It provides a process whereby decisions can be made on planning applications without full consideration by the planning committee.
18. The Commissioner is therefore satisfied that the information is environmental information and that the council was correct to consider the information under the EIR,

### Regulation 11

19. Regulation 11 provides that:

#### Representations and reconsideration

*"(1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.*

*(2) Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.*

*(3) The public authority shall on receipt of the representations and free of charge -*

- (a) consider them and any supporting evidence produced by the applicant; and*
- (b) decide if it has complied with the requirement.*

*(4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.*

*(5) Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of -*

- (a) the failure to comply;*
- (b) the action the authority has decided to take to comply with the requirement; and*

*(c) the period within which that action is to be taken."*

20. The complainant received his response from the council on 13 August 2014. He made a request for review in writing to the council on 14 August 2014. He has therefore made his representations within 40 days as required by Regulation 11(2).
21. The council therefore received the request to review its decision on 15 August 2014. It did not however provide its review response to the complainant until after the intervention of the Commissioner. The date that the review was provided to the complainant was on 16 December 2014. This falls outside of the period of 40 working days provided by Regulation 11(4) to respond to a request for a review of a decision.
22. The Commissioner is therefore satisfied that the council did not comply with the requirements of Regulation 11(4) when responding to the complainant's request for review and his further representations.

#### Regulation 14(3)

23. Regulation 14 provides that:

*(1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.*

*(2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.*

*(3) The refusal shall specify the reasons not to disclose the information requested, including -*

*(a) any exception relied on under regulations 12(4), 12(5) or 13; and*

*(b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).*

24. As stated above the complainant specifically highlighted the council's reliance upon Regulation 12(5)(f) to his request. Regulation 12(5)(f) applies to information provided voluntarily to a council where the council could not have required a third party to provide it with that information. The complainant complained to the council that there appears to have been no context for this exception to be applicable to information falling within the scope of his request, and that the council did not explain to him what information it was applying this to, nor why it was appropriate to apply it in its refusal notice.

25. The Commissioner notes that the council did not provide any explanation to the complainant as to why Regulation 12(5)(f) had been applied in its refusal notice.
26. The Commissioner has therefore decided that this is a breach of Regulation 14(3).
27. The council did not rely upon Regulation 12(5)(f) after its internal review in December 2014. It explained that this exception was applied in error due to a template it had used when responding to the request. The application of this exception has not therefore been considered further.

## **Right of appeal**

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28. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

29. 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.
30. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**