

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 14 October 2015

Public Authority: East Hampshire District Council

Address: Penns Place
Petersfield
Hampshire
GU31 4EX

Decision (including any steps ordered)

1. The complainant has made a request to East Hampshire District Council ("the council") for information about a planning application. The council confirmed that no information was held, which the complainant disputed.
2. The Commissioner's decision is that no recorded information is held. However, in failing to provide an internal review, the council has breached regulations 11(3) and 11(4).
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 6 December 2014 the complainant wrote to the authority and requested the following:

"Please provide copies of the following information:

1. *The initial consultee comments (including general site design and overdevelopment) provided by District (and Parish) Councillor [redacted name].*
2. *The notification letter signed by Cllr [redacted name], which 'authorised' the use of delegated powers in this case (similar to that for application F.29568/001/FUL)."*

5. The council responded on 23 December 2014 and confirmed that no recorded information was held in relation to either part.
6. The complainant requested an internal review on 29 December 2014, but this was not undertaken by the council.

Scope of the case

7. The complainant contacted the Commissioner on 23 March 2015 to contest the authority's response.
8. The Commissioner therefore considers the scope of this case is the determination of whether the council is likely, on the balance of probabilities, to hold further information relevant to the request.

Reasons for decision

Is the information environmental?

9. 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)(c), any measures 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 decision making on the appropriateness of a planning application. The Commissioner therefore considers that the request should be dealt with under the terms of the EIR.

Regulation 5(1) – Duty to make information available on request

10. Regulation 5(1) states that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions or exclusions that may apply.

The Commissioner's investigation

11. On 15 June 2014 the Commissioner wrote to the council to request details about the searches it had undertaken in order to respond to the complainant's request.
12. The council had advised the Commissioner that the initial consultee comments sought by part 1 of the request were made verbally, with their only reference being in a later written document by the councillor in which they state "*Further to my original comments...*".

13. The complainant considers that the information sought by part 2 of the request would be held in the form of an automatically generated notification letter, which would have been sent to a councillor to be signed and returned to the council to show their agreement to the use of delegated powers. However, the council has advised that the authorisation by the councillor was made verbally rather than in written form, and that this fact has been recorded in a separate document (the "Officer's Delegated Report").
14. The council has confirmed that it has searched within the electronic and hardcopy planning files to confirm that no relevant recorded information is held, and has also searched by keywords in the email accounts and saved electronic documents of involved council officers. The council's Legal Officer also oversaw the original response to the request to ensure that it was correct. However, the council has reiterated to the Commissioner that it would not expect there to be any recorded information held for the reasons given in paragraphs 12 and 13.

Conclusion

15. The Commissioner has considered the council's submission and has noted that it is consistent with previous responses that the council has issued to the complainant in their course of correspondence.
16. It is evident to the Commissioner that the complainant considers the requested information should have been recorded as a matter of procedure, and that this is particularly so in regards of the authorisation sought by part 2 of the request. However this matter falls outside the terms of the EIR, and the Commissioner's role does not extend to adjudicating on the value of information or whether it should be formally recorded.
17. On this basis, and in the absence of any conflicting evidence that suggests the information must be held in recorded form, the Commissioner has concluded that no relevant information is likely to be held.

Regulation 11 – internal review

18. Regulation 11(1) 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.
19. 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.

20. The Commissioner notes in this case that the complainant in this case clearly requested an internal review on 29 December 2014.
21. 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). 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

22. 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

23. 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.
24. 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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