

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 15 August 2017

Public Authority: Hastings Borough Council
Address: Town Hall
Queens Road
Hastings
East Sussex
TN34 1QR

Decision (including any steps ordered)

1. The complainant has requested a copy of the 'Development Management Plan' Report ("the Report") for the 'Hastings Local Plan' from Hastings Borough Council ("the Council"). The Council disclosed information in response. The complainant disputed that the information disclosed by the Council was not that which was requested.
2. The Commissioner's decision is that the Council has disclosed the information which was requested, and has therefore complied with regulation 5(1) of the Environmental Information Regulations ("the EIR"). The Commissioner is also satisfied that the Council has complied with the requirement of regulation 9(1) by providing relevant advice and assistance to the complainant.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 5 October 2016, the complainant wrote to the Council and requested information in the following terms:

Please send me Inspector [redacted name]'s Examination Report on DVD in electronic form i.e. Microsoft or Adobe portable document form,

under the Freedom of Information Act as amended in 2004 as soon as possible please.

5. The Council responded on 17 October 2016. It disclosed information.
6. On 1 January 2017, the complainant wrote to the Council and asked for an internal review. This was on the basis that the information disclosed was not that requested.
7. Following an internal review the Council wrote to the complainant on 10 February 2017. It stated that its original response was correct.

Scope of the case

8. The complainant contacted the Commissioner on 3 January 2017 to complain about the way his request for information had been handled. The complainant specifically contested that the Council had not provided the information that was requested.
9. The complainant has raised various issues, including the validity of the Council's actions and decisions. However, these issues fall outside the terms of the EIR, which only relates to the provision of recorded information.
10. The Commissioner considers the scope of the case to be the determination of whether the Council has complied with regulation 5(1) and regulation 9(1).

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 rather than the FOIA. Under regulation 2(1)(c), any information on measures affecting or likely to affect the state of the elements of the environment listed in regulation 2(1)(a) will be environmental information. The information requested relates to the development of a local area, which can be understood to affect the state of various elements. The Commissioner therefore considers that the request should be dealt with under the EIR.

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

12. Regulation 5(1) of the EIR states that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions that may apply.

The complainant's position

13. The complainant has informed the Commissioner that he is seeking the 'correct version' of the Report as written by the Planning Inspector, and that the version he has received has been altered by a council officer. It is understood that this concern is based on the metadata of the electronic document which the Council provided, which shows that the document was modified by a council officer.

The Council's position

14. The Council has informed the Commissioner that the Report is the outcome of the 'Examination in Public' ("EIP") of the Development Management Plan that has been created in respect of the Hastings Local Plan. Following the EIP, the Planning Inspector, as appointed by The Planning Inspectorate ("PINS"), created the Report.
15. On 14 May 2015, PINS provided a 'fact check' copy of the Report to the Council so that any factual errors or unclear conclusions could be corrected; and the Council duly responded with its suggested corrections. On 29 May 2015, PINS provided the Council with the final Report, which was then published on the Council's website. On 22 June 2015 the Planning Inspector contacted the Council to request that the Council amend and publicise a factual error contained in the Report. The Council subsequently made the amendment and added a note to its website that confirmed which part had been amended.
16. The Council has confirmed that in response to the request it supplied the complainant with the Report in its final published form. The Council considers that this document represents the information that has been requested.
17. The Council has further informed the Commissioner that the EIP process has followed the requirements provided by the *Town and Country Planning (Local Planning) (England) Regulations 2012*. Once the Council has received the Planning Inspector's Report it is binding, and the Council has no authority to modify the Report on its volition. Should the Council disagree with the Report, it must withdraw the plan to which it relates and prepare a new version for examination. In this case, the Council accepted the Report.
18. The Council has directed the Commissioner to decision notice FS50597755, in which the Commissioner considered a similar request for the Report, and in which the context to the Report is also outlined.

The Commissioner's conclusion

19. The Commissioner is aware that the main basis of the complainant's concern is that the Report is not that written by the Planning Inspector, and that the metadata of the electronic document provided by the Council indicates that the Report has been altered by a council officer.
20. The Council has provided the Commissioner with a cogent explanation for why the Report has been altered by a council officer, and the Commissioner has noted that this amendment is clearly referenced on the Council's website¹.
21. Having considered the wording of the complainant's request, and the nature of the information sought, the Commissioner considers that the Council has complied with the request by providing the Report in its final published form.

Regulation 9 – Advice and assistance

22. Regulation 9(1) of the EIR states that:

A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

23. This regulation places a duty on a public authority to provide advice and assistance to someone making a request. The Commissioner's guidance² on regulation 9(1) explains that this duty may cover wide range of circumstances.
24. The Commissioner recognises that, following the complainant's request for an internal review (in which he contested that the Report had been altered) the Council advised the complainant that explanatory information about the Report was available on its website. This information explained the basis on which the Report had been altered, and the specific text that had been added.
25. The Commissioner considers that by providing such advice and assistance the Council complied with regulation 9(1).

¹

<http://www.hastings.gov.uk/planning/policy/adoptedlocalplan/dmp/earlierstages/finalreport/>

² <https://ico.org.uk/media/for-organisations/documents/2013834/eir-advice-and-assistance-regulation-9.pdf>

Right of appeal

26. 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

27. 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.
28. 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
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Wycliffe House
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