

Freedom of Information Act 2000 (FOIA)

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 20 March 2018

Public Authority: Southend-on-Sea Borough Council
Address: Civil Centre
Victoria Avenue
Southend-on-Sea
Essex
SS2 6ER

Decision (including any steps ordered)

1. The complainant has requested information relating to planning applications and enforcement notice appeals received by Southend-on-Sea Borough Council ("the council").
2. The Commissioner's decision is that the council has failed to respond to the complainant's request for an internal review and it has therefore breached regulation 11 of the EIR.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - The council should carry out an internal review in accordance with regulation 11 of the EIR and notify the complainant of its findings.
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 25 July 2017, the complainant wrote to the council and requested information in the following terms:

"How many Planning Applications & Enforcement notices have been the subject of appeal in the last 5 years? Have many of these appeals have won costs & legal charges & if so, what was the total cost to the Council?"

6. The council responded on 21 August 2017. It stated that 391 appeals had been received, of which, 32 were enforcement appeals. It stated that its legal and democratic services do not hold records about the costs and legal charges associated with appeals.
7. The complainant requested an internal review on 2 November 2017. In relation to information about costs and charges, he stated that the council knew that the majority of appeals were not upheld [and so would have no costs paid], many others who won their appeal would have no charges, and that *"it is only those appeals where they feel they were refused planning, so had to employ further legal / architectural services, where some form of compensation would be sought."* and therefore this information would be held by the council.

Scope of the case

8. The complainant contacted the Commissioner on 27 October 2017 to complain about the way his request for information had been handled. The Commissioner noted that an internal review had not been requested at that stage. The complainant requested an internal review on 2 November 2017. The complainant subsequently contacted the Commissioner stating that he had not received the council's internal review response despite sending several reminders.
9. The Commissioner wrote to the council on 12 January 2018 in relation to the complainant's request for an internal review, she reminded the council of its obligations under regulation 11 of the EIR and asked it to issue its review decision within 20 working days. The complainant contacted the Commissioner again on 10 February 2018 stating that he had not received the council's internal review decision. The Commissioner contacted the council and was informed that the delay had been caused by work associated with the council's preparations and compliance with the General Data Protection Regulation.

10. The Commissioner considers the scope of her investigation to be to determine whether the council handled the complainant's request for an internal review within the required timeframe of the EIR.

Reasons for decision

Regulation 11 – Representations and reconsideration

11. Regulation 11(4) of the EIR states that a public authority shall carry out an internal review and notify the applicant of its findings within 40 working days of receipt.
12. In this case the complainant requested an internal review on 2 November 2017 and to the date of this notice it has not been completed. The Commissioner therefore finds the council in breach of regulation 11 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF