

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 11 November 2022

**Public Authority:** Central Bedfordshire Council  
**Address:** Watling House High Street North,  
Dunstable  
LU6 1LF

#### **Decision (including any steps ordered)**

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1. The complainant requested information from Central Bedfordshire Council about environmental issues surrounding air quality, noise, vibrations and road safety. The complainant also asked for a copy of the 5 year post-opening report for the Woodside Link road that had been submitted to the Department for Environment, Food and Rural Affairs ("DEFRA"), and any environmental impact assessments that might have been carried out for Luton Road prior to implementing HGV weight limits of 7.5 tonnes on 5 February 2018 on various roads in Dunstable and Houghton Regis.
2. The Commissioner's decision is that Central Bedfordshire Council breached regulation 5(2) of the EIR by failing to provide a valid response to the request within 20 working days. No steps are required.
3. The Commissioner also finds that Central Bedfordshire Council should have considered the request in this case under the EIR rather than FOIA. The Council therefore breached regulation 14(3) of the EIR as it incorrectly issued its response under FOIA and not the EIR. No steps are required. However, should the complainant request an internal review, Central Bedfordshire Council must reconsider the original request under the EIR.

## Request and response

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4. On 11 August 2022, the complainant made the following request for information:

" I wish to make a request for information under the Freedom of Information Act.

Air Quality

[redacted] (director of [redacted]) stated in an email to [redacted] (forwarded to me on 30th March this year) that there has been an agreement with DEFRA that allowed the revision of the 2006 Air Quality Action Plan for Dunstable's Air Quality Management Area to be put on hold. If possible, please could you provide evidence for this agreement. Please could you state who in DEFRA sanctioned this agreement, and the date the agreement was made.

In the same email [redacted] stated that a National Bias adjustment factor of 0.81 was applied to all monitoring sites in 2020. Can you confirm if this bias factor has been consistent in Dunstable for every receptor every year since 2006? Please answer yes or no.

If the answer to question 2 is no, please can you make available the bias factors applied for Dunstable's AQMA for all years since 2006.

In another email sent to [redacted] on 4th July this year [redacted] stated that the 5 year post-opening report for the Woodside Link road was recently submitted to the Department for Transport. Please can you make available a copy of that report.

In the same email [redacted] stated that the Linpac site development was supported by an air quality assessment which concluded, based on computer modelling and local monitoring results, that there would be a negligible to minor adverse impact on the air quality in the vicinity. Please can you explain what 'minor adverse impact means' using figures and data, including predictions for receptor readings once the development is complete.

On receptor 37 [Bramley Ct, Luton Road] there are 4 missing readings. These are July and October 2020, and March and June 2021. Please can you provide an explanation for this missing data.

## Weight Limits

On 5th February 2018, HGV weight limits of 7.5 tonnes, were implemented on various roads in Dunstable and Houghton Regis resulting in Luton Rd, [A505 between Poynters Rd junction and Boscombe Rd junction] becoming a principal HGV route. Was an Environmental Impact Assessment carried out for Luton Road prior to implementing the weight limits? In particular, for; noise, vibrations, adverse impacts on air quality road safety  
Please answer yes or no for each part

If the answer to question 7 is yes, please could you provide a copy/ copies of this/ these assessments including dates they were completed."

5. Central Bedfordshire Council partially responded to the request for information on 28 September 2022. Central Bedfordshire Council sent revised copies of the partial response on 29 September 2022 and 4 October 2022. Central Bedfordshire Council sent a further response on 19 October 2022. In their responses Central Bedfordshire Council referred to the complainant's "Freedom of Information request" and used the heading "Freedom of Information Act 2000".

## Scope of the case

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6. The complainant contacted the Commissioner on 20 October to complain about Central Bedfordshire Council's failure to respond to their request within the statutory time frame.
7. The Commissioner has considered whether Central Bedfordshire Council has complied with its obligations in relation to the time for compliance at regulation 5(2) of EIR.
8. The Commissioner has considered whether Central Bedfordshire Council has complied with its obligations in relation to regulation 14(3) of the EIR as it incorrectly issued its response under FOIA and not the EIR.

## Reasons for decision

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9. Regulation 5(1) of the EIR states that:

"a public authority that holds environmental information shall make it available on request."

10. Regulation 5(2) of the EIR states that:

"Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."

11. From the evidence provided to the Commissioner in this case, it is clear that Central Bedfordshire Council did not deal with the request for information in accordance with the EIR. The Commissioner's decision is that Central Bedfordshire Council has breached regulation 5(2) by failing to respond to the request within 20 working days.

12. Regulation 2(1) of the EIR describes environmental information as being information on:

"(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..." and

...(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)...as well as measures or activities designed to protect those elements..."

13. The requested information in this case involves environmental issues surrounding air quality, noise, vibrations and road safety; a report about a road that had been submitted to DEFRA, and possible environmental impact assessments.

14. The Commissioner is therefore satisfied that this information falls within scope of subsections (a) and (c) of regulation 2(1) of the EIR and is environmental information. The Council should therefore have handled the request under the EIR and not FOIA.

## Right of appeal

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15. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

16. 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.
17. 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 .....**

**Michael Lea Team Manager**

**Information Commissioner's Office**

**Wycliffe House Water Lane Wilmslow Cheshire SK9 5AF**