

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 26 September 2012

Public Authority: Sefton Council

Address: Town Hall
Southport
PR8 1DA

Decision (including any steps ordered)

1. The complainant requested information concerning any entry under the Control of Pollution Act 1974 and the Environmental Protection Act 1990 for a specified location. Sefton Council (the Council) charged a fee to respond to the complainant's request.
2. The Commissioner's decision is that the Council breached the EIR in this case in that it levied a charge in response to a request to view information in situ and where it held no information falling within the scope of the request. The Council has acknowledged to the ICO that it breached the EIR in relation to this request and has confirmed that it has taken appropriate remedial action.

Request and response

3. On 1 February 2012, the complainant wrote to the Council and requested information in the following terms:

"I would like to make arrangements to inspect any entry under the Control of Pollution Act 1974, and the Environmental Protection Act 1990 for the following land and or buildings in the place where the Council has a duty to make available for inspection.

Southport Business Enterprise Park, Russell Road, Southport, PR9 7RF."

4. The Council responded on 3 February 2012 and stated that the information requested was not held. However, prior to providing this response the Council had required the complainant to pay a fee of £15.

Scope of the case

5. The complainant contacted the Commissioner to complain about the way his request for information had been handled on 2 May 2012. Subsequently the complainant clarified the narrative of his request and stated that it had initially been made verbally on 31 January 2012.
6. The Council asked for this request to be clarified in writing. Following receipt of the written request the Council required payments, of £10 and £5, before responding substantively to the request.
7. The complainant clarified why he had not requested an internal review, stating that the cheques making the payments required by the Council had not been cleared until more than 40 working days after the date of the Council's response. Regulation 11(2) of the EIR requires that an internal review must be requested within 40 working days following the date of the response to the request. As the Council did not take the payment until more than 40 working days following the date of the response, the Commissioner accepts that the complainant was not able to request an internal review in relation to the issue of the levying of a charge and so this case was progressed without requiring the complainant to go through internal review.
8. Whilst the complaint concerned primarily the levying of a charge by the Council, the complainant also raised the issue of the Council asking for the verbal request to be made in writing. Whilst it is the case that under the EIR a request is not required to be made in writing and a public authority is obliged to respond to a verbal request, there is no breach of the Regulations through requesting clarification of a request made verbally. However, if the requester declines to provide written clarification of a verbal request, the public authority is still obliged to respond to the verbal request.

Reasons for decision

Regulation 2

9. This Regulation defines what is environmental information. The first step for the Commissioner here is to consider whether the information falling within the scope of the request is environmental in accordance with this definition and so whether it was correct to deal with this request under the EIR.

10. Environmental information is defined within regulation 2(1) of the EIR as follows:

“any information in written, visual, aural, electronic or any other material form on –

(a) the state of the environment, such as air and atmosphere, water, soil, land and landscape and natural sites including wetlands...

(b) factors, such as substances, energy, noise, radiation or waste, emissions...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...and activities affecting or likely to affect the elements and factors referred to in (a) and (b)...”.

11. The complainant requested information concerning actions taken under legislation intended to protect the environment. The Commissioner believes that any information relating to this matter would be environmental information by virtue of Regulation 2(1)(c). Any record of actions taken under this legislation would have been taken under legislation intended to impact upon the elements and factors referred to in Regulation 2(1)(a). Therefore, the Commissioner considers the requested information in this case to be environmental and so it was correct for this request to have been considered under the EIR.

Regulation 8

12. Regulation 8(1) provides that a public authority may charge a reasonable amount for making environmental information available. However, Regulation 8(2)(b) qualifies this by stating that no charge may be levied for making information available for inspection. Also Regulation 8(1) is clear that a charge may be levied for making environmental information available; not for the processing of a request.

13. In this case it is clear that the Regulations did not allow the Council to charge. The wording of the request is specific in that the complainant was requesting to view the information in situ, meaning that Regulation 8(2)(b) applies and no charge could be levied.
14. Furthermore, the response to the request was that no information falling within the scope of the request was held. Even where a request is made to be supplied with a copy of information, rather than to view information in situ, a charge can be levied only for making recorded information available. A charge cannot be levied for responding to a request stating that no information is held.
15. The decision of the Commissioner is, therefore, that the Council breached the requirement of Regulation 8 of the EIR in that it levied a charge in relation to a request to view information in situ and where no information falling within the scope of the request was held. The Council has acknowledged to the ICO that it breached the EIR in this case and has refunded the charge to the complainant. It has also stated that it has taken steps to ensure that staff members are aware of the regulations concerning charging for the provision of environmental information.

Right of appeal

16. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

17. 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.
18. 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

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