

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

### **Decision notice**

**Date:** 28 July 2014

**Public Authority:** Ribble Valley Borough Council  
**Address:** Church Walk  
Clitheroe  
Lancashire  
BB7 2RA

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

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1. The complainant requested planning information. Ribble Valley Borough Council (the Council) initially refused to disclose this information, but without specifying any provision from the EIR as grounds for doing so. It later specified the exception provided by regulation 12(5)(f) (adverse effect to the interests of the person who provided the information). It subsequently changed its position and disclosed the requested information.
2. The Commissioner's decision is that the Council breached regulation 14(3) through its poor handling of the request.

#### **Request and response**

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3. On 21 January 2014, the complainant wrote to the Council and requested information in the following terms:  
  
*"Has RVBC received any request for pre-planning advice in respect of a proposed development of a hotel, houses or any similar development on land off Mill Lane Gisburn? If so can the Council please provide outline details of the proposals and the advice it has given."*
4. The Council responded on 19 February 2014. It refused to disclose the information requested, but specified no grounds from either the Freedom of Information Act or the EIR for this refusal. Instead, it stated

only that the information requested was "*confidential in nature and...not released to the general public*".

5. An exchange of correspondence followed during which the complainant sought a response from the Council that was valid for the purposes of the legislation. The Council eventually cited the exception provided by regulation 12(5)(f) (adverse effect to the interests of the person who provided the information).
6. Following further exchanges of correspondence between the complainant and the Council, the Council changed its position and disclosed the requested information.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 24 June 2014 to complain about the way his request for information had been handled. The complainant specified that he wished the Commissioner to issue a decision notice recording any procedural breach by the Council in its handling of his information request.
8. The breach of the EIR by the Council in its handling of the complainant's request is set out below. The Commissioner also comments more widely on the handling of the complainant's request in the 'Other matters' section below.

### **Reasons for decision**

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#### **Regulation 2**

9. The first question for the Commissioner to address here is whether the information is environmental in accordance with the definition given in regulation 2(1) of the EIR, which defines environmental information 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)...”.*

10. The view of the Commissioner is that the information in question is 'on' a plan that falls within the scope of regulation 2(1)(c). The information concerns planning and the view of the Commissioner is that planning is a process likely to effect a number of elements and factors referred to in regulations 2(1)(a) and (b). The information requested by the complainant is, therefore, environmental under regulation 2(1)(c) and it is correct to consider it under the EIR.

#### **Regulation 14**

11. This regulation sets out the duties of a public authority when refusing a request for environmental information. These include specifying the provision of the EIR under which the request is refused and why the balance of the public interest is believed to favour the maintenance of that exception.
12. In this case the Council failed initially to specify a provision of the EIR under which the request was refused and at no stage provided an adequate explanation as to why that exception was believed to apply or for why the balance of the public interest favoured the maintenance of that exception. In so doing the Council did not comply with the requirements of regulation 14(3).

#### **Other matters**

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13. As well as his finding above that the Council breached the EIR, the Commissioner also has the following comments on the way that the complainant's request was dealt with.
14. The Council's handling of this request was poor. It was only after the complainant had repeatedly contacted the Council that it specified any provision of the EIR as grounds for the refusal of this request. Initially, the Council did not appear to have considered whether the specific information requested by the complainant could be disclosed, instead it referred to any information of the type requested by the complainant not being disclosable.

15. The Council must ensure that there is no repetition of these issues in relation to future information requests. Upon receipt of an information request, the Council must consider in each case whether the information requested can be disclosed. Where an information request is refused, the requester must be provided with a response that explains why the information they have requested cannot be disclosed and that specifies the provision of the EIR or the Freedom of Information Act upon which the Council relies for this refusal.
16. The issues with the handling of this request have been recorded and may be revisited should evidence from other cases suggest that this is necessary.

## Right of appeal

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17. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

18. 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.
19. 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**