

Environmental Information Regulations 2004 (the EIR)

Decision notice

Date: 16 March 2016

Public Authority: Cheshire West and Chester Council

Address: Floor 2
HQ Building
58 Nicholas Street
Chester
CH1 2NP

Decision (including any steps ordered)

1. The complainant has requested information in relation to building works carried out on a specific address, including the installation of a log burning stove. Cheshire West and Chester Council (the council) provided the information it held but the complainant considered it had not provided all that it held.
2. During the Commissioner's investigation, a further document was located and sent to the complainant. Other than this further document, the Commissioner has determined that no further information is held by the council within the scope of the request.
3. The Commissioner did however find that the council had breached regulation 5(1) of the EIR in not providing its initial response within the permitted 20 working days following receipt of the request and that it breached regulation 11 of the EIR because it provided the complainant with its internal review outside the required 40 working days following the request for one to be conducted.
4. As the Commissioner has determined that no further information is held and the council has now provided its initial response and internal review response to the complainant, he does not require the council to take any steps.

Request and response

5. On 5 March 2015 the complainant requested the following information from the council:

"I seek provision of all information in your possession relating to the entirety of the Building Works carried out, under your reference: [reference redacted] at [address redacted] incorporating specifically the installation of the wood burning stove (the 'stove') in the first floor sitting room, including the establishment of the proximity thereto of any combustible materials, and including the flue attached to the stove, and the latter's passageway through the sitting room's ceiling into the terrace above it. Please include details of all notes emanating from site visits by your personnel carried out during the currency of the building process, necessitated to observe and approve the complete installation of the stove and flue, and those relating to the visit to approve completion of the works."

6. The council provided its response on the 14 April 2015 providing the requested documents but redacting some information, such as names, under section 40(2) of the FOIA as it determined this to be third party personal data.
7. The complainant requested an internal review on the 22 May 2015. The council carried out its internal review on the 10 July 2015 and provided a copy to the complainant on the 5 August 2015.
8. It found that it should have responded to his request under the EIR. It upheld its decision to redact the third party data, but considered it should have relied on regulation 5(3) of the EIR to redact it. Lastly, it confirmed that it had provided all the information it held within the scope of the request.

Scope of the case

9. The complainant contacted the Commissioner on 19 August 2015 to complain about the way his request for information had been handled. The complainant has not disputed the redaction of personal data, but considers that the council holds further information and is not satisfied with the time it took the council to provide its responses.
10. The Commissioner therefore considers the scope of the case is to firstly determine whether the council has provided all the information it holds within the scope of the request.
11. The Commissioner will then go on to determine whether the council responded outside the required timeframes of the EIR for providing its initial response and internal review response.

Reasons for decision

Regulation 5(1) of the EIR – Information held/ not held

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

“Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.”

13. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. The Commissioner must decide whether on the balance of probabilities the public authority holds any further information which falls within the scope of the request (or was held at the time of the request).
14. With this, the Commissioner has asked the council to explain the types of searches it has undertaken in order to establish whether it has provided all the recorded information it holds within the scope of the request.
15. The council has told the Commissioner that any relevant information would be held electronically and located in its back office systems which are used to retain documents, case officer and inspecting officers case notes. It has confirmed that no other system would be used to store information of this type.
16. The council stated to the Commissioner that its Building Control department was the service that held this information relating to the construction of works and the information in relation to the installation of the wood burning stove. Searches of the building control application number and the address of the property were used in locating the relevant information.
17. The council has also told the Commissioner that it is not aware of any information being deleted or destroyed and that it has a duty to keep building control records for a minimum of 15 years. It does this by scanning new paper applications upon receipt and stores the digital copies in its back office system. Operationally, it retains the original paper copies until a formal decision has been made on the application by one of the council surveyors.

18. Once the decision has been made, the paper copy is then destroyed to ensure filing space is kept to a minimum. Also, in 2010, the council explained it had invested in the digitalisation of its then existing paper base planning and building control files; consequently all these applications are now stored electronically and the paper files destroyed.
19. The complainant has also described to the Commissioner what type of information he is trying to obtain in making his request. He has stated he wants to know:
 - i. Was the planning application and approved building works overseen by Building Control in the normal proper manner?
 - ii. Where are the records of site visits during the building works? If they do not exist, they should, and if they do not, I should be told.
 - iii. Is there evidence that Building Control was aware of the log burner and flue being installed by a non HETAS registered technician? There should be but if not, why not and where is any explanation?
 - iv. Does the Completion Certificate confirm that the log burner and flue installation had been installed in accordance with Building Regulations, and specifically document J?
20. The council provided the Commissioner with a response to each of these four points above, explaining that building control do not oversee planning applications or their conditions, but works appears to have been notified to, and inspected by, the council's building control at the appropriate stages.
21. The site records were provided in its response of 14 April 2015, however on reviewing this, the council realised that a page of the site inspection notes were not included in that response. The council then sent this information to the complainant during the Commissioner's investigation.
22. With regards as to whether building control was aware of the log burner flue being installed by a non HETAS registered technician, the council has explained that there is no legal requirement under the Building Regulations to say that wood burning stoves can only be fitted by HETAS registered fitters and building control was aware that the wood burning stove was not being installed by a HETAS registered installer.
23. Lastly, with regards to the completion certificate, the council has told the Commissioner that this neither confirms nor guarantees that any item of work undertaken is compliant with the building regulations, nor

does it specifically comment of the compliance of any singular element of work in relation to that elements individual compliance in the technical requirements of the building regulations.

24. Although the council responses to the complainant's four points did not provide any further recorded information, except for the further page of inspection notes, the council's responses and explanations were given to provide the complainant with an understanding of the council's approach to this specific building application and works.
25. With regards to these explanations, the Commissioner is not able to consider or question if the council has taken the correct approach with regards to how it has handled the planning process, he is only able to consider whether further recorded information is held, but appreciates that an explanation can help to bring some understanding to the way the council operates or has operated in such matters.
26. On reviewing the council's explanations to the searches it has undertaken, it appears to the Commissioner that the council has made relevant searches with the mostly likely departments and system in order to determine if any further information is held. On that basis the Commissioner is satisfied that, on the balance of probabilities, the council holds no further information within the scope of the request.

Regulation 5(2) of the EIR

27. Regulation 5(2) of the EIR requires a public authority to respond to a request within 20 working days following its receipt.
28. In this case the council received the request on the 5 March 2015 and did not provide a response until 14 April 2015, this being outside the permitted 20 working days. With this, the Commissioner finds that the council breached regulation 5(2) of the EIR.
29. As the response has been provided to the complainant, the Commissioner does not require it to take any steps.

Regulation 11 of the EIR

30. Regulation 11 of the EIR requires a public authority to provide an internal review of its initial response within a maximum of 40 working days following the complainant requesting one be undertaken.
31. In this case, the council received the request for an internal review on the 22 May 2015. Although the review was conducted within the 40 working days, on the 23 July 2015, it was not provided to the complainant until the 5 August 2015 which is outside the required 40 working days.

32. The Commissioner therefore finds that the council breached regulation 11 of the EIR. As the review has since been provided to the complainant, the Commissioner does not require the council to take any steps.

Right of appeal

33. 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

34. 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.
35. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF