

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

### **Decision notice**

**Date:** 10 December 2019

**Public Authority:** Great Yarmouth Borough Council

**Address:** Town Hall  
Hall Plain  
Great Yarmouth  
Norfolk  
NR30 2QF

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

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1. The complainant requested information from Great Yarmouth Borough Council ("the Council") concerning charges in relation to planning permissions.
2. The Commissioner's decision is that the Council failed to respond to the request within 20 working days and has therefore breached regulation 5(2) of the EIR.
3. As the Council has now provided a response to this request, the Commissioner does not require any further steps to be taken.

#### **Background**

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4. The complainant's request refers to "s106 agreements". This is a reference to section 106 of the Town and Country Planning Act 1990. The Local Government Association describes these agreements as follows:

*"Planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended), commonly known as s106 agreements, are a mechanism which make a development proposal acceptable in planning terms, that would not otherwise be acceptable."<sup>1</sup>*

## **Request and response**

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5. On 28 January 2019, the complainant wrote to the Council and requested information in the following terms:

*"Please provide details of all charges enforced under s106 agreements entered into as a result of the issue of planning permissions over the last 15 years.*

*Please indicate the sums that have been used for the facilities nominated and detailed in the applicable s106.*

*Please show which monies levied have been returned to the developers concerned in the charge."*

6. The complainant has stated that the Council telephoned him on 8 February 2019 in relation to this information request.
7. The complainant provided the Council with clarification on his information request on 10 February 2019.
8. The complainant stated that he contacted the Council on 12 February 2019 and 31 May 2019 to ask for an update on his request.
9. The complainant wrote to the Council on 3 September 2019 to request an update on his request and on 5 September 2019, the Council acknowledged receipt.

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<sup>1</sup> <https://www.local.gov.uk/pas/pas-topics/infrastructure/s106-obligations-overview>

## Scope of the case

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10. The complainant contacted the Commissioner on 20 September 2019 to complain about the Council's failure to respond to his request.
11. The Commissioner contacted the Council on 28 October 2019 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
12. The Commissioner also contacted the complainant on 28 October 2019 to explain that the Council had been given 10 working days from 28 October 2019 within which to provide a response to their request.
13. The Commissioner received neither an acknowledgement nor a response to this correspondence from the Council.
14. On 12 November 2019, the Commissioner contacted the Council via telephone. The Council confirmed that a response to this request had been issued on 29 October 2019 and provided the Commissioner with a copy of this.
15. The scope of this notice and the following analysis is to consider whether the Council complied with regulation 5(2) of the EIR.

## Reasons for decision

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### Was the requested information environmental?

16. Regulation 2(1)(c) of the EIR defines environmental information as being information on:

*"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) and (b) as well as measures or activities designed to protect those elements;"*

17. The Commissioner considers the wording of the request to be for information about planning obligations. She believes that this is likely to be information about policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in regulation 2(1)(a) and regulation 2(1)(b). For procedural reasons, the Commissioner has therefore assessed this case under the EIR.

## **Regulation 5**

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

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

19. 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."*

20. The Commissioner considered that the request in question fulfilled the above criteria and therefore constituted a valid request for recorded information under the EIR.

21. From the evidence provided to the Commissioner in this case, it is clear that the Council did not provide a substantive response to the request within 20 working days of receipt. Therefore, the Commissioner's decision is that the Council has breached regulation 5(2) of the EIR.

## **Other matters**

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22. The Commissioner is concerned about the duration of the delay in responding to the complainant's information request, particularly given that the complainant had repeatedly contacted the Council seeking a reply before turning to the Commissioner. The Commissioner's attempts to contact the Council were also initially met with silence.

23. The Council must ensure that it has appropriate procedures in place for handling information requests. A record has been made of the severe delay in this case. Should evidence from other cases suggest that there is a systemic issue within the Council's handling of information requests, the Commissioner will consider what further action relating to the Council may be necessary.

## Right of appeal

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24. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

25. 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.
26. 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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**