

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 22 December 2021

Public Authority: Fylde Borough Council

Address: Town Hall
South Promenade
Lytham St Annes
Lancashire
FY8 1LW

Decision (including any steps ordered)

1. The complainant has requested information from Fylde Borough Council ("the Council") for all exchanges between the Council, the developer and other agencies regarding drainage schemes and site levels.
2. The Commissioner's decision is that the Council has failed to carry out a reconsideration (internal review) of a response it provided, under the Environmental Information Regulations ("the EIR"), within 40 working days and has therefore breached Regulation 11 of the EIR.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Reconsider how it responded to the original request and inform the complainant of the outcome of that reconsideration in accordance with Regulation 11 of the EIR.
4. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Freedom of Information Act and may be dealt with as a contempt of court.

Request and response

5. On 21 October 2020, the complainant wrote to the Council and requested information in the following terms:

"...sight of all exchanges (written and recorded) between FBC, the developer and LCC/LLFA (and any other related agencies) in relation to the drainage schemes and site levels"
6. The Council responded to the request on 12 May 2021. The Council stated that the information the complainant was seeking would take a considerable amount of time to pull together.
7. The complainant requested a review on 27 May 2021, but the Council had not completed its review at the date of this notice.

Scope of the case

8. The complainant contacted the Commissioner on 5 November 2021 to complain about the way his request for information had been handled.

In line with her usual practice, the Commissioner contacted the Council on 18 November 2021 to highlight the outstanding response. He requested that the Council complete its reconsiderations within 10 working days. The correspondence was neither acknowledged nor responded to.

9. The Complainant contacted the Commissioner on 14 December 2021 to advise that the Council has still not provided a response to their request for reconsideration.
10. The scope of the Commissioner's investigation is to determine whether the Council has complied with Regulation 11 of the EIR.

Reasons for decision

11. Regulation 2(1) of the EIR defines 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;

- (b) *factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, 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, 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;*
 - (d) *reports on the implementation of environmental legislation;*
 - (e) *cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
 - (f) *the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);*
12. The Commissioner has not seen the requested information but, as it is information relating to a an alleged lack of a approved up to date drainage scheme or site levels, he believes that it is likely to be information about the water and landscape elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

Reconsideration/Internal Review

13. Regulation 11 of the EIR states that:
- (1) *Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.*
 - (2) *Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.*
 - (3) *The public authority shall on receipt of the representations and free of charge—*

- (a) consider them and any supporting evidence produced by the applicant; and*
 - (b) decide if it has complied with the requirement.*
 - (4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.*
 - (5) Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of—*
 - (a) the failure to comply;*
 - (b) the action the authority has decided to take to comply with the requirement; and*
 - (c) the period within which that action is to be taken.*
14. From the evidence presented to the Commissioner in this case it is clear that, in failing to carry out an internal review within 40 working days the (“the Council”) has breached Regulation 11 of the EIR.

Right of appeal

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

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

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

Catherine Fletcher
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF