

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 13 April 2021

Public Authority: Cheshire West and Chester Council
County Hall
Chester
Cheshire
CH1 1SF

Decision (including any steps ordered)

1. The complainant has requested information about local overbridge works in Helsby.
2. The Commissioner's decision is that Cheshire West and Chester Council has breached regulations 5(2) and 11(4) by failing to respond to the request within 20 working days, and a review of response within 40 working days.
3. As the Council has now responded to the request and undertaken a review, no steps are required.

Request and response

4. On 5 June 2020 the complainant wrote to Cheshire West and Cheshire Council and requested information in the following terms:

'Please provide me with copies of all the information that you hold about the on-going overbridge works, and associated works to the road, embankments and walls, at Old Chester Road, Helsby.'

5. The Council responded on 8 June 2020, referring to the Commissioner's then position recognising that public authorities may need to prioritise other service areas in light of the Covid-19 situation, and that they would not be penalised for delays in responding to information requests.

6. The complainant contacted the Council on 6 October 2020 asking when a response might be received. The Council replied on the same day, explaining delays were still being experienced, and that the relevant service area would be contacted. The complainant was dissatisfied with this response, particularly given that the statutory requirements for response times still remained. The Council noted these concerns, and confirmed a response would be provided as soon as it was received from the service area.

7. On 21 October the Council spoke with the complainant to clarify the request to include:

- i. 'Policy, procedure documentation for firstly why the road was closed and the associated delays over the last 3 years.'*
- ii. 'Management information, surrounding the management of the project over the last 3 years'*
- iii. 'Results of a geological survey done on the road'*
- iv. 'Why the embankment wasn't surveyed along the road'*

8. On 27 October the Council contacted the complainant to advise it was now liaising with the service area for the revised request.

9. The complainant contacted the Commissioner on 28 October to complain that the Council had not responded to the request and, more than 4 months after it was made, had provided no timeframe for doing so.

10. The Commissioner wrote to the Council on 17 November 2020, requiring it respond to the request within 10 working days. On the same day the complainant contacted the Commissioner to advise that the Council had

in fact responded to the request the previous day. However, it had only disclosed a two page letter, and withheld the remainder of the information under regulations 12(4)d and 12(5)f of the EIR.

11. The complainant immediately requested a review on 17 November 2020. The Council contacted the complainant on 16 December 2020 to advise it was still considering the review request and awaiting responses from the service area. The complainant contacted the Council on 17 December to advise he was dissatisfied with this as the expectation for a review response is 20 working days, unless there are exceptional circumstances, and nothing in the Council's response indicated this was the case. He also notified the Commissioner of the Council's response.
12. The Commissioner again wrote to the Council, reminding it of the 20 day compliance expectation, and acknowledging that whilst the impact of the pandemic may have affected services, she now expected public authorities to have recovery plans in place. She asked the Council to respond to the review request as soon as possible.
13. On 19 January 2021, after a follow-up email from the complainant, the Council responded. It advised it was still awaiting information from the service area, and did not know when it would be able to provide the review response.
14. On 20 January 2021 the Commissioner again wrote to the Council, reminding it of its statutory responsibilities to comply with the review request within 40 working days, which it had already exceeded. She ordered the Council to respond within five working days, otherwise she would issue an information notice to force compliance.
15. The Council finally provided its review response on 22 January 2021. It included significantly more information than that provided in its initial response, but continued to rely on the following EIR exceptions to withhold information: 12(4)d, 12(5)b, 12(5)f and 13(2).

Scope of the case

16. The complainant reviewed the information that was finally disclosed to him and whilst not convinced about the application of all the exceptions, he considered that there was enough information disclosed to support his concerns about the bridgeworks, and that challenging the Council further would be disproportionate effort for all involved.
17. However, the Commissioner considered the Council's conduct regarding time for compliance warranted a formal record.

Reasons for decision

18. Regulation 5(2) of the EIR states that information that has been requested shall be made available
- “as soon as possible and no later than 20 working days after the date of receipt of the request.”
19. Whilst the Commissioner adapted her regulatory approach to recognise the increased pressures faced by public authorities during the pandemic, by September she expected organisations to have recovery plans in place to deal with any backlog. The Council formally responded to the request over 5 months after it was made, disclosing a two-sided letter. Whilst acknowledging the impact of the pandemic on public authorities, she does not consider this length of delay reasonable, and it is a clear breach of regulation 5(2).
20. For clarity, she does not consider that the conversation between the complainant and the Council constituted a revision of the request, and therefore in any way justifies the delay.
21. 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.....*
- (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.*
22. The complainant requested a review of the Council's response on 17 November 2020. Initially the Council stated it did not know when it would be able to respond to the review request, and only responded after the Commissioner instructed it to do so. It provided its response

on 22 January 2021, outside of the 40 day limit, thereby breaching regulation 11(4).

23. The Commissioner reminds the Council of its responsibilities to deal with information requests in a timely fashion, and certainly within the statutory limits.

Right of appeal

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

Website: 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

Andrew White
Head of FOI Complaints and Appeals
Information Commissioner's Office
Wycliffe House
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SK9 5AF