

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

### **Decision notice**

**Date:** 7 September 2023

**Public Authority:** Torbay Council  
**Address:** Town Hall  
Castle Circus  
Torquay  
TQ1 3DR

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

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1. The complainant submitted an information request to Torbay Council (the Council) for all communication involving the case officer and/or statutory/external consultees, in relation to two specific planning applications.
2. The Commissioner's decision is that the Council did not seek clarification of the request, and in failing to do so, breached regulation 9(1) of the EIR.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Write to the complainant seeking clarification of their request for 'all communication involving the case officer and/or statutory/external consultees.'
4. The public authority 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 Act and may be dealt with as a contempt of court.

## **Request and response**

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5. On 22 February 2023, the complainant wrote to the Council and requested information in the following terms:

“I am therefore making a Freedom of Information request of all communication relating to [redacted] and [redacted] that have involved case officer and statutory consultees or external consultees on both planning applications as well as external uploads made to council planning website on 13 December 2022 and 7 June 2022 from Council of British Archaeology.”
6. A response was provided on 14 March 2023 in which the Council confirmed that the information was not held.
7. Upon receiving this response, the complainant submitted an internal review on 14 March 2023. On 5 April 2023, the Council provided its internal review response, in which it upheld its original position.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 19 May 2023 to complain about the way their request for information had been handled, specifically regarding the Council's interpretation of communication as a dialogue, and not extending it to include the sharing or receiving of information.
9. Upon reviewing the request and having contacted the Council to discuss its interpretation of it, the Commissioner's view is that the request was not sufficiently clear. Given this, he has considered whether the Council was obliged under regulation 9(1) of the EIR to seek clarification from the complainant about the request, before proceeding with it.

## **Reasons for decision**

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### **Regulation 9-duty to provide advice and assistance**

10. Under regulation 9(1) of the EIR, a public authority shall provide advice and assistance, as far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

11. The Commissioner has published guidance on interpreting and clarifying requests<sup>1</sup>, where it is stated that public authorities must interpret information requests objectively and avoid reading into the request any meanings that are not clear from the wording.
12. The guidance states that if an authority finds that there is more than one objective reading of the request, then it must go back to the requester to ask for clarification. It should not assume which interpretation is correct.
13. The Commissioner considers that the use of the word 'involved', meant the request was open to more than one reasonable interpretation and therefore the Council was under a duty to seek clarification from the complainant, about their request.
14. The Commissioner therefore finds that the Council failed to comply with its obligations under regulation 9(1) of the EIR, and is now required to contact the complainant to obtain the correct objective reading of the request.
15. The Commissioner would further advise that, in order to facilitate this correct reading, the newly formulated request should use a word other than 'involved'.

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/regulation-9-advice-and-assistance/>

## Right of appeal

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

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

17. 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.
18. 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

**Joanna Marshall**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**