

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 18 December 2012

Public Authority: Department for Communities and Local Government

Address: Eland House
Bressenden Place
London
SW1E 5DU

Decision (including any steps ordered)

1. The complainant has requested information relating to the safeguarding direction for certain sites relating to the Thames Tunnel project. The Department for Communities and Local Government (DCLG) acknowledged receipt of the request and confirmed that it was dealing with the request under the EIR. It stated that it was extending the time for complying with the request under regulation 7(1). DCLG did not subsequently issue a substantive response to the request.
2. The Commissioner's decision is that DCLG has breached regulation 5(2) of the EIR by failing to respond to the complainant's request within 20 working days. In failing to respond to the request within 40 working days DCLG also failed to comply with regulation 7(1) of the EIR.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - State whether it holds the requested information, and communicate the information it holds to the complainant and/or
 - issue a refusal notice in respect of all or parts of the information it intends to withhold in accordance with regulation 14 of the EIR.
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 Freedom of Information Act 2000 and may be dealt with as a contempt of court.

Request and response

5. On 1 March 2012, the complainant wrote to DCLG and requested information in the following terms:

"...all Information held by it or on its behalf relating to the making of the Safeguarding Direction, including but not limited to all correspondence and meeting notes, including correspondence with Thames Water and its agents. Please also confirm whether any other sites Identified by Thames Water as being required for the purposes of the Thames Tunnel project have been safeguarded and, if so, provide copies of the relevant directions."

6. DCLG provided an initial response on 28 March 2012. It stated that, due to the complexity of the request and the volume of information involved, it intended extending the time for response by an additional 20 working days, as provided by regulation 7(1) of the EIR.
7. No response was received within the 20 working day deadline or the extended 40 working day deadline and, despite the complainant contacting DCLG again, no substantive response was ever issued.

Scope of the case

8. On 24 July 2012 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
9. The Commissioner has considered whether DCLG has dealt with the request in accordance with the EIR.

Reasons for decision

Regulation 5 – duty to make information available

10. Regulation 5(2) of the EIR requires that a public authority that holds environmental information shall make it available on request as soon as possible and no later than 20 working days after the date of receipt of the request.
11. The Commissioner wrote to DCLG on two occasions (in September and October 2012), advising it that the complainant had not received a response to their request. Immediately prior to issuing this decision notice the Commissioner also contacted the complainant who confirmed that they were yet to receive a response to their request from DCLG.

12. The Commissioner has concluded that, in failing to respond to the request within 20 working days DCLG has breached regulation 5(2) of the EIR.

Regulation 7 – extension of time

13. Regulation 7(1) of the EIR allows a public authority to extend the period of 20 working days referred to in regulation 5(2) to 40 working days if it reasonably believes that the complexity and volume of the information requested means that it is impracticable either to comply with the request within the earlier period or to make a decision to refuse to do so.
14. In this instance, DCLG informed the complainant of its intention to extend the time for responding to the request on 28 March 2012.
15. The Commissioner has concluded that, in failing to provide a substantive response to the request within 40 working days, DCLG has failed to comply with regulation 7(1) of the EIR.

Right of appeal

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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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

Andrew White
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