

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 25 November 2021

Public Authority: Hemingbrough Parish Council

Address: hemingbroughpc@gmail.com

Decision (including any steps ordered)

1. The complainant has requested information about maintenance work carried out in a particular area. Hemingbrough Parish Council ("the Parish Council") had failed to issue a substantive response at the date of this notice.
2. The Commissioner's decision is that the Parish Council has failed to respond to the request within 20 working days and has therefore breached Regulation 5(2) of the Environmental Information Regulations ("the EIR").
3. The Commissioner requires the Parish Council to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the EIR, to the request.
4. The Parish 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 September 2021, the complainant wrote to the Parish Council and requested information in the following terms:

"Please may you provide me with written details about the maintenance, tendering of work, finances spent and planned future upkeep for the area known as Hagg Lane Ings. Please provide all minutes from meetings, that refer to this area.

"Please provide the information in the form of written or typed documents, via mail or email."

6. The Parish Council acknowledged the request on 24 September 2021, but, despite several holding responses, had failed to provide a substantive response by the date of this notice.

Scope of the case

7. The complainant contacted the Commissioner on 21 October 2021 to complain about the way her request for information had been handled.
8. In line with her usual practice, the Commissioner contacted the Parish Council on 30 October 2021 to highlight the outstanding response. She requested that the Parish Council respond to the request within 10 working days.
9. The Parish Council responded on 11 November 2021 to apologise for the delay. It stated that it would deal with the request the following week "as a matter of urgency."
10. The Complainant contacted the Commissioner on 24 November 2021 to point out that the Parish Council had still not responded to the request. Given that the response remains outstanding, despite her intervention, the Commissioner considers that a decision notice is appropriate.
11. The Commissioner considers that the scope of her investigation is to determine whether the Parish Council has complied with Regulation 5(2) of the EIR.

Reasons for decision

12. 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;*
13. The Commissioner has not seen the requested information but, as it is information relating to maintenance and upkeep of a rural area, she believes that it is likely to be information on a "measure" affecting the elements of the environment – namely landscape and biological diversity. For procedural reasons, she has therefore assessed this case under the EIR.
14. Regulation 5(1) states that: *"a public authority that holds environmental information shall make it available on request."*
15. Regulation 5(2) states that such information shall be made available *"as soon as possible and no later than 20 working days after the date of receipt of the request."*
16. The Commissioner considers that the request in question constituted a valid request for information under the EIR.
17. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the Parish Council has breached Regulation 5(2) of the EIR.

Other Matters

18. When the clerk responded to the Commissioner on behalf of the Parish Council she outlined personal circumstances which had prevented her from responding sooner. The Commissioner is happy to accept that these personal circumstances have inhibited the clerk's ability to carry out her duties.
19. The Commissioner would remind the Parish Council that the legal obligation to deal with information requests falls on the Parish Council as a corporate body and not on any one individual within the organisation.
20. In this case the Parish Council's "system" for ensuring that it continually meets its legal obligations appears to assume that the clerk will always be available to deal with such requests. It is not for the Commissioner to prescribe the Parish Council's process for dealing with information requests – but she notes that the current system would appear to present a significant risk that the Parish Council will fail to meet its obligations under both FOIA and EIR on a regular basis.

Right of appeal

21. 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

22. 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.
23. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
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