

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 15 June 2021

Public Authority: Sheffield City Council
Address: Town Hall
Pinstone Street
Sheffield
S1 2HH

Decision (including any steps ordered)

1. The complainant has requested information from Sheffield City Council ("the Council"), regarding information in relation to the cancellation of the Castlegate Conservation Area consultation.
2. The Commissioner's decision is that Sheffield City Council ("the Council") has breached regulation 5(2) under the Environmental Information Regulations ("EIR") in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. It is also the Commissioner's view that the request should have been logged and handled under the EIR as opposed to the Freedom of Information Act ("the FOIA").
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Sheffield City Council must provide the complainant with a response to their request in accordance with its obligations under the EIR.

5. 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 FOIA and may be dealt with as a contempt of court.

Request and response

6. On 14 October 2020, the complainant wrote to the Council via Whatdotheyknow and requested information in the following terms:

"Please provide any and all information held, associated with the Castlegate Conservation Area Consultation. Particularly (but not limited to) the cancellation of the consultation.

<https://sheffield.citizenspace.com/place...>"

7. On 15 October 2020, the Council responded stating that the complainant's request had been logged and will be dealt with under the FOIA 2000. It said that the Covid-19 pandemic has led to a reduction of resources across the Council and that they were dealing with a backlog of requests. It said that they would aim to respond to the request within 20 working days, by 11 November 2020.
8. On 11 December 2020, the complainant contacted the Council again as it had still not received a response to their request. The Council wrote to the complainant the same day and apologised for the delay. It further explained that due to the long-term illness of two staff it was taking longer than normal to respond to requests. The Council confirmed that it had received the relevant documents from the City Growth department but these needed to be reviewed before they could be disclosed.
9. To date, a substantive response to the request has not been issued.

Scope of the case

10. The complainant contacted the Commissioner on 2 April 2021 to complain about the way his request for information had been handled. He explained that a conservation area consultation was cancelled at the last minute without any satisfactory explanation being given.

11. In line with her usual practice, the Commissioner contacted the Council on 29 April 2021 to highlight the outstanding response. She requested that the Council respond to the request within 10 working days, by 14 May 2021.
12. On 14 May 2021, the Council wrote to the Commissioner, asking for another 10 working days to respond to the complainant's request, which the Commissioner agreed to.
13. The Council wrote to the complainant on 17 May 2021 via Whatdotheyknow, apologising for the delay and informing them that the Commissioner had allowed it an extension up until 28 May 2021 to respond to the request.
14. A substantive response has still not been issued in accordance with the EIR.
15. The Commissioner considers that the scope of her investigation is to determine whether the information requested is environmental and if so, whether the Council has complied with Regulation 5(2) of the EIR.

Reasons for decision

Regulation 2 – is the information environmental?

16. Environmental information must be considered for disclosure under the terms of the EIR rather than the FOIA.
17. 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);

18. The Commissioner has considered the wording of the request and notes that it is for information about measures or activities designed to protect the Castlegate Conservation area. She believes that this is likely to be information about policies, legislation, plans, programmes, environmental agreements and activities likely to affect the elements and factors referred to in Regulation 2(1)(a) and Regulation 2(1)(b). For procedural reasons, she has therefore assessed this case under the EIR rather than the FOIA.
19. It is important to ensure that requests for information are handled under the correct access regime. This is particularly important when refusing to provide information, since the reasons why information can be withheld under FOIA ("the exemptions") are different from the reasons why the information can be withheld under the EIR ("the exceptions"). In addition, there are some procedural differences which affect how requests should be handled.
20. It is the Commissioner's view that the Council are required to handle the complainants information request in accordance with the EIR.

Regulation 5(1) & (2)

21. Regulation 5(1) states that: "a public authority that holds environmental information shall make it available on request."
22. Regulation 5(2) of the EIR states that: "Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."
23. On 29 April 2021 the Commissioner wrote to the Council, reminding it of its responsibilities and asking it to provide a substantive response to

the complainant's request within 10 working days. On 14 May 2021, the Council wrote to the Commissioner to seek a further 10 working days to provide a response to the complainants request. This was granted.

24. Despite these interventions, the Council has failed to respond to the complainant.
25. From the evidence provided to the Commissioner in this case, it is clear that the Council did not deal with the request for information in accordance with the EIR. The Commissioner finds that the Council has breached regulation 5(2) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the EIR.
26. The Commissioner wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the FOIA.

Right of appeal

27. 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

28. 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.

29. 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF