

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 14 November 2022

Public Authority: Cheshire West and Cheshire Council

Address: The Portal
Wellington Road
Ellesmere Port
CH65 0BA

Decision (including any steps ordered)

1. The complainant, a law firm acting on behalf of a client, requested information held by Cheshire West and Cheshire Council (the council) about an abatement notice issued to a particular farm.
2. Whilst the council initially refused the request in its entirety under regulation 12(3) of the EIR – third party personal data, and regulation 12(5)(b) of the EIR – course of justice, at the internal review stage it then released some of the information.
3. The council has now gone on to provide the complainant with all of the information that they required.
4. As the council failed to issue the refusal notice, and carry out an internal review, within the appropriate statutory time periods, the Commissioner has found a breach of regulation 14(2), and regulation 11(4), of the EIR, respectively.
5. Furthermore, as the council has only recently identified (and released) some of the information held that is relevant to the request, the Commissioner has found a breach of regulation 5(2) of the EIR in respect of this information.
6. The Commissioner does not require the council to take any steps as a result of this decision notice.

Request and response

7. On 7 March 2021, the complainant wrote to the council and requested information in the following terms:

“Please send me:

1. All correspondence between CW&C environmental services, planning, legal department with respect to issues of odour at Hales Pasture Farm, Allstock and the putting in place of an acceptable Odour Management Plan (OMP) at the site of Hales Pasture Farm, Allstock. The documentation should cover the entire period from December 2017 (when the dairy farm commenced operation) until the present day. It should include all correspondence including:

- a) The build up to and the issuing of the Abatement Notice dated 12th September 2018 (copy attached).

- b) Subsequent internal correspondence between legal and other departments with respect to denying us sight of the Abatement Notice.

- c) All correspondence relating to the Planning Committee meeting on Tuesday 3rd March, the subsequent decision notice dated 6th April 2020 and in respect of Discharge of Condition 2 (OMP) 19/03679/FU until present day.

- d) All correspondence to and from [name redacted] with any other member of CW&C, the applicant and/or the applicants agent with respect to the odour issues at Hales Pasture Farm, Allstock.

2. All correspondence between, but not limited to, CW&C environmental services, planning and legal departments with respect to issues of Noise from the engineering operation at Hales Pasture Farm, Allstock.

This is to include all information pertaining to the Noise Recordings taken at Hales Pasture House. For the avoidance of doubt the term correspondence includes, but is not limited to, e-mails, memo's, notes, telephone records, reports, minutes and any other form of correspondence between the parties in both paper and electronic form of any kind.”

8. The council initially refused the request under regulation 12(3), and regulation 12(5)(b), of the EIR; at the internal review stage the council did then release some of the information to the complainant. However, it

maintained that the remaining information was exempt from disclosure under the exceptions previously cited.

9. Further information that related to the same matter, but which fell outside the scope of the request, was subsequently released by the council to the complainant as part of litigation proceedings.
10. Following the receipt of additional correspondence sent by the complainant in March 2022, the council confirmed that, in accordance with its duty of candour in relation to the relevant litigation proceedings, and in the interests of co operation, it was now intending to release all of the information which the complainant required. This included some information relevant to the complainant's request which the council advised had not previously been identified due "to an inadvertent error based on the volume of correspondence involved."
11. On 28 April 2022, the council then released all of the outstanding information to the complainant.

Scope of the case

12. The complainant has now received all of the information held by the council that is relevant to the request. Given this, the Commissioner does not intend to consider whether the council was, or was not, entitled to withhold some of the information under regulation 12(3) and regulation 12(5)(b) at the time that the request was initially dealt with.
13. The Commissioner will therefore only make a decision in respect of certain procedural matters, as requested by the complainant.

Reasons for decision

14. The Commissioner notes that references have been made to both the EIR, and the Freedom of Information Act 2000, within the correspondence sent between the two parties about the request.
15. The information requested is about an abatement notice, and related matters concerning noise and odour from a particular farm site. The Commissioner is satisfied that all the requested information falls under the definition of environmental information for the purposes of the EIR.
16. The complainant submitted their request on 7 March 2021, and the council provided its response on 13 May 2021. Whilst there is an indication that the council may have requested an extension to the time in which it is required to respond from 20, to 40, working days (which it

is entitled to do in certain circumstances), it still failed to issue its refusal notice within this extended time frame. As a result, the Commissioner has found a breach of regulation 14(2) of the EIR.

17. The complainant requested an internal review on 8 July 2021, and had to chase the council before finally receiving a response on 11 November 2021. As the council failed to complete its internal review within the statutory time period of 40 working days, it has breached regulation 11(4) of the EIR.
18. On 28 April 2022, the council released some additional information that it had found to be relevant to the complainant's request. As the council failed to identify and provide the complainant with copies of some of the information that it held within the statutory time period, the Commissioner has also found a breach of regulation 5(2) of the EIR in respect of this particular set of information.
19. The Commissioner regards it to be necessary to make further comment about the council's handling of this particular request. It took over two months for the council to respond to the initial request, and then four months to provide its internal review response. The council also failed to identify some information that was relevant to the request for over a year.
20. The council should now take steps to ensure that it deals with the requests that it receives in a timelier manner, and that it has appropriate processes in place to identify all the information held that is relevant to a request. This is a matter that may be revisited should similar outcomes be noted by the Commissioner in any future cases relating to this council.

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

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