

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

### **Decision notice**

**Date:** 5 December 2022

**Public Authority:** Brentwood Borough Council  
**Address:** Town Hall  
Ingrave Road  
Brentwood  
Essex  
CM15 8Ay

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

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1. The complainant requested various information from Brentwood Borough Council ('the Council') in respect of an investigation regarding an alleged infestation of flies at a named location.
2. The Commissioner's decision is that the Council has failed to carry out a reconsideration (internal review) of a response provided under the EIR within 40 working days. It has therefore breached regulation 11 of the EIR.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Reconsider how it responded to the original request and inform the complainant of the outcome of that reconsideration in accordance with regulation 11 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 Act and may be dealt with as a contempt of court.

## Request and response

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5. On 16 December 2021, the complainant wrote to the Council and requested the following information:
  - “1. Copies of all reports the residents of (address redacted) have made to Brentwood Borough Council regarding flies since 2010; including via email, online form, and telephone.
  2. Copies of all the documented and subsequent actions taken by Brentwood Borough Council as a result of the reports in point 1.
  3. Copies of all communication between Brentwood Borough Council and the London Borough of Havering regarding flies in the properties of the residents of (address redacted) and all return communication.
  4. Copies of all communication between the council and Thames water regarding flies in (address redacted) and return correspondence.”
6. The Council responded on 30 December 2021 informing them that the records would be sent via the next day.
7. The complainant contacted the Council on 4 January 2022 expressing dissatisfaction with the information provided in respect of item 1 of their request, and stating that no response had been provided in respect of items 2, 3 and 4 of their request. The complainant also expressed dissatisfaction with this response on 9 February 2022 and 15 May 2022. However, to date, has not received the Council’s internal review.

## Scope of the case

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8. The complainant contacted the Commissioner on 4 April 2022 to complain about the way their request for information had been handled. They remained dissatisfied that they had not received an internal review in relation to their request.
9. The Commissioner contacted the Council on 1 June 2022 to highlight the outstanding internal review and asked the Council to complete its reconsiderations within 10 working days.
10. Despite this intervention the Council has failed to respond to the complainant and has not responded to further correspondence from the Commissioner dated 27 June 2022 and 3 November 2022.
11. The scope of the Commissioner’s investigation is to determine whether the Council has complied with regulation 11 of the EIR.

12. For the avoidance of doubt, the Commissioner has not yet considered, and therefore takes no position on whether the Council holds further information.

## **Reasons for decision**

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### **The appropriate legislation**

13. The Commissioner has first considered whether the information is environmental in accordance with the definition given in regulation 2(1) of the EIR:

"any information in written, visual, aural, electronic or any other material form 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) and (b) as well as measures or activities designed to protect those elements..."

14. Although the Commissioner has not seen the requested information, he considers that information in respect of an infestation of flies allegedly resulting from a water treatment plant, is a 'measure', as defined by regulation 2(1)(c), which is likely to affect the elements of the environment referred to in regulation 2(1)(a) namely air and atmosphere. The Commissioner therefore considers that the request would fall to be considered under the EIR.

**Regulation 11 – representations and reconsideration**

15. Regulation 11<sup>1</sup> of the EIR states that:

“(3) The public authority shall on receipt of the representations and free of charge—

(a) consider them and any supporting evidence produced by the applicant; and

(b) decide if it has complied with the requirement.

(4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.”

16. From the evidence presented to the Commissioner in this case it is clear that, in failing to carry out an internal review within 40 working days, the Council has breached regulation 11 of the EIR. The Commissioner considers the delay in this case to be extremely unsatisfactory and reminds the Council that it should provide prompt responses in future.

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<sup>1</sup> <https://www.legislation.gov.uk/uksi/2004/3391/regulation/11>

## Right of appeal

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17. 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)

18. 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.
19. 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 .....**

**Catherine Dickenson  
Senior Case Officer  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**