

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

Date: 8 February 2022

Public Authority: Brighton and Hove City Council

Address: Hove Town Hall
Norton Road
Hove
BN3 3BQ

Decision (including any steps ordered)

1. The complainant has requested correspondence relating to a particular planning application. At the date of this notice, Brighton and Hove City Council ("the Council") had failed to respond to the request.
2. The Commissioner's decision is that the 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 Council to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the EIR, to the request.
4. The 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.

Background

5. The request in question is related to an earlier, broader, request that the complainant made for information, that the Council refused on grounds of burden. In estimating the burden of complying with that request, the Council stated that it would take, on average, around 3 minutes to review each of the 862 emails it held within the scope of the request.

Request and response

6. On 30 November 2021, the complainant wrote to the Council and requested information in the following terms:

"We request to see details of 300 sequential items of all email and written correspondence on planning matters between BHCC and the Berkeley/St William Group relating to the Gasworks site in the (unspecified) period ending on and immediately prior to May 31 2020.

"This should include all correspondence in both directions, and include relevant dates and content.

"The start date of the correspondence would obviously need to relate to when the first of those 300 items of correspondence was sent. This is not a date we are able to specify without knowing details of the correspondence."

7. The Council replied to the complainant on 31 December 2021. It accepted that it had missed its statutory response deadline and said that it needed additional time to respond to the request. The Council said that it intended to respond by 31 January 2022, but had failed to provide a substantive response by the date of this notice.

Scope of the case

8. The complainant contacted the Commissioner on 4 January 2022 to complain about the way his request for information had been handled.
9. In line with his usual practice, the Commissioner contacted the Council on 15 January 2022 to highlight the outstanding response. He requested that the Council respond to the request within 10 working days. The correspondence was neither acknowledged nor responded to.

10. The complainant contacted the Commissioner on 3 February 2022 to request a decision notice considering the Council's compliance with the EIR.
11. The Commissioner considers that the scope of his investigation is to determine whether the 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;*
 - (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);*
13. The Commissioner has not seen the requested information but, as it is information relating to planning, he believes that it is likely to be information on a "measure" affecting, or likely to affect, the elements of

the environment. For procedural reasons, he 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 notes that the request in question comes close to being one framed by reference to the cost limit. He does not consider that such requests meet the definition of section 8(1)(c) of FOIA which requires a request to "describe the information sought." The distinguishing characteristic of information falling within the scope of the request is its proximity to a particular end date rather than anything specific to the information itself.
17. However, as this request falls to be dealt with under the EIR – which do not contain any prescriptive requirements for a request to be valid – the Commissioner does not consider that the FOIA guidance prevents this request from being treated as valid. There are sufficient grounds for the Council to distinguish, without having to apply an element of discretion, between information that falls within the scope of the request and information that does not. If the Council had concerns about the validity of the request it has had ample opportunity to seek clarification, but it has not chosen to do so.
18. The Commissioner is therefore satisfied that the Council received a valid request for information and was thus under an obligation to respond to it in accordance with the EIR.
19. 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 Council has breached Regulation 5(2) of the EIR.

Right of appeal

20. 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

21. 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.
22. 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
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF