

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 8 March 2023

Public Authority: Rother District Council
Address: Town Hall
Bexhill-on-Sea
East Sussex
TN39 3JX

Decision (including any steps ordered)

1. The complainant has requested various information about a housing development, including correspondence between different involved parties. During the course of investigation, Rother District Council ("the Council") informed the Commissioner that it had responded to the request without being sure of its parameters. The Council subsequently sought clarification, which the complainant then provided.
2. The Commissioner's decision is that the Council has failed to undertake searches appropriate to the request.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request as clarified by the complainant. The Council should either disclose the information or, in respect of any information it intends to withhold, issue a refusal notice within the meaning of regulation 14 of the EIR providing a basis for withholding information.

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

5. On 23 August 2022, the complainant wrote to the Council and requested information in the following terms:

“All correspondence between the Council, Court Developments and Optivo Housing Association for this calendar year, together with associated reports and Minutes and meetings, in connection with Westfield Down development and affordable housing.”

6. The Council responded on 22 September 2022. It stated that information was held, but exempt under regulation 12(4)(d) of the EIR.
7. Following an internal review the Council wrote to the complainant on 24 October 2022. It maintained its position.

Reasons for decision

8. This reasoning covers whether the Council has complied with its obligations under regulation 5(1) (duty to make available environmental information on request).
9. During the course of the Commissioner’s investigation, the Council advised the complainant, on 30 January 2023, that it was unsure of its interpretation of the request, and specifically:

“You ask for all correspondence between the Council (Rother DC), Court Developments and Optivo Housing Association. Please could you confirm that you are seeking correspondence between the three named parties as a group rather than correspondence between, for example, two of the named parties.”

10. The complainant subsequently responded to the Council. The complainant has informed the Commissioner that this response advised that he sought **“All correspondence between the parties means just that whether between all three or any two.”**

11. Having considered the above, the Commissioner must conclude that if the Council was unsure of the scope of the request, then it cannot have undertaken searches appropriate to it.
12. The Commissioner requires the Council to issue a fresh response to the request as clarified by the complainant. The Council should either disclose the information or, in respect of any information it intends to withhold, issue a refusal notice within the meaning of regulation 14 of the EIR providing a basis for withholding information.

Right of appeal

13. 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

14. 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.
15. 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

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