

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 23 January 2023

Public Authority: Portsmouth City Council
Address: Civic Offices
Guildhall Square
Portsmouth
Hampshire
PO1 2AL

Decision (including any steps ordered)

1. The complainant requested information from Portsmouth City Council ("the Council") relating to a specific planning application.
2. The Commissioner's decision is that the Council has failed to carry out a reconsideration (internal review) of a response it provided under the EIR, within 40 working days. It has therefore breached regulation 11 of the EIR.
3. The Commissioner requires the Council 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 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.

Request and response

5. On 16 June 2022, the complainant wrote to the Council and requested information in the following terms:

"Can you please forward all material concerning Planning Applications 20/001143/PLAREG, 20/01144/ADV & PP-09134811 held by PCC & the Case Officer [redacted]."

6. The Council responded to the request on 6 October 2022.
7. The complainant requested an internal review on 7 October 2022, but the Council had not completed its review at the date of this notice.

Scope of the case

8. The complainant contacted the Commissioner on 11 December 2022 to complain about the way this request for information had been handled.
9. The Commissioner contacted the Council on 19 December 2022 to highlight the outstanding internal review and asked the Council to complete its reconsiderations within 15 working days, by 16 January 2023.
10. Despite this intervention the Council has failed to respond to the complainant.
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 was entitled to rely on the exceptions which it has done.

Reasons for decision

13. Regulation 11¹ of the EIR states that:

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

- “(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.”
14. 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.

Right of appeal

15. 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-regulatorychamber

16. 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.
17. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF