

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 30 April 2024

Public Authority: Westmorland and Furness Council
Address: South Lakeland House
Lowther Street
Kendal
Cumbria
LA9 4DQ

Decision (including any steps ordered)

1. The complainant requested information from Westmorland and Furness Council ("the Council") relating to a planning application. By the date of this notice the Council had not issued a substantive response to this 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 EIR.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response to the request in accordance with its obligations under the EIR.
4. The Council must take these steps within 30 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 24 January 2024, the complainant wrote to the Council and requested information in the following terms:

"I make the following request under the Environmental Information Regulations 2004.

Please send me a copy of all communications regarding planning application 1/23/9005 between the Council (whether Westmorland and Furness Council, Cumberland Council or Cumbria County Council) and the applicant (including the applicant's agent(s) and including North West Recycling and including Waste Projects Ltd). Relevant information held by Westmorland and Furness Council on behalf of Cumberland Council should be included, as should any relevant information held by Westmorland and Furness Council that was sent/received by Cumbria County Council. For the avoidance of doubt, information about planning application can be found at:

<https://planning.cumbria.gov.uk/Planning...>

The screening request for this application can be found at:

<https://planning.cumbria.gov.uk/Planning...>

Planning documents already shown on the planning website at the two links above do not need to be included, but please include any covering emails and any other information sent. This includes, but is not necessarily limited to, all other correspondence with the applicant that relates to this application, any correspondence that relates to subsequent or associated development at the wider North West Recycling site, arrangements for meetings, minutes of meetings and records of telephone conversations. Copies of correspondence both to and from the Council, including any attachments, should be included.

If necessary, the search for relevant emails can be limited to emails sent/received from three months prior to the screening request."

6. The Council wrote to the complainant on 29 January 2024 to inform them that the planning application referred to in the request did not fall within the geographical area of the Council. It advised the complainant to refer their request to Cumberland Council.
7. On the same date the complainant wrote to the Council to request an internal review. They stated that they believe the Council to hold information within the scope of their request as they believe that whilst the planning application referred to in the request does not fall within

the geographical area of the Council, the Council's planning team is responsible for waste related planning applications within the Cumberland Council area.

8. The Council responded on the same date and informed the complainant that it would not be conducting an internal review as it had not provided a response to the request. It indicated that its position was that the response sent on 29 January 2024 did not amount to a substantive response to the complainant's information request. It stated that it would log the complainant's request and respond accordingly. However, by the date of this notice, the Council has not provided the complainant with a substantive response to the request.

Reasons for decision

9. Regulation 5(1) of the EIR states that:

"a public authority that holds environmental information shall make it available on request."

10. Regulation 5(2) of the EIR states that:

"Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."

11. The Commissioner contacted the Council on 8 April 2024 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days. Despite this intervention the Council has failed to respond to the complainant.
12. From the evidence provided to the Commissioner in this case, it is clear that the Council did not deal with the request for information in accordance with the EIR. The Commissioner's decision is that the Council has breached regulation 5(2) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the EIR.

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.

Ben Tomes
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF