

Environmental Information Regulations 2004 (EIR) Decision notice

Date: 21 June 2024

Public Authority: Westmorland and Furness Council
(formerly Cumbria County Council)

Address: Parkhouse Building,
Carlisle,
Cumbria,
CA6 4SJ

Decision (including any steps ordered)

1. The complainant has requested information relating to roadworks that took place in October 2022. Cumbria County Council (CCC) did not provide a response.
2. The Commissioner's decision is that CCC breached regulation 5(2) of EIR.
3. The Commissioner requires Westmorland and Furness Council (the council) to take the following steps to ensure compliance with the legislation.
 - Provide a response to the request of 17 November 2022.
4. The public authority 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 Act and may be dealt with as a contempt of court.

Background

5. On 1 April 2023, Westmorland and Furness Council came into being as a result of Local Government Reorganisation. Cumbria County Council and the former six district councils no longer exist. The two new Unitary Councils that cover Cumbria are Cumberland Council and Westmorland

and Furness Council. All of the predecessor authorities ceased to exist on the 31 March 2023.

6. For the purposes of this decision notice, all references to 'the council' are references to Westmorland and Furness Council as the current public authority.
7. In October 2022 the complainant suffered damage to his car following an incident with a pot hole. The complainant submitted a claim to Cumbria Highways in line with its procedures and liability was subsequently denied.
8. The complainant then made an information request. Unfortunately, this was sent to CCC's insurance company, and although the email was forwarded to CCC it is clear that the information request was not dealt with.

Request and response

9. On 17 November 2022, the complainant wrote to the council and requested information in the following terms:

"...I will also require you to provide me with the data and information with regards to the above mentioned road works which took place early October 2022 on the A592 around the Glenridding/Patterdale/Kirkstone Pass stretch, and a precise and detailed account of the locations of the road works and road closures you put in place..."

10. No response was provided.

Scope of the case

11. The complainant originally contacted the Commissioner on 12 February 2023 to complain about the way their request for information had been handled. However, following further correspondence the original case was closed in error. This was only discovered when the complainant contacted the Commissioner again on 4 March 2024 and a new case was created.
12. The Commissioner contacted the council but provided an incorrect reference number, thereby causing further delay. Having reviewed all the information on the relevant case files and contacting the council, the Commissioner established that the request had not been logged as an information request, consequently it was unable to carry out an internal review as the complainant had requested.

13. The council has agreed to take responsibility for carrying out any steps ordered in this decision notice.

Reasons for decision

Is the requested information environmental?

14. 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;
15. The Commissioner is satisfied that the information requested falls within the definition of 2(1)(c) above.

Regulation 5 – duty to make environmental information available on request

16. Under regulation 5(1) of the EIR, a public authority must make environmental information available on request if it holds the information and it is not subject to an exception.
17. The Commissioner finds that CCC breached regulation 5(1) of EIR. The council should therefore provide a response now to fulfil its obligations under EIR.
18. Furthermore, regulation 5(2) of EIR 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."

Therefore, it is clear that CCC also breached regulation 5(2).

Procedural matters

19. The Commissioner notes that part of the reason for this request not being actioned appears to be because Highways Cumbria did not recognise it as an information request.
20. Ordinarily the Commissioner would recommend that a public authority takes steps to ensure all its staff are made aware of how to recognise a request and how it should be dealt with. However, as Highways Cumbria is not the subject of this decision notice, the Commissioner suggests that the council pass this recommendation on.

Other matters

21. The Commissioner would like to apologise to the complainant for the significant delays and errors when dealing with this complaint and acknowledges that this falls far short of the service standards he expects.

Right of appeal

22. 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

23. 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.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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Cheshire
SK9 5AF