

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

Decision notice

Date: 16 August 2012

Public Authority: Kirklees Metropolitan Council
Address: Civic Centre
3 Market Street
Huddersfield
HD1 2EY

Decision (including any steps ordered)

1. The complainant requested e-mails containing the word 'Kingsgate', sent by a named officer in Kirklees Regeneration, for a 6 month period preceding the opening day of a public inquiry. During the course of the Commissioner's investigation the public authority disclosed the information. The Commissioner's decision is that in disclosing the information outside the time for compliance Kirklees Metropolitan Council breached regulation 5(2) of the EIR. The Commissioner notes that there were serious delays in issuing a refusal notice and conducting the internal review. The Commissioner therefore finds that the council also breached regulations 14(2) and 11(4). As the information has now been disclosed, the Commissioner does not require the public authority to take any steps in this case.

Background

2. The requested information relates to a refusal of planning permission for Kingsgate phase 2, a proposed extension to a shopping centre in Huddersfield, and in particular the role of a named officer of Kirklees Metropolitan Council ("the council"). The requester wished to understand why, at the public inquiry, the council had changed its reasoning for the refusal from that given in its original refusal of the planning application.
3. There is a considerable background of correspondence between the complainant and the council and a number of related requests were made in between this request and the internal review.

Request and response

4. The Commissioner has not been provided with a copy of the actual request in this case. However, the complainant and the council have agreed that on or around 19 November 2009, the complainant wrote to the council and requested information in the following terms:

"please supply all e-mails from [named officer] in Kirklees Regeneration for a 6 month period preceding the opening day of the Public Inquiry containing the word Kingsgate."

5. At some point the request was interpreted as being for emails 'in the past two years' but the council is unable to explain when or why this interpretation was placed on the request. However, the two parties are now agreed that as the public inquiry began on 7 October 2008, the 6 month preceding period is 7 April 2008 to 7 October 2008.
6. The council responded throughout on the basis that the request was for emails 'in the past two years'. On 3 March 2011 it refused the request, citing regulation 12(4)(e) – the request involved the disclosure of internal communications. The council considered that the public interest in maintaining the exception outweighed the public interest in disclosure at that time.
7. In November 2011, whilst in the process of conducting its internal review, the council disclosed some emails but all were outside the scope of the request outlined above, as they were before and after the dates now agreed.
8. Following the internal review, the council wrote to the complainant on 31 January 2012. It stated that it was satisfied that all the information in question fell within the exception in regulation 12(4)(e). However, it also considered that regulation 12(3) was engaged as certain of the emails were to third parties.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
10. The council decided that the information requested is environmental information and therefore the appropriate access regime is the EIR. The complainant has not disputed this and the Commissioner is satisfied that

the information relates to a measure likely to affect the elements and factors mentioned in regulations 2(1)(a) and (b). The information therefore falls within the definition of environmental information at regulation 2(1)(c) of the EIR.

11. During the course of the Commissioner's investigation, the council took the decision to disclose all the information falling within the scope of the original request. The council has also disclosed emails outside the scope of the now agreed time period of the original request.
12. The Commissioner contacted the complainant and asked him if he wished to withdraw his complaint in the light of the full disclosure of the requested information. The complainant stated that he was not prepared to withdraw his complaint and wished the Commissioner to issue a formal decision notice.
13. The scope of this case, therefore, is to consider whether the council complied with the requirements of regulation 5(2) of the EIR and also the time taken to issue the original refusal notice and internal review.

Reasons for decision

14. Regulation 5(1) of the EIR states:

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

15. Regulation 5(2) of the EIR states:

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

16. It is accepted that the council received the request for information on or about 19 November 2009. The council provided the complainant with the requested information on 30 May 2012. Therefore the Commissioner finds that the council has breached regulation 5(2) of the EIR because the information was not provided within 20 working days.
17. Regulation 14 requires a public authority to issue a refusal notice within 20 working days after the date of receipt of the request. Although there was considerable correspondence between the parties about the request, the official refusal notice was not issued until 3 March 2011, more than 15 months after the request. The council has therefore breached regulation 14(2).

18. Regulation 11 provides requesters with the right to require the public authority to conduct an internal review of its handling of a request. Regulation 11(4) requires the public authority to notify the requester of its decision within 40 working days after receipt of the request for a review. The Commissioner notes that the council recorded the requester's email of 28 November 2011 as a request for an internal review, but did not complete its internal review until 31 January 2012. The council has therefore breached regulation 11(4) of the EIR.

Other matters

19. Delays have been a significant factor in this case. The parties are in agreement that the original request was made in November 2009. The council did not provide its refusal notice until March 2011 and the internal review was only provided in January 2012. The council has not provided any justification for these unacceptable delays. However, the Commissioner is aware that there were a number of related requests by the complainant during the intervening period that may have served to complicate matters.
20. The council has further confused matters by its misinterpretation of the scope of the request. The widening of the scope introduced arguments that were not relevant to the information within the scope.

Right of appeal

21. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

22. 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.
23. 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

Alexander Ganotis
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