

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

Decision notice

Date: 12 January 2015

Public Authority: Rhondda Cynon Taf County Borough Council
Address: The Pavillions
Cambrian Industrial Park
Cydach Vale
Tonypany
CF40 2XX

Decision (including any steps ordered)

1. The complainant requested various items of information from Rhondda Cynon Taf County Borough Council ('the Council'), in respect of a feasibility study in relation to traffic controls outside the front of her property. Although she did not initially receive a response, following the Commissioner's intervention the Council subsequently provided its response.
2. The Commissioner's decision is that in providing its response after the required 20 working days, the Council has breached regulation 5(2) of the EIR.
3. As a response has now been provided the Commissioner does not require the public authority to take any steps.

Request and response

4. On 19 February 2014, the complainant wrote to the Council and requested the following information:

"...details of the feasibility study that the applicant paid £100,000 to the highways authority, and the work study officer who executed the said study.

...where in this study were the recommendations made to place, traffic control lights, crossing with constant bleeps, double yellow lines, directly outside my property...

I also request paperwork that let this project happen within my boundaries... evidence that the Structural Engineer's advice that a ground investigation be carried out, and that Polychlorinated Biphenols (PCB;s) were removed from site and capped. and [sic] that policy ENV 15 was also carried out for the investigations into potential contamination, with remedial measures taken if this proved to be the case.

I also request justification as to how? [sic] this was allowed, when recommendations state clearly, that measures such as these should not be allowed to entrance [sic] to private property.

I also request the reasoning behind this project...justification for the removal of off road parking, to the front of my premises, which as [sic] been there for over a hundred years.

I also request why two houses that were not affected by the proposals, and who could still park to the front of their property's [sic] were allocated a large parking area to the rear of their property's..."

5. Following the Commissioner's intervention, the Council responded on 10 September 2014.

Scope of the case

6. The complainant contacted the Commissioner on 16 May 2014 to complain about the Council's lack of response to her request.
7. As stated in paragraph 5 of this notice, following the Commissioner's intervention, the Council provided its response on 10 September 2014. However, the complainant was not satisfied with the response and asked the Commissioner to investigate the actual substance of the response itself.
8. The Commissioner has explained to the complainant on a number of occasions that he cannot investigate the substance of the Council's response at this stage because she has not exhausted its internal complaints procedure. He has further explained that as he considers that

this request was for environmental information, as defined by regulation 2(1) of the Environmental Information Regulations, that an internal review is a formal requirement under regulation 11 of the EIR which deals with representations and reconsideration of a request.

9. The complainant has however, insisted that a decision notice is issued in respect of her complaint and the Commissioner has confirmed to her that at this stage, the scope of any decision notice can only consider whether it has complied with its obligations under regulation 5(2) of the EIR. The scope of the Commissioner's investigation does not therefore extend beyond this consideration.

Reasons for decision

The appropriate legislation

10. As stated in paragraph 8 of this notice, the Commissioner has considered whether the information subject to this request is likely to be environmental, as defined by regulation 2(1) of the EIR, which states that:

'(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) and (b) as well as measures or activities designed to protect those elements...'

11. The Commissioner notes that the information requested relates 'measures' regarding land, and factors affecting it such as pollution and noise. He therefore considers that the information is environmental, as defined by regulation 2(c) of the EIR.
12. Information which satisfies the definition in regulation 2 must be considered for disclosure under the terms of the EIR rather than the FOIA.

Regulation 5 - the duty to make environmental information available on request

13. Under Regulation 5(1) of the EIR, a public authority holding environmental information is obliged to make that information available on request.
14. Regulation 5(2) sets out the timescales for this and 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."
15. The Commissioner notes that the complainant's request was dated 19 February 2014. However, the Council did not provide its response until 10 September 2014, which is clearly well in excess of 20 working days.
16. The Council's failure to provide a response within the timescales stated in paragraph 14 of this notice therefore represents a breach of regulation 5(2) of the EIR.

Right of appeal

17. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

18. 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.
19. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF