

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

Date: 7 May 2019

Public Authority: Hastings Borough Council
Address: Town Hall
Queens Road
Hastings
East Sussex
TN34 1QR

Decision (including any steps ordered)

1. The complainant requested from Hastings Borough Council (the Council) information comprising of documents and correspondence between the Council and Natural England regarding England Coastal Path and Ecclesbourne Glen. Following the Commissioner's involvement, the Council responded to the request. However, the complainant remained unhappy with the overall handling of the request by the Council including the time the Council took to provide a response.
2. The Commissioner's decision is that the Council failed to respond to the complainant's request within 20 working days of receipt and has therefore breached regulation 5(2) of the EIR.
3. Since the request has now been responded to, the Commissioner does not require the Council to take any further steps in relation to this complaint.

Request and response

4. On 15 February 2017, the complainant wrote to the Council and requested information in the following terms:

"In reply to a question to full council on 15/02/2017 Cllr Chowney stated:

.....

Please provide me with all supporting documents and correspondence between HBC and Natural England concerning Coastal Path and Ecclesbourne Glen to support Cllr Chowney's statement.

Please take this as a formal request under EIR legislation."

5. Following a severe delay the Council responded on 25 September 2018. It provided the complainant with a web-link containing information on implementation of the coastal path. The Council stated that it held no other information.
6. Remaining dissatisfied, on 28 September 2018 the complainant requested the Council to conduct an internal review, stating that the provided link does not provide what was requested and explained why he thinks that there is further information held.
7. Following an internal review the Council wrote to the complainant on 15 October 2018. It stated that upon further investigation it became apparent there was further information held in the form of email communication. The Council provided a redacted copy of this email exchange.

Scope of the case

8. The present complaint derives from a previous complaint submitted on 17 October 2018, which in itself contained a number of other complaints.
9. This particular complaint was received on 25 March 2019, upon the complainant's confirmation that he does not dispute the substance of the response received, however, he wanted the Commissioner to address the procedural aspect of how the request was handled.
10. The Commissioner therefore considers that the scope of the case, in light of the investigation and the subsequently released information,

is to determine whether the Council dealt with the information request in accordance with the EIR.

Reasons for decision

Regulation 5 – Duty to make environmental information available on request

11. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request.
12. Regulation 5(2) of the EIR states that information should be made available *"as soon as possible and no later than 20 working days after the date of receipt of the request"*.
13. In this case, the complainant submitted the information request on 15 February 2017. The Council informed the complainant that his request was put "on hold" on 20 July 2018. The Council provided a substantive response to the complainant on 28 September 2018 and provided the requested information only on 15 October 2018.
14. The Council took over 19 months to provide the complainant with a substantive response and even longer to provide him with the information requested, which is greater than the 20 working days specified by the EIR. As such, the Commissioner finds that the Council breached regulation 5(2).

Other matters

15. The Commissioner would like to address the following issues which were noted in the course of investigation of this complaint.
16. The Commissioner noted that the Council in deciding to placing "on hold" the present request together with a several other requests, pending a First-tier Tribunal decision on an appeal dealing with relevant issues to the subject matter of the present request, has disregarded statutory requirements deriving from the EIR.
17. The Commissioner reiterates that public authorities do not have the discretion to place "on hold" a valid information request without the requester's consent.
18. In addition, the Commissioner notes that the Council took more than five months to inform the complainant that the present request was placed "on hold".

19. Furthermore, the Council provided a substantive response to the present information request on 25 September 2018, whilst the relevant decision of the First-tier Tribunal was issued on 26 March 2018.
20. The Commissioner considers that the extreme delays in dealing with information requests, as described above, raise serious concerns about the Council's procedures in place. The Council should review its FOI procedures and ensure that such delays are not repeated in the future. Should the Commissioner become aware of systemic failings at the Council, she will consider what action may be appropriate.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

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