

Freedom of Information Act 2000 (Section 50) *Environmental Information Regulations 2004*

Decision Notice

Date: 19 April 2010

Public Authority: Clydach Community Council
Address: c/o Chairman of the Council
49 Heol Graigfelin
Clydach
Swansea
SA6 5DH

Summary

The complainant contacted Clydach Community Council on 10 November 2008 to request financial information such as the Council's accounts for the last six years and its expected expenditure profile for 2008/09. The complainant also asked for a list of Councillors for his ward. On 9 March and 1 July 2009, the complainant chased a response to his request and added to it. The complainant restated his request on 12 October 2009. To date the complainant has received no substantive response. The Commissioner therefore finds the public authority to be in breach of sections 1(1) and 10(1) of the Act and instructs it to provide a substantive response or issue a valid refusal notice in accordance with section 17 of the Act. The Commissioner also highlighted the need for the Council to consider the provisions of the Environmental Information Regulations 2004 if appropriate.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.
2. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information

Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Act are imported into the EIR.

The Request

3. On 10 November 2008 the complainant submitted a request to the home address of the clerk to the Clydach Community Council ('the Council') in which he asked for:

- Council Accounts for the last six years.
- The Council projected expenditure profile for 2008/09.
- The Initiatives/Projects (plus costs) agreed for 2008/2009.
- Listing of the Councillors for his Ward.

The complainant also asked the Council to "ascertain and advise" what projects had been funded by Local Authority Councillors' "annual 'Environmental Allowance'" over the last five years.

4. On 9 March 2009, the complainant wrote to the clerk to the Council to chase a response to his request of 10 November 2008 and enclosed a copy of that letter. He also added to his request as follows:

"As we are now in the cusp of the new financial year, would you please add the 2009/2010 details to the first three, bullet point questions and also the topic of the final paragraph."

The complainant also asked the Council to "ascertain and advise when the minor Recycling facility will be restored to Clydach and at what location." The complainant also asked the Council to arrange to clear a site in the local area known as 'Stone Barge' but no request for information was included in his question.

5. On 1 July 2009, the complainant wrote to the clerk to the Council to chase a response to his requests of 10 November 2008 and 1 July 2009. The complainant also asked the Council to provide "copies of the Finance Sub-Committee minutes for 2008/2009 and the current financial year."

6. The clerk to the Council responded to the complainant in an undated letter that the complainant says was received on 19 July 2009. The response did not address the requests included in the complainant's letters of 10 November 2008, 9 March 2009 or 1 July 2009 other than to state that the Council was unaware of the level of 'annual environmental allowance' made to each City Council ward member and

that "we are rarely told what it has – or will be – spent on". The Council did provide the complainant with information on some initiatives and projects that it had been involved in but it is not clear to which financial year these relate and whether it is a definitive list of all such projects / initiatives.

7. On 12 October 2009 the complainant wrote to the clerk to the Council and stated that he was pursuing some of the information previously requested, namely:

- "1. My letter dated to you dated 10 November 2008 (Copy dated 9 March 2009) The first three 'bullet point questions.
2. My letter to you dated 01 July 2009. (Copied also to the Council Chairman) The question contained in Paragraph Four of this letter."

The Investigation

Scope of the case

8. On 19 November 2009 the complainant wrote to the Commissioner to complain about the way his request for information had been handled. The complainant drew the Commissioner's attention to the sequence of events since his letter to the clerk to the Council of 12 October 2009. The Commissioner has therefore taken the information that the complainant wishes to pursue to be the following:
 - Council Accounts for the last six years.
 - The Council projected expenditure profile for 2008/09.
 - The Initiatives/Projects (plus costs) agreed for 2008/2009.
 - Copies of the Finance Sub-Committee minutes for 2008/2009 and the current financial year.

Chronology

9. The Commissioner wrote to the Council on 1 December 2009 and asked it to provide a response to the complainant's requests within 10 working days. Having received no response, on 11 January 2010 the Commissioner deemed the complaint eligible for assessment and the case was assigned to a work queue to await allocation to a case officer.
10. On 8 April 2010, the Commissioner telephoned the clerk to the Council to clarify the Council's position in this matter. The clerk stated that the complainant had received responses to some of his requests and that

some information was in the public domain. It was not clear to the Commissioner what information had been provided to the complainant and what information was in the public domain. As such, and given the period of time that had passed since the initial request, the Commissioner informed the Council of his intention to issue a Decision Notice in this case.

Analysis

Substantive Procedural Matters

11. The Commissioner has considered the correct access regime that applies to the complainant's requests. While he has not had sight of any information held by the Council, he considers that the Environmental Information Regulations 2004 (the "EIR") might be relevant to at least part of the request. For example, the request for "Initiatives/projects (plus costs) agreed for 2008/2009" might include some information that is "environmental information" as defined by regulation 2(1)(a)-(f) or the EIR. The Council should consider this point when responding to the complainant's requests.

Procedural Requirements

12. Section 1(1) of the Act states that states that:

"Any person making a request for information to a public authority is entitled

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him".

13. Section 10(1) (full wording in legal annex) of the Act states the following: "Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."
14. By the date of this notice the public authority has failed to provide a substantive response to the complainant within the statutory time period contained within the provisions set out in section 10(1). This constitutes a breach of section 1(1)(a) and 10(1).
15. Regulations 5(1) and 5(2) (full wording in legal annex) of the EIR state that a public authority that holds environmental information shall make it available on request, as soon as possible and no later than 20

working days. As he is unaware whether the request relates to environmental information as defined by the EIR, the Commissioner has made no decision regarding the application of those regulations and he has raised this point for the information of the Council.

The Decision

16. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act. The Commissioner finds the public authority to be in breach of sections 1(1)(a) and 10(1) of the Act.

Steps Required

17. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act and/or the EIR:
- Provide a substantive response to the complainant or
 - Issue a valid refusal notice in accordance with the requirements of section 17 of the Act or regulation 14 of the EIR, as applicable.
18. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

19. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

20. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 19th day of April 2010

Signed

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

Legal Annex

Section 1(1) provides that –

“Any person making a request for information to a public authority is entitled

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him”.

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Regulation 5(1) provides that –

Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 5(2) provides 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.