

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

Decision notice

Date: 27 October 2011

Public Authority: Newport City Council
Address: Civic Centre
Newport
Gwent
NP20 4UR

Decision (including any steps ordered)

1. The complainant made a request for information held by Newport City Council (the "Council") relating to various projects and initiatives. The Council stated that to comply with the request would exceed the appropriate cost limit and refused the request on the basis that section 12(1) of the Freedom of Information Act 2000 (the "Act") was engaged. During the course of the Information Commissioner's (the "Commissioner") investigation it became clear that some of the relevant information held by the Council was likely to be environmental information but had not been treated as such. The Council claimed that, where information could be considered to be environmental information, the request was manifestly unreasonable under regulation 12(4)(b) of the Environmental Information Regulations 2004 (the "EIR"). The Council also stated that it did not hold some of the requested information. The information provided to the Commissioner has not been sufficient for him to conclude that its application of section 12(1) the Act or regulation 12(4)(b) of the EIR was appropriate.
2. The Commissioner's decision is that Newport City Council has not complied with the provisions of the Act or the EIR.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Where the Commissioner has found that either section 12(1) of the Act or regulation 12(4)(b) of the EIR is not engaged, the Council should either disclose the requested information or issue a refusal

notice citing a relevant exemption or exemption to disclosure, other than section 12(1) or regulation 12(4)(b).

- Reconsider the following parts of the request and either disclose the relevant information or issue a valid refusal notice under section 17 of the Act or regulation 14 of the EIR, whichever is the valid legislation:
 - The Riverside Park
 - Section 106 funding for Pillgwenlly schools.
 - The Lollipop person request for Pillgwenlly school.
 - Pill bank lane neighbourhood watch alley gates request.
4. The public authority must take these steps within 35 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 (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 12 September 2010, the complainant wrote to the Council and requested information in the following terms:

"Dear Freedom of information officer,

I am writing to make an open government request for all the information to which I am entitled under the freedom of information and Data Protection act. In order to assist you with this request, I am outlining my query as specifically as possible. If however this request is too wide or too unclear, I would be grateful if you could contact me as I understand that under the act, you are required to advise and assist requesters.

A description of my request:

Specifically, information including applications, minutes, emails, reference funding applications by Newport City Council and partners concerning:

- *The Pillgwenlly regeneration project 2009; Including European, WAG, and NCC application and acceptance stipulations.*
- *The overall cost (£) of supporting the Ryder cup;*

- *The Flying Start project; Including European, WAG, and NCC application and acceptance stipulations.*
- *The Riverside park; Including Businesses, European, WAG, and NCC application and acceptance stipulations.*
- *Project 4 and 21; including European, WAG, and NCC application and acceptance stipulations.*
- *Section 106 funding for Pillgwenlly schools; including minutes, comments, emails.*
- *The Lollipop person request for Pillgwenlly school;*
- *Pill bank lane neighbourhood watch alley gates request, rejection, refusal, comments ,support, emails;*

To include councillor comments and comments reference [complainant's name] incorporating any of the above. This application can be broken down into 132 separate applications by residents of [named street] if preferred."

6. The Council responded on 7 October 2010. It stated that it estimated that it would take well in excess of 18 hours to respond to the request and that section 12(1) of the Act was therefore engaged. The Council stated that if the complainant were able to narrow the request so that the time to comply fell within the 18 hour limit, it would be able to provide him with the information he required. The Council also said that it publishes a large amount of information on its website and provided the complainant with details of how to search for information relevant to his request.
7. Following an internal review and an apparent conversation or meeting between the Council and the complainant, the Council wrote to the complainant on 13 January 2011. It sent the complainant some information relevant to his request regarding "part (c)" of his request (the issue is addressed in more detail in the 'scope of the case' below) but said that to comply with the request would still exceed the cost limit.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant did not feel that any aspects of his request had been fulfilled.
9. During the course of his investigation the Commissioner clarified with the complainant that he was not pursuing his complaint about the part of the request that related to his own personal data.

10. During the course of the Commissioner's investigation it became clear that there was confusion over the scope of the request. The Council believed that the scope had been revised by the complainant to cover only the first five bullet points. The complainant disputed this and said that he was seeking a response to the request in its entirety. The Commissioner acknowledges that the complainant emailed the Council regarding the last two bullet points of his request to request "guidance in the form of a meeting". The Council took this to mean that the complainant was not seeking access to information regarding these parts of the request. However, the complainant made it clear in a subsequent email to the Council that he did not consider his original request to have been adequately answered. The Commissioner does not consider there to be sufficient evidence to confirm that the complainant agreed to revise his request to limit it to the first five bullet points.
11. The Commissioner considers the scope of this case is to determine whether the Council appropriately applied the provisions of the Act and the EIR, as appropriate, to the request in its entirety.

Reasons for decision

12. Both the Act and the EIR make provision for the disclosure of official recorded information. The EIR deal specifically with environmental information, the definition of which is set out in regulation 2(1). In order to appropriately refuse a request for information a public authority needs to first identify the relevant legislation. It is not uncommon for requests – particularly those that cover a number of issues – to span both the Act and the EIR.
13. In its refusal notice of 7 October 2011 and its email of 13 January 2011 (which the Commissioner considers can be taken to be the findings of its internal review) the Council referred to the appropriate cost limit of £450, or 18 hours work, which applies to requests under the Act. In correspondence with the Commissioner the Council acknowledged that the EIR was likely to be the relevant legislation under which parts of the request should have been considered.
14. The Commissioner has set out his view on each part of the request below.

The Pillgwenlly regeneration project 2009

15. The Council's position is that some of the information relevant to this part of the request is environmental and the Act and the EIR apply. The Council said that this is a £6.7 million project that has been in the pipeline for several years. As such, the Council said that there were

large amounts of information associated with the project and that would not be possible to locate it all and provide copies to the complainant. The Council said that the request for information relevant to this project was manifestly unreasonable and that it would take far in excess of 18 hours to disclose any information that was not environmental. The Council was therefore clearly relying on regulation 12(4)(b) of the EIR and section 12(1) of the Act.

16. The Commissioner's decision is that he has not been provided with sufficient evidence to clarify that the appropriate cost limit has been exceeded (section 12 of the Act) or – where information is environmental – that the request is manifestly unreasonable (regulation 12(4)(b) of the EIR. The Commissioner accepts that the information associated with this part of the request is likely to be voluminous, when taking into account that the complainant asked for all applications, minutes and emails. However, despite pointing the Council to his relevant guidance and setting out the level of detail required to enable him to make a decision in this matter, the Commissioner does not consider that the information he has received from the Council is sufficient to demonstrate that section 12 of the Act or regulation 12(4)(b) of the EIR are engaged.
17. For example, the Council has not provided any detail of the time it would take to determine whether it holds relevant information or locate, retrieve and extract that information. The Council has stated that it has already spent over 18 hours searching for information relevant to the request but no detail of the time already spent has been provided. In addition it is not clear whether the 18 hours the Council says it has already spent dealing with this request relates to this part only or the request as a whole.
18. The Commissioner's guidance, 'Using the Fees Regulations'¹, is relevant to the application of section 12 of the Act. In particular the Commissioner would like to refer the Council to the section regarding the aggregation of costs. In this case it does not seem likely that the various elements of the request can be legitimately aggregated. The Commissioner has also considered this issue in his specialist guidance². The EIR contain no direct equivalent of section 12 of the Act and the Council may find it useful to refer to the Commissioner's specialist guidance that considers the application of regulation 12(4)(b) in relation

¹http://www.ico.gov.uk/for_organisations/freedom_of_information/information_request/costs.aspx

²<http://www.ico.gov.uk/foikb/FOIPolicyAggregationofmultiplerequestswithinasingleitemofcorrespondence.htm>

to the cost of complying with a request³. In this case the lack of detail provided to the Commissioner has not enabled him to determine that either section 12(1) of the Act or regulation 12(4)(b) of the EIR are engaged.

The overall cost of supporting the Ryder Cup

19. The Council informed the Commissioner that at the time of the request it had not calculated the total cost but that it now held the information and was willing to disclose it to the complainant. The Commissioner has not considered this matter further.

The Flying Start project

20. This project relates to a project funded by the Welsh Government from 2006 to the financial year 2010/11, which targets catchment areas of schools where there is a free school meals allocation of 45% or more. The project is aimed at making a difference to the lives of children under the age of four in the areas where projects are run. The Council said that the relevant access regime is the Act and that to comply with the request would exceed the appropriate limit of £450 or 18 hours. The Council's position is that the information associated with this part of the request is so voluminous that it would not know where to start to supply all the documentation requested.
21. The Commissioner's position is that he has not been provided with sufficient information to demonstrate that to comply with the request would exceed the appropriate cost limit. Again, while he recognises that the information relevant to this part of the request might well be voluminous, without sufficient detail of the Council's estimate of the time it would take to comply, he is unable to determine that section 12(1) of the Act is engaged.

The Riverside Park

22. The Council considers that it has complied with this part of the request and it is clear that it has disclosed some information to the complainant. The complainant disputes that he has received any information relevant to his request, which he states was clarified in a conversation with the Council. During the course of the Commissioner's conversation the Council stated that it could disclose further information to the complainant but it is not clear if has yet done so. It is not clear whether the information disclosed by the Council to date and the additional

³<http://www.ico.gov.uk/foikb/FOIPolicyManifestlyunreasonableinrelationtothecostofcomplyingwitharequest.htm>

information it says it is willing to disclose comprises all the information the Council holds on this aspect of the request. It seems unlikely, given the Council's statement that it holds a vast amount of information relevant to this part of the request. The Commissioner does not consider that the Council has clarified its position in relation this part of the request; ie whether it holds more information and whether it considers an exemption or exception to apply.

Project 4 and 21

23. The Council's position is that it can find no evidence of a project named 'Project 4'. During the course of his investigation the Commissioner attempted to clarify this part of the request. In response to the Commissioner's queries the Council said that the complainant might be referring to Priority 4 funding but it was not clear. In any case, the Council stated that this is a type of funding that has not been available recently. The Commissioner is satisfied with the Council's explanation that it cannot find evidence of a 'Project 4'. If the complainant can provide more specific details of the information he is seeking he should contact the Council directly. The Commissioner would like to point out that the Council should have clarified this issue with the complaint in its original response.
24. Project 21 is a road improvement project approved by the Council in 2009. As such, the Council said that a large amount of documentation had been created. The Council stated that both the Act and the EIR applied, though the Commissioner considers that – although he has not seen any information relevant to the request - the EIR is likely to be the relevant regime because the project can be considered a measure under regulation 2(1)(c) of the EIR likely to affect the elements of the environment referred to in regulation 2(1)(a). The Commissioner's decision is that he has not been provided with sufficient evidence to support the Council's position that the request is manifestly unreasonable and that regulation 12(4)(b) of the EIR is engaged. The reasons for this decision are as previously stated in this notice.

Section 106 funding for Pillgwenlly schools, and

The Lollipop person request for Pillgwenlly school, and

Pill bank lane neighbourhood watch alley gates request

25. The Commissioner's decision in light of his comments regarding the scope of the case, above, is that the Council has not dealt with these elements of the request in line with the legislation. In particular, the Council has not clarified whether it holds information relevant to these parts of the request and whether that information can be disclosed or is

exempt from disclosure. Accordingly the Commissioner's decision is that the Council should revisit these parts of the request and issue a valid response in line with the relevant legislation.

Other matters

26. In this case the Commissioner considers that a lack of clarity regarding the scope of the request and the level of information required by the complainant is a significant factor in a complaint being brought to him. He would encourage the Council and the complainant to enter into meaningful dialogue regarding this matter. He would also suggest that any suggested amendment to the scope of the request is documented so that the chance for further confusion in this area is limited.
27. The Council should also be mindful of the duty to provide advice and assistance to applicants for information conveyed by section 16 of the Act and regulation 9 of the EIR. In this case the Commissioner considers that the cumulative affect of the lack of engagement by the Council was to confuse matters; for example the scope of the request was left unclear and there is no evidence that the complainant was provided with the opportunity to refine his request.

Right of appeal

28. 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

29. 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.
30. 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
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