

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

Date: 28 August 2012

Public Authority: Ceredigion County Council
Address: Penmorfa
Aberaeron
Ceredigion
SA46 0PA

Decision (including any steps ordered)

1. The complainant requested the computer data and models the Environment Statement was based on in respect of the planning application for the Coastal Defence Scheme at Borth. The Council initially considered the request under the Act refusing to provide the information on the basis of costs. Following the Commissioner's intervention it subsequently considered the request under the EIR citing regulation 12(4)(b).
2. The Commissioner's decision is that Ceredigion County Council has handled the request in accordance with the EIR.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - No steps are required.

Request and response

4. On 19 July 2010 the complainant wrote to Ceredigion County Council and requested information in respect of the planning application for the Coastal Defence Scheme at Borth:

"computer data and models that the Environment Statement to the Planning Application was based on..."

5. The Council responded on 26 July 2010. It stated that the cost of providing the information would be in excess of the cost limit but did not specifically cite an exemption or exception.
6. There followed various correspondence between Professor King and the Council in the period from July 2010 and February 2011 not just relating to his request but planning matters in general.
7. On 2 February 2011 the complainant's representative contacted the Council repeating his original request for information from July 2010 and also making additional requests for information.
8. The Council sent its substantive response on 23 February 2011 providing information in respect of the new requests but upholding its refusal to provide the information subject to his original request on the basis of costs.
9. Following the Commissioner's investigation, the Council considered the request under the EIR and cited regulation 12(4)(b) as it viewed the time and cost necessary to comply with the request made it manifestly unreasonable.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
11. The complainant has confirmed that he does not want the Commissioner to investigate his additional information requests submitted on 2 February 2011; therefore the scope of this investigation is limited to his original request dating back to July 2010 and outlined in paragraph 4 of this notice.

Reasons for the decision

The applicable access regime

12. The Council originally looked at this request under the Freedom of Information Act 2000 ('the Act'). However, in the Commissioner's opinion information falling within the scope of this request would constitute environmental information under regulation 2(1)(c) of the EIR. Under this regulation such information has to meet two criteria:
 - The information itself must be on a measure or activity;

- The measure or activity (not the information itself) must affect or be likely to affect, the elements and factors in 2(1)(a) and (b), or be designed to protect the elements in (a). These elements include the air and atmosphere, water, land and landscape; the factors include substances, energy, noise radiation and waste.
13. The Commissioner considers the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner's opinion, a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor etc in question. In other words, information that would inform the public about the matter under consideration and would therefore facilitate effective participation by the public in environmental decision making is likely to be environmental information.
14. In the Commissioner's opinion, the raw computer data and models which the Environment Statement was based on in respect of the planning application for the Coastal Defence Scheme at Borth will be likely to affect the factors and elements of the environment referred to above.

Regulation 12(4)(b) – manifestly unreasonable

15. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information if the request is manifestly unreasonable. There is no definition of 'manifestly unreasonable' under the EIR, but the Commissioner's opinion is that 'manifestly' implies that a request should be obviously or clearly unreasonable.
16. In this case, the Council considers that the request is manifestly unreasonable' due to the time and cost of complying with the request. It has argued that complying with the request would place an unreasonable burden on its resources in terms of expense.
17. Unlike the Act however, the EIR do not have a provision where a request can be refused if the estimated cost of compliance would exceed a particular cost limit. However, the Commissioner considers that if a public authority is able to demonstrate that the time and cost of complying with the request is obviously unreasonable, regulation 12(4)(b) will be engaged.
18. The request is for raw data which formed the basis of the Environment Statement in respect of a planning application for the Borth Coastal Defence scheme. The Council has explained that a number of companies produced the raw data which formed the basis of the Environment Statement and ultimately its decision regarding the planning application. The raw data itself is held by the various external companies, in an un-

indexed form, held in a variety of locations/formats and software packages.

19. The Council also informed the Commissioner that there is a significant amount of primary data held under licence from organisations such as the Environment Agency, Ordnance Survey and the Met Office much of which will be directly available from these organisations for a fee.
20. It has further explained that it has approached the company responsible for producing the bulk of the raw data for an estimate of the costs of providing the information. The company originally estimated that to pull everything together would cost approximately £2000. However, it has considered the request further since the Commissioner's intervention and estimated that even a partial compliance would be likely to exceed £30,000.
21. The external company has also explained that it views the request for all data as too general. It added that it had been working with the Council to develop the Borth Scheme for over 12 years and that the work has been undertaken as a number of separate commissions including:
 - The consideration of the reef and the preparation of the Enabling Report
 - Covering preparation of the Strategy
 - Covering outline design of the Phase 1 works
 - Detail design and construction of the Phase 1 works
22. It confirmed that its current assignment alone contains over 40,000 files consisting of approximately 150Gb of data. It also confirmed that the earlier commissions/projects have all been closed and archived but contain equally large volumes of data.
23. The external company has stated that all of the deliverables from its work have previously been provided in digital form and could readily be extracted from its files. However, the complainant has already been supplied with this data and is seeking further and additional raw data not contained within its normal deliverables.
24. The external company further informed the Council that if it takes an average of 30 seconds to access, open, categorise and collate each file, the 40,000 current project files alone will take 80 days to process at a cost of £30,000. However, even this would only provide data for the detail design and construction stage work undertaken during the last three years.
25. The Commissioner queried with the Council why it would need the raw data to be refined/processed as the complainant indicated that this would not be necessary. However, the external company has stated that the raw data still needs to be produced in a logical and indexed

manner otherwise even specialists would be unable to distinguish which pieces of data referred to which scenario, iteration or event and could not therefore compare or attribute results as contained within the deliverables.

26. The complainant is not persuaded by these arguments and considers that the external company's estimate of costs is incorrect. He believes that a simple script could be written to automate the copying of files which could be uploaded onto either a protected website or 200Gb hard drive with an estimated cost of £40 each.
27. He also believes that the external company's comments in relation to providing the data unprocessed, implies that it has not organised its data well.
28. However, the Commissioner considers that the comments from the Council in paragraph 18ff of this notice appear reasonable as the raw data will have come from very diverse sources and is therefore likely to be held in different formats and styles.
29. Whilst it may be technically possible for the data to be copied in the manner suggested by the complainant in paragraph 26 of this notice, having taken internal technical advice on the matter the Commissioner agrees that it is likely that work would be necessary to 'access, open, categorise and collate each file', in order to allow the complainant to be able to make any sense of the data.
30. Whilst the Commissioner cannot therefore comment with certainty, he considers that the explanation provided by both the external company and the Council is reasonable. Additionally, this only relates to the current assignment and he notes that each of the earlier assignments contain similar volumes of data. The Commissioner also notes that these estimates relate to the main provider of the raw data but that were also a number of other companies commissioned by the Council to work on this project.
31. In reaching a decision as to whether the request is manifestly unreasonable in this case, the Commissioner has taken into account the following factors:
 - The appropriate limit in the Act is 18 hours. If a public authority estimates that to comply with a request made under the Act will exceed this limit it is not obliged to comply.
 - While there is no equivalent limit in the EIR, the Commissioner considers that the Council's estimate of the time and cost of complying with request is so far in excess of the appropriate limit set out in the Act, as to make the request clearly unreasonable.

32. The Commissioner is therefore satisfied that based on the arguments provided above, that the cost of complying with the request would make it manifestly unreasonable and that regulation 12(4)(b) of the EIR is engaged.

Public interest test

33. Regulation 12(4)(b) is a qualified exception and therefore subject to the public interest test at regulation 12(1)(b) which states that information can only be withheld if in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest test in disclosure.

Public interest test factors in favour of disclosure

34. The Council has acknowledged that there is an inherent public interest in the transparency and accountability of public authorities in relation to decision making and public expenditure.
35. The Council also recognises the more specific public interest test arguments in favour of disclosure in relation to this request for information. It has explained that the Borth Coast protection project is one of the most significant projects which the Council has been involved in over recent years and in which the people of Borth take a very close interest. It has further explained that eight separate public consultation events have taken place in Borth since the requirement for a coastal defence scheme was first identified 15 years ago. There will therefore be a strong public interest in favour of disclosure of information relating to such a high profile and significant project.
36. It has also confirmed that to date, some £13.5m has been spent on the project with the Council actively seeking £8m of funding to commence design approvals and construction for Phase 2 in order to provide protection to the entire Borth coastal frontage. With such vast sums of public money involved, there is inevitably a strong public interest in transparency and accountability in relation to the Council's decisions and expenditure in relation to both phase 1 and phase 2 of this project.
37. The Council has also acknowledged that although it views the project as innovative, there were alternative solutions with ten different options originally considered and presented to the Community. Whilst it has argued that the Community as a whole requested the inclusion of a coastal protection reef, it further acknowledges that there is interest from scientists who would have supported alternative solutions and who may wish to test the modelling data itself.
38. The complainant believes the scheme has damaged a site of special scientific interest and has stated that concerns about the project have been expressed at Community meetings. In his view therefore, there is

a strong public interest in favour of disclosure of this information, particularly before the decision regarding phase 2 is finalised.

Public interest test factors in favour of maintaining the exception

39. The Council views the number of hours which would need to be devoted to this with the resultant costs of supplying the raw data to be prohibitive particularly in an economic environment of public sector cuts.
40. The Council also considers that if it were to bear the costs of complying with this request, it might prejudice the second phase of this project. In the Council's opinion, the project has received widespread (although not unanimous) support and anything that prejudiced the second phase would be contrary to the public interest.
41. Additionally, the Council has argued that despite the eight separate public consultations which took place, no specific concerns were raised with the officers tasked with the development of the scheme. In addition to these consultations, the Council has stated that there were many more meetings with the Community Council and that Community Council Members viewed the physical modelling.
42. Further, the Council has explained that as part of the consents process for the Planning Application, a number of statutory and non-statutory consultees were contacted, yet none raised concerns or objections.

Balance of public interest test arguments

43. The Commissioner fully acknowledges the inherent public interest in transparency and accountability of public authorities in relation to decision making and expenditure. The Commissioner also recognises the strong public interest in transparency and accountability in relation to a large and significant project such as this.
44. However, he is also sympathetic to the arguments around the time and costs that would be required in order to comply with the request. Whilst the Commissioner recognises that the appropriate limit is not a barrier to the disclosure of information under the EIR, he considers that the appropriate limit is a useful benchmark for assessing the costs involved in responding to requests for information and he is mindful that the estimate provided in this case significantly exceeds the appropriate limit.
45. The Commissioner considers that there is a strong public interest in the Council being able to carry out its core functions without the disruption that would be caused by the cost of compliance as public authorities need to be able to carry out their wider obligations fully and effectively so that the needs of the communities they serve are met.

46. The Commissioner considers the public interest in this case to be very finely balanced, however he has concluded that there is a greater weight in favour of maintaining the exception than disclosure of the information and that consequently, the Council was correct to consider the request manifestly unreasonable.

Right of appeal

47. 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

48. 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.
49. 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