

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 4 April 2012

**Public Authority:** Public Services Ombudsman for Wales  
**Address:** 1 Ffordd yr Hen Gae  
Pencoed  
Bridgend  
CF35 5LJ

#### **Decision (including any steps ordered)**

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1. The complainant requested information provided by Flintshire County Council ('the Council') to the Public Services Ombudsman for Wales ('the PSOW') in respect of a complaint of maladministration she made to the PSOW. The PSOW provided some information and withheld other information under 12(5)(d) of the EIR. It also stated that regulation 6(1)(b) applied as some of the information was publicly available and easily accessible. During the course of the Commissioner's investigation the PSOW withdrew its reliance on regulation 12(5)(d) but maintained that regulation 6(1)(b) was applicable to all of the remaining withheld information. The Commissioner's decision is that the remaining withheld information held is publicly available and easily accessible, and therefore regulation 6(1)(b) is engaged. The Commissioner requires no steps to be taken.

#### **Request and response**

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2. On behalf of a number of residents, the complainant submitted a complaint to the PSOW that there was maladministration in the way the Council granted planning permission for a particular development. Following receipt of the PSOW's draft report, on 2 August 2011, the complainant wrote to the PSOW and requested information in the following terms:

"In the meantime, residents have asked that I request copies of the information provided to you by Flintshire County Council for our records".

3. The PSOW responded on 1 September 2011 and confirmed that the request encompassed two classes of information - the Council's comments and planning files. The PSOW considered the request under the Public Services Ombudsman (Wales) Act 2005 ('the PSOW Act'), the Data Protection Act 1998 ('the DPA') and the EIR. It disclosed some information relevant to the request, namely the Council's comments, but withheld the personal information contained within the planning files under section 31(4) of the DPA and other information in the planning files under regulation 12(5)(d) of the EIR.
4. The complainant requested an internal review on 9 September 2011.
5. The PSOW provided the outcome of its internal review on 15 September 2011 and upheld its decision that the remaining withheld information was exempt from disclosure under section 31(4) of the DPA and Regulation 12(5)(d) of the EIR. The PSOW stated that, in relation to the planning files, as the information was publicly available it considered that regulation 6(1)(b) of the EIR to be applicable.

### **Scope of the case**

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6. The complainant contacted the Commissioner to complain about the way her request for information had been handled. She asked the Commissioner to consider whether the information she had requested should be disclosed.
7. Some of the requested information was considered by the PSOW as a subject access request under section 7 of the DPA on the basis that it constituted the complainant's own personal data. The PSOW's handling of the request under the DPA has been considered by the Commissioner separately as it falls outside the scope of the EIR, and of this case.
8. During the course of the Commissioner's investigation the PSOW withdrew its reliance on regulation 12(5)(d) of the EIR. However, it maintained that regulation 6(1)(b) of the EIR applied to the information contained within the planning files. The Commissioner has therefore considered whether the PSOW was correct to apply regulation 6(1)(b) to the request.

### **Reasons for decision**

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#### **Regulation 6 – Form and format of information**

9. Regulation 6(1) of the EIR states that:

"Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless –

(a) it is reasonable for it to make the information available in another form or format; or

(b) the information is already publicly and easily accessible to the applicant in another form or format.

10. In interpreting regulation 6 the Commissioner has considered Article 3(4) of Directive 2003/4/EC from which the Regulations are transposed. Article 3(4) contains the following wording: *'where an applicant requests a public authority to make environmental information available in a specific form or format (**including in the form of copies**)'* (emphasis added) and goes on to say that a public authority shall make the information available unless it is already publicly available in another form or format or it is reasonable to make it available in another form or format.
11. The PSOW confirmed that it holds two classes of information relevant to the request, which were submitted by the Council in reference to the complaint of maladministration. Class 1 information comprises the Council's comments/observations and class 2 information comprises the Council's planning files. The class 1 information was disclosed with the PSOW's refusal notice of 11 September 2011. The withheld information comprises the class 2 information (the planning files).
12. The PSOW confirmed to the Commissioner that the class 2 information comprised entirely of the publicly available planning files. The PSOW also provided the Commissioner with evidence that it had consulted with the Council who confirmed that all of the information contained within the planning files it had submitted to the PSOW was publicly available for inspection at its offices in County Hall, Mold.
13. The complainant advised the PSOW and the Commissioner that she had viewed the publicly available planning files and information available through the planning portal. She advised that she had also received information directly from the Council in respect of a freedom of information request she had submitted to the Council. She expressed concern that the Council might have withheld some information contained within the planning files when it submitted copies to the PSOW in respect of her complaint about maladministration. The complainant advised that the only way she could prove this was to obtain a copy of the information that the Council submitted to the PSOW.

14. In correspondence with the PSOW the complainant referred to its report outlining its findings in relation to her complaint. She stated that one of the documents referred to in the report, namely an email from the Council's planning officer dated 1 November 2001, had not formed part of the publicly available planning files, nor been provided by the Council in response to her freedom of information request. The PSOW confirmed that the email in question was held within the public planning files which the Council had provided to it. As the email in question was referred to in its investigation report, the PSOW disclosed a copy of the email in question under the provisions of the PSOW Act at the time of its internal review.
15. The Commissioner notes the complainant's comments regarding possible discrepancies between the information which the Council submitted to the PSOW in respect of the complaint of maladministration, and the information she viewed on the planning files, and received directly from the Council in response to her request. However, based on the representations and the evidence submitted by the PSOW, the Commissioner is satisfied that the withheld information ie the planning files are publicly available and easily accessible. The Commissioner therefore considers that regulation 6(1)(b) of the EIR applies and the PSOW is not required to make the information available in the form and format requested.
16. The Commissioner notes that the PSOW did not specifically explain to the complainant how she could access the information, but accepts that this was because the complainant had already confirmed that she had viewed the planning files.

## Right of appeal

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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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

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**