

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

Date: 16 July 2015

Public Authority: Carmarthenshire County Council
Address: County Hall
Carmarthen
SA31 1JP

Decision (including any steps ordered)

1. The complainant requested information relating to a particular planning application. Carmarthenshire County Council ('the Council') refused to provide the information citing regulation 6(1)(b) of the EIR as it considered the information requested to be publicly available and easily accessible for viewing at its offices. During the course of the Commissioner's investigation, the Council confirmed that, following a review of its processes, more planning information was now published online. The Council stated that the information requested was therefore also available to view online. In addition, as a result of queries raised by the complainant, the Council identified additional information relevant to the request, which was neither available for viewing at the time of the request, nor published online, which it provided to the complainant. The Commissioner's decision is that the Council correctly applied regulation 6(1)(b) to some information but it breached regulation 5(2) in relation to other information held relevant to the request. The Commissioner does not require any steps to be taken.

Request and response

2. On 25 March 2015 the complainant wrote to the Council regarding Planning Application E/31117 and requested information in the following terms:

"Please can you provide:

- (a) copies of the site, press and neighbour consultation notices
 - (b) copies of the Detailed Landscape and Biodiversity Compensation Scheme (including the full list of items identified in Notes 1-5 of E/28634) proposed by the applicant, any correspondence regarding the same, and the final written Scheme as approved by the LPA to satisfy Condition 4 of E/28634
 - (c) copies of the details of when the construction was/is to start and finish, maximum height of any construction equipment, latitude and longitude of the development as submitted by the applicant, correspondence regarding the same and the final written scheme as approved by the LPA as per Condition 3 of E/28634
 - (d) copies of the observation of the Ecology Officer
 - (e) all other documentation relating to E/31117 neither covered by issues a-d or the material referenced in paragraph two above as publicly available today".
3. The Council responded on 26 March 2015 and advised it was treating the request under the EIR as opposed to the FOIA. The Council stated that the information requested was available on the publicly available planning file which was available to view at its offices. As such, the Council stated that regulation 6 of the EIR applies.
 4. On 26 March 2015 the complainant requested an internal review of the Council's handling of the request.
 5. The Council provided the outcome of its internal review on 21 April 2015 and upheld its decision that regulation 6 of the EIR applied as the information requested was considered to be publicly available and easily accessible.

Scope of the case

6. The complainant contacted the Commissioner on 1 April 2015 to complain about the way his request for information had been handled.
7. During the course of the Commissioner's investigation, the Council advised that it had recently undertaken a review of its practices and as a result it now published more extensive information about planning applications online. As such, even though the Council maintained that regulation 6(1)(b) applied at the time of the request, it confirmed that

the information held relevant to the request of 25 March 2015 was available to view online. The Council also wrote to the complainant to advise that the information held relevant to his request was now available to view online.

8. Based on the Council's response, the Commissioner wrote to the complainant to advise that his preliminary view was that regulation 6(1)(b) applied at the time of his request as the information was available to view at Council offices. He also reiterated that the Council had now confirmed that all of the information held relevant to the request was available to view online.
9. As a result of viewing the information available online relating to the planning application, the complainant wrote back to the Council and the Commissioner about the handling of his request. He made a number of new requests to the Council which fall outside the scope of this complaint. He indicated that it was clear that the Council held much of the information relevant to this request electronically at the time of his request, despite being told that he had to view the information in situ at its offices. He also indicated that he did not consider the Council had provided/published all of the information held relevant to this request because:
 - (i) the planning application form referred to pre-planning advice having been sought from the Council, which had not been disclosed or published, and
 - (ii) the Council had not provided the upload and transfer logs associated with electronic documents held relevant to this request.
10. The Council subsequently disclosed information relating to pre-planning advice to the complainant.
11. The Commissioner considers the scope of this complaint to be whether the Council has complied with its obligations under regulations 5 and 6 of the EIR.

Reasons for decision

Pre-Planning information

12. As stated earlier in this notice, as a result of viewing the information online relating to the planning application in question, the complainant queried whether the Council held any information about pre-planning advice, as reference was made to it within the planning application. The

Council subsequently identified information relating to pre-planning advice which it disclosed to the applicant.

13. The Council confirmed to the Commissioner that the pre-planning information did not form part of the public planning files, which was available to view in its offices at the time of the request, and therefore, it would not have relied on regulation 6(1)(b) in respect of pre-planning information held. The Council accepted that the information fell within the scope of the request and should have been disclosed within 20 working days in accordance with regulation 5(2) of the EIR.
14. Based on the above, the Commissioner is satisfied that the Council complied with regulation 5(1) of the EIR in relation to pre-planning information held relevant to the request. However, in failing to provide the information within 20 working days after the date of receipt of the request, the Council breached regulation 5(2).

Upload and transfer logs

15. In a communication to the Council dated 24 June 2015, (again following viewing the planning application online), the complainant stated that he did not think the Council had provided all of the information held relevant to his request, because it had not disclosed:

“the upload logs, and later transfer logs to the main corporate network of the application.....I expect they will show (at minimum the file name, date and time of upload, file ` size, checksum and origin”.

16. The Commissioner understands that upload and transfer logs record details about electronic documents which are uploaded or transfer within an organisations' network. The information is stored/recorded within a separate file to the electronic documents it relates to.
17. The request in this case was for a number of specific documents relating to the planning application (parts a to d) and “all other documentation” relating to the application not covered by parts a to d or publicly available on the Council's website.
18. On receipt of a request for information, a public authority should interpret the request objectively and avoid reading into the request any meanings that are not clear from the wording. A public authority must answer a request based on what the requester has actually asked for, and not on what it thinks they would like, should have asked for or would be of most use to them.
19. In this case, as the complainant did not specifically request information about the properties of any electronic documents held relevant to his request or any associated upload and transfer logs, the Commissioner

considers that the objective reading of the request is for all information relating to the planning application in question. He does not, therefore, consider that the Council was obliged to consider the disclosure of any upload and transfer logs that it may or may not hold relevant to the request. If the complainant is interested in receiving such information he will need to submit a new information request to the Council.

Regulation 6(1)(b) - Public Planning file

20. The bulk of the information held by the Council relevant to the request in this case is the public planning file. At the time the request was received, the Council stated that it considered regulation 6(1)(b) to apply to the information as it was held on the publicly available planning file which could be viewed at its offices. As stated earlier in this notice, during the course of the Commissioner's investigation the Council confirmed that, following a review of its processes, the planning file for planning application number E/3117 had been published online and was available to view on its website.

21. 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.

22. 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.

23. The Commissioner's guidance on Regulation 6¹ states that the EIR Code of Practice² explains why a preference for a particular format must be considered:

"A public authority should be flexible, as far as is reasonable, with respect to form and format, taking into account the fact, for example, that some IT users may not be able to read attachments in certain formats, and that some members of the public may prefer paper to electronic copies." (Paragraph 22)

24. However, the duty to make the requested information available in the preferred form or format is not an absolute one. It is qualified by regulations 6(1)(a) and 6(1)(b) in that a public authority does not have to meet the requester's preference if either it is reasonable for it to make the information available in another form or format or the information is already publicly available and easily accessible to the applicant.

The Council's position

25. The Council's position is that regulation 6(1)(b) applied to the request at the time it was received as a copy of the public planning file was available to view at its offices in Llandeilo. As stated earlier in this notice, since the request was received, the Council has undertaken a review of its processes relating to publication of planning information, as such the public planning file for the planning application in question was now available view online.
26. The Commissioner asked the Council to confirm that it had taken into account the particular circumstances of the complainant when deciding whether access is easily available. The Council stated that access to the public planning file was available by appointment during normal office hours between 9:00am and 4:30pm in its offices in Llandeilo. The Council referred to the complainant's internal review request where he implied it was difficult for him to take time off work and arrange childcare cover to attend the offices in question during a "narrowly defined set of hours". The Council does not consider that allowing access

¹ <https://ico.org.uk/media/for-organisations/documents/1639/form-and-format-of-information-eir-guidance.pdf>

² Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (SI 2004 no 3391) issued by DEFRA

to view the documents within a seven and a half hour window would present any issues in terms of accessibility.

27. The Council also advised that its records show that the complainant attended a planning committee meeting in 2014 where he spoke about a particular planning application. This meeting took place at 10:00am at County Hall in Carmarthen. The meeting took place within normal office hours and was held in premises which are approximately 23 miles from the complainant's home. By comparison, the Council's offices in Llandeilo (where the planning file was available to view), is approximately 8.5 miles from the complainant's home, a journey, which the Council contends takes on average 18 minutes. In view of this, the Council does not consider that the particular circumstances of the complainant would have made the information inaccessible to him.
28. The Commissioner asked the Council to confirm whether the information was available via its publication scheme. The Council confirmed that planning applications were listed within its publication scheme. However, the Council acknowledged that was no specific reference to the fact that planning information is available to view in its offices. The Council's website has now been updated to reflect its decision to publish more planning information online. However, before this decision, the Council confirmed that the relevant section of its website (including the link within its publication scheme), stated that:

"Application forms, plans and supporting documentation for the applications listed can be viewed using e-planning.

If you are unable to locate any documents, or would like assistance navigating the website, please contact:"

The complainant's position

29. The complainant does not consider the information to be reasonably accessible to him in light of the practical steps he would need to take in order to make an appointment to view the information in the Council offices in Llandeilo. He advised the Commissioner that the journey would involve a round trip of at least one hour. In addition, he indicated that his annual leave entitlement was already accounted for and he has significant personal and family commitments which would make it difficult for him to view the information requested in normal office hours. In addition, the complainant referred to the Commissioner's guidance on regulation 6 (paragraph 47) which indicates that any cost to the requestor of obtaining the information in another form or format must conform to "reasonable cost standards" and stated that, in terms of costs, his "standard charge rate is £228/hr".

30. Following publication of the information requested online by the Council, the complainant expressed concern that the metadata associated with some of the documents indicated that they were available in electronic format at the time of his request. Despite this, the Council insisted on him viewing the information in situ as opposed to providing him with copies (electronic or otherwise). In addition, the complainant considers that, even if the Council held all of the information in a paper file, then it would have been reasonable for the Council to scan the information and provide him with electronic copies without the need to publish the information on its website. Alternatively, the complainant considers that the Council could have placed the public planning in a location nearer to the site of the development, for example the local library or community noticeboard.
31. The complainant does not consider the Council's actions in handling his request conform to the Aarhus Implementation Guide which, in explaining the provisions of the Aarhus Convention about "form requested" states that:

"The issue of form also means that public authorities must provide copies of documents when requested, rather than simply providing the opportunity to examine documents. In addition, some applicants may prefer to examine the original documentation rather than receive copies. If they so request, public authorities must allow them to do so, subject to subparagraphs (i) and (ii) below". (page 55)

The Commissioner's position

32. With reference to the complainant's reference to information contained in the Aarhus implementation guide relating to "form requested" in paragraph 31 above. The Commissioner notes that subparagraphs (i) and (ii) referred in the guide relate to reasons for not meeting the requestor's preference in terms of form and format, which correspond to paragraphs 6(1)(a) and (b) of the EIR. In this case, the Council is relying on regulation 6(1)(b) and as such, the consideration for the Commissioner is whether or not the information requested is publicly available and reasonably accessible to the requestor in another form or format. Whilst the Commissioner notes the complainant's position that the information requested could have been easily extracted and provided to him in an electronic format, this is not a consideration that can be taken into account in determining whether or not regulation 6(1)(b) is applicable.
33. The Commissioner's general view is that information will be reasonably accessible to the applicant, irrespective of their individual circumstances, if it is included in the public authority's publication scheme. The Commissioner notes that planning applications are referred to in the

Council's publication scheme. However, he accepts that, at the time of the request, the Council's publication scheme did not specifically state that planning applications could be inspected in situ at Council offices.

34. The Commissioner considers that by requesting the information in the form of a copy the complainant has requested the information in a specific form and format. The Council's alternative provision of the information at its offices is publicly available and easily accessible to the applicant. The Commissioner notes the complainant's position in relation to the difficulties in terms of travelling time and work and personal commitments, which might make inspecting the information requested more difficult. However, the Commissioner considers that whilst this may make capturing / collating the information more difficult the key point is that the information requested is publicly available and easily accessible and the Council has explained how he can access it
35. Based on the representations and evidence submitted by the Council, the Commissioner is satisfied that the public planning file is publicly available and easily accessible. The Commissioner therefore considers that regulation 6(1)(b) of the EIR applies and the Council is not required to make the information available in the form and format requested.

Right of appeal

36. 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

37. 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.
38. 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

Andrew White
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