

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

Date: 23 February 2015

Public Authority: Flintshire County Council
Address: County Hall
Mold
CH7 6NF

Decision (including any steps ordered)

1. The complainant asked Flintshire County Council whether it had any objections to the clearance of vegetation from an area surrounding a number of specific Grade II listed buildings and whether it had any objection to the location of a shipping container in one of those buildings. Flintshire County Council initially informed the complainant that it did not hold relevant information, however following the intervention of the Commissioner it subsequently provided information to the complainant.
2. The Commissioner's decision is that Flintshire County Council failed to comply with its obligations under regulation 5(2) of the EIR.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 3 June 2014, the complainant wrote to Flintshire County Council and requested the following information:

"Could you please state your objections, if any, to the clearance of vegetation on an Urgent/Essential basis from a two metre band around the Grade II listed buildings P4, P5, P6 and R3 at the former Valley Works at Rhydymwyn?"

Could you further state your objections, if any, to the location of a shipping container which can be moved and does not have foundations in the Grade II listed Building P4 at the former Valley Works at Rhydymwyn?

Could you finally state if World War II is included as a subject in the Flintshire Schools syllabus?"

5. Flintshire County Council ('the Council') responded to the first two questions of the request on 1 July 2014. It informed the complainant that it appeared that he was asking for an opinion rather than for information. It further informed the complainant that it would require more information to provide the comments sought. It continued that it was firstly a matter for those with responsibility for the site namely DEFRA and Natural Resources Wales (NRW). A response was sent in respect of the final part of the complainant's request on 2 July which referred him to the Welsh Government's website.
6. Following an internal review the Council wrote to the complainant on 28 July 2014. It confirmed that it could find no information in respect of questions one and two of the complainant's request and informed him that he cannot request advice or an opinion unless that advice or opinion is already recorded in a document held by the Council. It cited section 21 in respect of question three of the request but also informed the complainant that:

"... World War II is not taught as a separate subject in Flintshire Schools but taught as part of the History Curriculum."

Scope of the case

7. The complainant contacted the Commissioner on 6 August 2014 to complain about the way questions one and two of his request for information had been handled.
8. Following intervention from the Commissioner, the Council sent the complainant information relevant to questions one and two of his request. Whilst the complainant was satisfied with the information itself, he was not satisfied with the delay in receiving the requested information and requested a decision notice in respect of this.
9. The scope of the Commissioner's investigation is therefore to consider whether the Council complied with its obligations under regulation 5(2) of the EIR in respect of questions one and two of this request.

Reasons for decision

The appropriate legislation

10. The Commissioner has considered whether the information subject to this request is likely to be environmental, as defined by regulation 2(1) of the EIR, which states that:

'(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, Legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements...'

11. The Commissioner notes that the information requested relates to 'measures' regarding land. He therefore considers that the information is environmental, as defined by regulation 2(1)(c) of the EIR.
12. Information which satisfies the definition in regulation 2 must be considered for disclosure under the terms of the EIR rather than the FOIA.

Regulation 5 - the duty to make environmental information available on request

13. Under Regulation 5(1) of the EIR, a public authority holding environmental information is obliged to make that information available on request.
14. Regulation 5(2) sets out the timescales for this and states 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."

15. The Commissioner notes that the complainant's request was dated 3 June 2014. However, the Council did not provide the information to the complainant until after its internal review (28 July 2014). This is clearly in excess of the required 20 working days.
16. The Council's failure to provide the relevant information within the timescales stated in paragraph 14 of this notice therefore represents a breach of regulation 5(2) of the EIR.

Right of appeal

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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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