

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

Decision notice

Date: 12 November 2015

Public Authority: Pembrokeshire County Council

Address: County Hall
Haverfordwest
Pembrokeshire
SA61 1TP

Decision (including any steps ordered)

1. The complainant has requested various items of information in relation to highways, access and other material planning matters concerning the development of new housing on a specified area of land in Newport, Pembrokeshire. The complainant expressed a preference to receive the information electronically. Pembrokeshire County Council ('the Council') informed the complainant that the information was available for public viewing at County Hall and cited section 21 of the Freedom of Information Act 2000 ('the FOIA') on the basis that it was not required to provide information already in the public domain. The Commissioner's decision is that the Council should have considered this request under the Environmental Information Regulations 2004 ('the EIR'), however, it has complied with its obligations under regulations 5 and 6 of the EIR. The Commissioner does not require the Council to take any steps.

Request and response

2. On 18 May 2015, the complainant wrote to the Council and requested the following information:

"All correspondence (including by email) regarding highways, access and other material planning matters, held by your Authority, and concerning development of new housing on land north of Feidr Eglwys, Newport Pembrokeshire – including especially as between PCC Highways

Development Control or Planning Liaison and Harris Design and Management, or anyone else representing any prospective developer, or any such prospective developer or developers themselves in relation to this site

All minutes, notes and other records in relation to the holding of meetings and /or telephone conversations as between the same said parties in relation to the same said proposed development

All file records, folders and other documentation held by your Authority, in relation to the same said proposed development site, including correspondence as with other authorities (in particular the Pembrokeshire Coast National Park Authority) and other statutory planning consultees, created since 1 January 2008"

3. The Council responded on 26 May 2015. It confirmed that its Highway Development Control section holds the information and informed the complainant that it is available for public viewing at County Hall. The complainant was invited to contact that department to make an appointment to view the relevant files. He was further informed that if he could not attend in person, he could arrange for photocopies to be made, but informed that there may be a charge for this. The Council cited section 21 of the FOIA on the basis that it is not required to provide information that is already in the public domain.
4. Following an internal review the Council wrote to the complainant on 5 June 2015. It confirmed that whilst it was upholding its original response, it should have provided the contact details of an individual Officer and provided the details of an officer from its Highways Development Control section.

Scope of the case

5. The complainant contacted the Commissioner on 28 June 2015 to complain about the way his request for information had been handled. The complainant was not satisfied with the Council's refusal to provide the information electronically, or its reliance on section 21 of the Freedom of Information Act 2000 ('the FOIA'). He also expressed concern regarding whether it had identified all information it holds falling within the scope of the request.
6. The Commissioner considers that the nature of the requested information would fall within the definition of environmental information as stipulated in the EIR. The scope of his investigation is therefore to consider whether the Council has complied with its obligations under regulations 5 and 6 of the EIR.

Reasons for decision

The appropriate legislation

7. The Commissioner notes that the Council considered this request under the FOIA. However, the Commissioner considers that the information is environmental, as defined by regulation 2 of the EIR.

8. Regulation 2(1) of the EIR defines what 'environmental information'. The relevant parts of the definition are found in 2(1)(a) to (c) which state that it is any information in any material form on:

'(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...'

9. The information requested relates to the land and its potential change of use, which constitutes a 'measure' affecting the land. The Commissioner is therefore satisfied that the information is environmental as defined by regulation 2(c) of the EIR.

Regulation 5 – Duty to make available environmental information on request

10. Under regulation 5(1) of the EIR, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request. However, as stated in paragraph 5 of this notice, the complainant has expressed concern regarding whether the Council has identified all relevant information it holds.

11. Where there is a dispute concerning a public authority's compliance with regulation 5 of the EIR, the Commissioner is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley) that there can seldom be absolute certainty that additional information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold any additional information therefore, the normal standard of proof to apply is the civil standard of the balance of probabilities.
12. The Commissioner's judgement in such cases is based on the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner expects the public authority to conduct a reasonable and proportionate search in all cases.
13. In this particular case, the complainant has referred to at least one specific document that he had been made aware of since his original request falling within the scope of bullet point three. He further stated that in his view, it was not credible that a formal communication of an official highways assessment of this nature was made between two Local Government Authorities solely '*viva voce*', although he confirmed that he did accept that it may be included as a small part of a much larger document dealing with the Council's formal highways assessments in relation to the entire Pembrokeshire Coast National Park Authority ('the PCNPA') Deposit Plan. He confirmed that if that was the case, he would like the single relevant page on which the particular assessment subject to his request appears.
14. The complainant also makes reference to 'hundreds of proposed housing allocation sites for eventual inclusion in the LDP and states that he does not consider it credible that these would only have been made verbally, and discussed in unrecorded inter-authority meetings. He goes on to query that if this is not true for all, why is there no recorded information in respect of this one.
15. In an updated response from the Council, the complainant was informed that the Highways Authority was consulted on many potential sites in both Planning Authorities, (the Council and Pembrokeshire Coast National Park Authority), the vast majority of which were not included in the adopted plans. The complainant was further informed that there was no reason to keep these consultations as they are kept by the relevant Planning Authority. The Council confirmed to the complainant that all information it holds falling within the scope of his request, was contained within the information provided to him in response a similar FOIA request he submitted to PCNPA and could not provide information that it does not hold.

16. However, the complainant does not accept that at the time he made his request, all the information held by the Council was the same as that held by the PCNPA, or that it had all come from them. In support of this, he referred to a specific letter on the BDOG website to the Landscape and Trees Officer at the Park Authority and noted that it referred to an email dated 14 April 2015 to a named officer employed in the Council's Highways Department. Having contacted the co-ordinator of BDOG, he was informed that she had obtained the actual email having inspected the information subject to the complainant's request. He further confirmed that this email was not one of the copy documents forwarded electronically to him by PCNPA in response to his FOIA request and requested a copy.
17. The Commissioner therefore asked the Council to confirm whether there is likely to be relevant information forming a small part of a larger document, and if not, how the Council was able to reach this conclusion. He also asked the Council to provide comments regarding potential differences between information held by itself and PCNPA and to confirm whether it holds the specific email referred to by the complainant.
18. The Council confirmed to the Commissioner that all information falling within the scope of the request is held on a file of general correspondence for the Local Development Plan and that there is no single document, formal report or any information of the description the complainant had specified. It has also confirmed that as it is not the planning authority, it is not required to keep the same level of documentation that the planning authority would be required to.
19. In terms of the complainant's concerns that the Council may hold some information not held by the Planning Authority, and specifically, an email dated 14th April 2015, the Council confirmed that the only additional document it holds is the email referred to in paragraph 16 of this notice which is publically available for inspection.
20. Having addressed the complainant's concerns with the Council, the Commissioner is satisfied that based on the balance of probabilities, the Council has identified all relevant information falling within the scope of this request. The Commissioner is therefore satisfied that the Council has complied with its obligations under regulation 5 of the EIR.

Regulation 6(1) – Form and format of information

21. Under regulation 6 of the EIR, a public authority does not have to comply with the applicant's preference if it is reasonable to make the information available in another form and format or if the information is already publicly available and accessible in another form and format.

22. The link to the Commissioner's specific guidance produced in regard to this regulation is provided below:

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

23. The Commissioner notes that although the complainant did specify a preference for the information to be provided to him electronically, the Council informed the complainant that he could inspect the information at its premises or at a location of the complainant's choice. As per page 11 of the Commissioner's guidance referred to in paragraph 22 of this notice, regulation 6 should be interpreted broadly so that it includes inspecting the information as well as a copy of it.

24. Furthermore, the EIR provisions on charging in regulation 8(2), clearly envisage the inspection of information:

"A public authority shall not make any charge for allowing an applicant-

(a) To access any public registers or lists of environmental information held by the public authority' or

(b) To examine the information requested at the place which the public authority makes available for that examination."

25. Consistent with his abovementioned guidance, the Commissioner is therefore satisfied that inspection of the information is a form of publication. Additionally, the Commissioner notes that the complainant has not provided any arguments to either himself or the Council which suggests that inspecting the information is impracticable either in terms of cost or of accessibility.

26. The Commissioner considers that although not provided in the form and format requested by the complainant, it was reasonable for the Council to make the information available to the complainant for inspection and that it has therefore complied with its obligations under regulation 6 of the EIR.

Right of appeal

27. 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

28. 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.
29. 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
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SK9 5AF