

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 August 2016

Public Authority: Gwynedd Council
Address: Council Offices
Shirehall Street
Caernarfon
Gwynedd
LL55 1SH

Decision (including any steps ordered)

1. The complainant requested information about parking restrictions at Efailnewydd. Gwynedd Council ('the Council') stated it did not hold any the information requested. The Commissioner's decision is that, on the balance of probabilities the Council does not hold any recorded information relevant to the request. The Commissioner does not require any steps to be taken.

Request and response

2. On 4 February 2016, the complainant wrote to the Council and requested information in the following terms:
 - "1. From the Chief Executive Mr Dilwyn Williams:
 - 1.1 In his letters he has intimated that he considered the legal aspects of the development within his investigation into the conduct of the Regulatory Department.
 - 1.2 Please could you give me a copy of his contemporaneous notes of that investigation with particular emphasis on the legality of the scheme.
 - 1.3 In the alternative, at some stage, he must have separately considered the legality of the scheme and I request a copy of his

conclusion. The scheme has to comply with the 3 legal documents shown in section 2 herewith.

2. From the Legal Department:

2.1 The Department are responsible for ensuring compliance with the Law but have refused to answer simple questions therefore I request a copy of their instructions to the Street Care Department regarding the following:

2.2 The TRO headed "The Gwynedd Council (prohibition and restriction of waiting and street parking places, Efailnewydd) Order 2009 Variation Order 2013 by its heading and the specific Clause 4 in Part 1 specifically prohibits the removal of existing prohibitions to allow parking. This is a legal document produced by the Department. If no instructions were given to the Street Care Department, I request the internal notes produced.

2.3 The Road Traffic Regulation Act (1984) is specifically referred to and, by the application of section 1 and Part IV of schedule 9 requires that the development has to enhance safety. By allowing parking in an area previously designated as a no parking zone, this is compromise and the development is therefore illegal. The Department detailed notes on the compliance of the development with this Act is sought (Incidentally the Ombudsman agrees with my interpretation).

2.4 The Disability Discrimination Acts have to be complied with but have been ignored by the Street Care Department. The notes and instructions to them from the Legal Department is requested.

3. From the Street Care department

3.1 Their notes on the legality of the scheme and how they complied with the requirements of the above mentioned acts and legal authority".

3. The Council responded on 3 March 2016 and stated that it did not hold any information relating to parts 1 and 2 of the request because; no "contemporaneous notes" existed, no other documents setting out a conclusion other than those letters already issued to the complainant, and no instructions were given by Legal Services to the Street Care Department.

4. On 5 March 2016 the complainant wrote back to the Council and pointed out that it had not addressed part 3 of his request regarding the Street Care Department. He asked the Council to respond to this point.

5. On 24 March 2016 the Council wrote to the complainant and referred to previous correspondence and requests about the subject matter. The Council stated that it did “not feel there is anything further we can provide in terms of additional information pertaining to this issue”. The Council also advised that it was “minded to” refuse any further requests about the subject matter under section 14 of the FOIA.
6. Following a discussion with the Commissioner the Council wrote to the complainant on 8 June 2016 confirming that its position was that it did not hold any recorded information relevant to the request of 4 January 2016. However, the Council provided some background/contextual information about the subject matter associated with the request ie. parking restrictions at Efailnewydd.

Scope of the case

7. The complainant contacted the Commissioner on 11 April 2016 to complain about the way his request for information had been handled.
8. The Commissioner considers that the scope of her investigation is to determine whether, on the balance of probabilities, the requested information is held by the Council.

Reasons for decision

Section 1 – general right of access

9. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
10. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant’s evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held; he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.

11. The Council advised the Commissioner that information relevant to the subject of parking restrictions at Efailnewydd is held in three different locations, namely the Street Care and Transportation Service, Legal Service and the Chief Executive's office as detailed below:
 - Five lever arch files relating to the subject matter within the Transportation Service. There are also some electronic copies held of the same documentation.
 - In accordance with normal procedure, the Legal Service hold a file which was opened when instructions were received to prepare a parking order on 'The Gwynedd Council (Prohibition & Restriction of Waiting & Street Parking Places)(Efailnewydd) Order 2009 Variation Order 2013'.
 - The Chief Executive holds a paper file of correspondence with the complainant along with other correspondence relating to the case. E-mails the Chief Executive received supplying the correspondence he reviewed are also held within his e-mail inbox, most of which have been printed and placed on the hard copy file.
12. The Council confirmed that comprehensive searches were conducted of the hard copy and electronic files held by the three departments listed above and no relevant information was identified.
13. The Council provided the Commissioner with further representations to support its position that no relevant information is held and these are summarised below.
14. The request in this case was submitted by a relative of an individual who lives in the area where the parking order has been introduced. The Council has corresponded with the complainant's relative on approximately 120 occasions over a period of five years about the subject matter. In addition, the matter has been referred to the Public Services Ombudsman for Wales on two occasions and the complaint has not been upheld.
15. In a letter to the complainant dated 16 December 2015, the Council clarified the procedures it followed in relation to the introduction of a parking order at Efailnewydd. In this letter the Council explained that it decided to review the parking arrangements following receipt of complaints from the local community over a period of years, The main causes for concerns were around the difficulties large vehicles were experiencing travelling along the road, having to deal with chicanes created by parked vehicles, which was regularly causing traffic congestion. In addition, residents had complained about difficulties they

were experiencing gaining access to their homes as a result of inconsiderate parking.

16. The Council explained that the work involved in introducing a parking order first involves an inspection by an engineer, where many aspects are considered including an inspection of the road and the physical features of the site. Following the appropriate inspection(s), a proposal is drafted and put forward to statutory consultees (eg Police) and then the general public. Any objections to the proposal are considered by the appropriate Council Committee responsible for making a decision. Once the proposal is accepted, it is forwarded to the legal department to draft a legal traffic order. The Council has the power to produce parking orders under the Road Traffic Regulations Act 1984 and the Council follows the procedure set out in the Local Authorities Traffic Order (Procedure) (England & Wales) Regulations 1996, parts 2 and 3.
17. Part 1 of the request relates to a review of the parking restrictions which the Chief Executive undertook following concerns raised about the matter. In undertaking the review, the Chief Executive reviewed the relevant files, which included correspondence which had been sent to the complainant's relative. No notes were held on the paper file held by the Chief Executive and on discussing the matter with him, he confirmed that in undertaking the review he did not make any notes of his investigation (part 1.2 of the request) and had simply read and reviewed the relevant documentation.
18. In parts 1.1 and 1.3 of the request the complainant states that in letters written by the Chief Executive, he intimated that he had considered the legal aspects of the parking order in his investigation. The Council's position is that at no time has its Chief Executive indicated he had reviewed the legality of the Council's actions. The Council provided the Commissioner with copies of the letters which the Chief Executive sent following his investigation to substantiate its position that he had not stated he had considered the legal aspects of the parking order. The Council pointed out that the Chief Executive had stated that he had reviewed the actions of the Regulatory Department and was satisfied that those actions were "reasonable", as opposed to "legal". The Chief Executive also suggested that the complainant seek his own legal advice if he considered that the Council had acted illegally.
19. Part 2 of the request relates to information held by the Legal Department, and in particular instructions/internal notes given to the Street Care Department, and notes held relating to compliance with the Road Traffic Regulations Act (1984). The Council explained that the nature of the involvement of its Legal Service is essentially to prepare parking orders on the instructions of the Traffic and Streetcare Service and to ensure that the correct procedure is followed. The Legal

Department will receive instructions from the Traffic and Streetcare Service to prepare an order, and will then proceed to draft the order on the basis of those instructions. It will then arrange for the requisite notices to be published. If the Legal Service receives an objection to the proposed order, it will acknowledge it and forward it to the Transportation and Street Care Service for consideration.

20. The Council advised that objections about parking orders usually relate to the effect of a proposed order. This is not a legal issue but rather one for the engineers to assess on the basis of their professional opinion. In the case of the parking order at Efailnewydd, the Council explained that the question of whether or not the changes would “promote road safety” (the prescribed reasons under the Road Traffic Regulations Act 1984 quoted in the order) was not a matter upon which legal advice was required. The objections, and the engineers’ assessment of them, were set out in the report placed before the relevant Council Committee¹. The Council advised that one individual raised questions regarding the legality of the process within their objection letter and a reply was issued by the Legal Services department in May 2012. The Council confirmed that no instructions were given to the Street Care Service by the Legal Department and as such, no notes or instructions are held in relation to items 2.1, 2.2, 2.3 and 2.4 of the request. The Council also confirmed that no notes are held by the Streetcare Service relating the legality of the scheme – item 3 of the request.
21. Based on the representations provided by the Council the Commissioner is satisfied that it has carried out adequate searches of the places where relevant information would be held. There is no evidence of any inadequate search or grounds for believing there is a motive to withhold information. The Commissioner has also considered the Council’s representations in relation to the subject matter of the request, and its involvement and role in the parking order. Based on the searches undertaken and the other explanations provided, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any recorded information relating to the request.

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[https://democracy.cyngor.gwynedd.gov.uk/Data/Planning%20Committee/20121015/Agenda/05_01_Gwynedd%20Council%20\(Prohibition%20and%20Restriction%20of%20Waiting%20and%20Street%20Parking%20Places\)%20Order%20\(Efailnewydd\)%202012.pdf](https://democracy.cyngor.gwynedd.gov.uk/Data/Planning%20Committee/20121015/Agenda/05_01_Gwynedd%20Council%20(Prohibition%20and%20Restriction%20of%20Waiting%20and%20Street%20Parking%20Places)%20Order%20(Efailnewydd)%202012.pdf)

Right of appeal

22. 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

23. 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.
24. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF