

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

Decision notice

Date: 05 December 2016

Public Authority: Conwy County Borough Council
Address: Bodlondeb
Conwy
LL32 8DU

Decision (including any steps ordered)

1. The complainant requested information about the refurbishment of Conwy Bridge and the Colwyn Bay Waterfront Project. Conwy County Borough Council ('the Council') provided some information and withheld other information under section 43 of the FOIA. During the course of the Commissioner's investigation the Council disclosed the information it originally withheld due to the passage of time. The Commissioner's decision is that the requested information is environmental information within the meaning of regulation 2(1)(c) of the EIR. Therefore the request ought to have been handled under the EIR rather than the FOIA. However, as the information requested information has now been disclosed, the Commissioner has not ordered any steps. The Commissioner also finds that the Council breached regulation 5(2) in failing to disclose the requested information within the statutory time for compliance.

Request and response

2. On 10 January 2016 the complainant wrote to the Council and requested information in the following terms:

"You are required to confirm or deny if the Authority is in possession of the following documentation. If so, a copy is required of such documentation is required. If however you conform [sic] that you are in possession of such documentation, but will not release such

documentation into the public domain, then the reason or reasons for not doing so are required, all as set out in the FOIA 2000 section 1(1).

The Cabinet as part of its normal secretive process in conducting such matters behind closed doors made a number of items exempt at the meeting held on 15 December 2015. Item 15.

It is requested that the following documents are made available under the requirements of the FOIA 2000.

- 1 The decision of the Cabinet with regard to the refurbishment of the bridge in Conwy adjacent to the Telford Bridge.
 - 2 All papers and documents provided to the Cabinet
 - 3 The decision of the Cabinet n [sic] matters appertaining to the Colwyn Bay Waterfront Project again covered by item 15.
 - 4 All paper, reports and documents provided to the Cabinet on such matter".
3. The Council responded on 5 February 2016 and provided information relating to parts 1 and 3 of the request. The Council stated that it considered section 43 to apply to the information held relating to parts 2 and 4 of the request, but advised that it needed additional time to consider the public interest test and confirmed that a further response would be issued in due course.
 4. On 8 February 2016 the complainant wrote to the Council and requested an internal review of its decision to withhold information relevant to the request under section 43 of the FOIA.
 5. The complainant wrote to the Council again on 3 March 2016 reminding it of the deadline to provide the outcome of its public interest test considerations. He also stated that he was "prepared to meet with officers and discuss these issues, with agreeing that all such discussions will not be released into the public domain".
 6. The Council provided a further response on 4 March 2016. A redacted copy of documents relevant to parts 2 and 4 of the request was provided. The Council also confirmed that, having considered the public interest test factors, it was withholding the remaining information relating to parts 2 and 4 of the request under section 43 of the FOIA.
 7. Following exchanges with the Council a meeting took place between the complainant and the Council on 22 March 2016 to discuss the request. Following this meeting the complainant wrote a further email to the

Council on 12 April 2016 regarding the general process of awarding contracts.

8. On 26 April 2016 the complainant wrote to the Council and referred to the meeting on 22 March 2016 and his email of 12 April 2016. He indicated that if he did not receive a satisfactory outcome by 4 May 2016 he would request an internal review of the Council's handling of his request.
9. On 3 May 2016 the complainant wrote to the Council and requested an internal review of its decision to withhold information relevant to parts 2 and 4 of the request of 10 January 2016.
10. The Council provided the outcome of its internal review on 8 June 2016. The Council provided some additional information relevant to part 2 of the request and upheld its decision that section 43 applied to the remaining information held relevant to parts 2 and 4 of the request.

Scope of the case

11. The complainant contacted the Commissioner on 26 June 2016 to complain about the way his request for information had been handled.
12. In correspondence with the Commissioner the complainant pointed out that he had discovered that the contract associated with part 4 of his request had recently been signed and work scheduled to start in August 2016. The Commissioner advised the complainant that she preferred to resolve complaints informally. As such, as part of her investigation she normally asked public authorities to reconsider a request in light of the passage of time to see whether its position had changed. However the Commissioner pointed out that should the complaint proceed to a formal decision notice consideration of any exemptions and the public interest test would be based on the circumstances that existed at the time the request was submitted to the Council.
13. During the course of the Commissioner's investigation, the Council confirmed that due to the passage of time since the request was submitted, and the fact that circumstances relating to the subject matter had changed, it considered that the documents held relevant to parts 2 and 4 of the request could be disclosed in full. As a result, the Council disclosed all the information held relevant to the requests to the complainant.
14. Following disclosure of the remaining information by the Council, the complainant contacted the Commissioner and requested that she issue a decision notice relating to his complaint. The complainant asked the

Commissioner to consider a number of issues, many of which fall outside her remit.

15. As the Council has disclosed all of the information it holds relevant to the request the Commissioner's decision in this case relates only to the appropriate access regime, ie, whether the requested information falls to be considered under the EIR or the FOIA. The Commissioner has made no decision as to whether the requested information should have been disclosed at the time of the request be disclosed, since the issue of the appropriate access regime must be resolved first.

Reasons for decision

Regulation 2: environmental information

16. Regulation 2(1) of the EIR provides the following definition of environmental information:

"...any information in written, visual, aural, electronic or any other 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;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites

and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);"

17. It is important to ensure that requests for information are handled under the correct access regime. This is particularly important when refusing to provide information, since the reasons why information can be withheld under FOIA (the exemptions) are different from the reasons why information can be withheld under the EIR (the exceptions). In addition there are some procedural differences affecting how requests should be handled.
18. The Commissioner recognises that it can sometimes be difficult to identify environmental information, and has produced guidance to assist public authorities and applicants.¹ The Commissioner's well-established view is that public authorities should adopt a broad interpretation of environmental information, in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.
19. Further, the Commissioner considers that interpretation of the phrase 'any information... on' will usually include information concerning, about, or relating to the measure, activity, factor etc., in question. It is not necessary for the information itself to have a direct effect on the elements of the environment, or to record or discuss such an effect. Rather, with regard to regulation 2(c) it is the measure or activity that must be likely to affect the elements or factors as set out in regulation 2(a) and (b).
20. The request in this case relates to two reports that were considered under item 15 at a Cabinet meeting of the Council on 15 December 2015. The reports relate to two separate issues - the refurbishment of Conwy Bridge and the Colwyn Bay Waterfront Project. Although the two issues were considered in the closed session of the meeting, the minutes of the meeting² indicate that the matters under consideration were:
 - Approval to transfer funding from a number of sources to deliver the refurbishment of Conwy Bridge.
 - Approval to award a construction contact for Phase 2a Promenade Enhancement works of the Colwyn Bay Waterfront Project.

¹ https://ico.org.uk/media/for-organisations/documents/1146/eir_what_is_environmental_information.pdf

² <http://modgoveng.conwy.gov.uk/Published/C00000171/M00004637/Minutes.doc.pdf>

21. The Commissioner understands that the refurbishment of Conwy Bridge included addressing corrosion on some of the structural parts and include a complete repaint of the bridge which would involve the erection of scaffolding. The project was scheduled to last 20 weeks and whilst work was being undertaken, it was necessary to temporarily close one lane on the bridge to facilitate the refurbishment. The Commissioner considers that external renovation works such as the refurbishment of a bridge would constitute a measure or activity, as defined by regulation 2(1)(c), which is likely to affect the elements of the environment as set out in regulation 2(1)(a), in particular land and landscape. As such, the Commissioner considers that information relating to the funding arrangements for such works would constitute information on this measure and is therefore environmental information as defined by regulation 2(1)(c).
22. In relation to the Colwyn Bay Waterfront project, the report that the Cabinet considered stated that "the principal elements of the works currently being procured by the Authority:
- Construction of a new concrete clad steel sheet pile wall seaward of the existing seawall to widen the existing promenade for approximately 360m length of promenade.
 - Formation of three 'headland' structures as part of the promenade widening works to form 'feature' areas to allow the incorporation of temporary events / concession spaces, a feature play area and permanent concession building.
 - Formation of a new improved access steps and ramp to the beach.
 - Raising the levels of the existing promenade and highway.
 - Provision of new surface finishes and landscaping features, following a similar theme to the recently completed phase 1 works and also incorporating new features such as raised planting areas and seating.
 - Construction of a new secondary sea defence wall.
 - New street lighting and street furniture.
 - New car parking alignment and finishes.
 - Resurfacing of sections of the existing promenade highway".
23. The report considered by the Cabinet specifically considered the recommendation that a contract be awarded for the works in question, following a tender exercise which had been undertaken, subject to receipt of grant funding approvals. It is clear to the Commissioner the works associated with the contract/project constitute a measure or activity, as defined by regulation 2(1)(c), which is likely to affect the elements of the environment as set out in regulation 2(1)(a), in particular land and landscape. As such, the Commissioner considers that information relating to the awarding of a contract for such works would

constitute information on this measure and is therefore environmental information as defined by regulation 2(1)(c).

24. In summary, the Commissioner has concluded that the requested information is environmental information and therefore the Council should have handled the request under the EIR. However, as the information requested has been disclosed, the Commissioner does not require the Council to reconsider the request under the EIR and provide a fresh response.

Regulation 5(2): time for compliance

25. Regulation 5(2) of the EIR states that a public authority shall make information available in response to a request

"...as soon as possible and no later than 20 working days after the date of receipt of the request".

26. The request in this case was made on 10 January 2016. The Council disclosed some information relevant to parts 2 and 4 of the request on 2 March 2016 and additional information at the time of its internal review on 8 June 2016. Further, during the course of the Commissioner's investigation the Council reviewed its handling of the request and, due to a change in circumstances, it disclosed the remaining information held relevant to parts 2 and 4 of the request. Accordingly the Commissioner is obliged to find that the Council has breached regulation 5(2) of the EIR in disclosing the information requested outside of the statutory 20 working day timescale.

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

Andrew White
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