

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

Decision notice

Date: 26 February 2020

Public Authority: Swansea Council

Address: freedomofinformation@swansea.gov.uk

Decision (including any steps ordered)

1. The complainant requested various pieces of information about a piece of land referenced within four specific planning applications. Swansea Council ('the Council') stated that all planning information was available on its planning portal and no additional information was held. During the course of the Commissioner's investigation the Council located additional information relevant to the request, which it then disclosed. The Commissioner has determined that some of the information requested constitutes the complainant's own personal data and is therefore exempt under regulation 5(3) of the EIR. The Commissioner has also determined that, on the balance of probabilities, the Council does not hold any additional information relevant to the request. However, she finds that the Council breached regulation 5(2) of the EIR in failing to provide the requested information within the required timescale. The Commissioner does not require any steps to be take.

Request and response

2. On 10 January 2019 the complainant wrote to the Council and requested information in the following terms:

"Please provide copies of all correspondence whether by letter, email or other form of media, such as electronic video files or photographs, received by or sent from any officer of the Council, involved in Planning (development control/management or policy) Highways or Drainage

roles in relation to the [address redacted]; as identified in planning applications referenced [four planning application reference numbers redacted]. Please include all communications directly in relation to those applications and received in any intervening period outside of the processing of those applications during the time 2017 to present.

Please provide copies of all file notes and internal memos or communications between Planning, Highways or Drainage officers and as a result of any internal meetings/discussions between officers of the Council where the proposals indicated in applications referenced [four planning application reference numbers redacted], have been discussed.

Please provide the names of all planning, highways or drainage officers and elected members present at any meeting where the applications referenced [four planning application reference numbers redacted] have been discussed along with any minute or record of that meeting. This also relates to meetings where the progress of these applications are discussed between officers and their line managers and any delegated panel meeting.

Please provide any communication received from elected members by Planning, Highways or Drainage officers in relation to applications referenced [four planning application reference numbers redacted].

Please provide any file note held by planning highways or drainage officers as a result of any meeting held on site or with neighbours in relation to applications referenced [four planning application reference numbers redacted].

Please do not include any information which is currently published on the Council's planning website page".

3. The complainant submitted a further follow up request on 11 January 2019 for:

"Supplemental to previous request of 10/1/2019, please also include all file notes and memos as a result of telephone conversations to or from any planning officer, highways officer, drainage officer in relation to applications [four planning application reference numbers redacted]".

4. The complainant wrote to the Council again on 12 February 2019 to chase a response to her request.
5. The Council responded on 13 February 2019 and stated that all of the information held relevant to the planning applications was published on its website, and as such no further information was held.

6. The complainant wrote to the Council on 17 February 2019 and requested an internal review into its handling of the request. She expressed concern at the amount of time the Council had taken to provide a response which essentially stated no information was held. She confirmed that she had again checked the Council's website and had been unable to find the "*substantial background information and electronic communications and officers notes of meetings*".
7. The Council provided the outcome of its internal review on 18 March 2019 and upheld its decision that all information held relevant to the planning applications was published on its website as the planning department worked in a 'paperless' environment.

Scope of the case

8. The complainant contacted the Commissioner on 23 March 2019 to complain about the way her request for information had been handled.
9. During the course of the Commissioner's investigation, the Council disclosed additional information falling within the scope of the request.
10. As the complainant had indicated that the planning applications referenced in the request had been submitted by her own planning agent, the Commissioner asked the Council to consider whether any of the information requested constituted the complainant's own personal data. The Council confirmed that as the complainant was not the planning applicant it did not consider any of the information to be her own personal data.
11. Having considered the information which the Council held relevant to the request and in light of the fact that the planning applications were submitted by the complainant's own planning agent the Commissioner considers that some of the information requested constitutes the complainant's own personal data. For clarity, a requester's own personal data is exempt under regulation 5(3) of the EIR. Personal data is defined by the Data Protection Act 2018 ('the DPA') as any information relating to a living and identifiable individual. The separate right of access provided by article 15 of the General Data Protection Regulation ('the GDPR') therefore applies. The Commissioner has considered this separately. This notice only relates to the information that falls under the scope of the EIR.
12. Based on the above, the scope of the Commissioner's investigation in this case is therefore to determine whether the Council holds any further recorded information other than that which has been disclosed to date.

The Commissioner has also considered procedural matters associated with the Council's handling of the request.

Reasons for decision

Regulation 5(3) – the exemption for personal data - the complainant's own personal data

13. The duty to make environmental information available on request is imposed by regulation 5(1) of the EIR. Regulation 5(3) provides that regulation 5(1) does not apply to information that is the personal data of the requester. The Commissioner has first considered whether any of the requested information is the personal data of the complainant. If it is, the EIR did not require the Council to disclose this information.
14. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".
15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
16. The information requested in this case relates to four planning applications submitted by a planning agent on behalf of the complainant. The complainant confirmed to the Commissioner that the planning agent in this case was her husband. Whilst the Commissioner acknowledges that the complainant was not the planning applicant, as the applications were submitted by an agent on her behalf she is satisfied that some of the information requested constitutes the complainant's own personal data. As such, regulation 5(3) applies and the Council was not obliged to disclose the information under the EIR. As stated in paragraph 11 of this notice the Commissioner has considered the data protection aspects of this complaint separately.

Regulation 5 – Duty to make environmental information available on request

17. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request.
18. 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. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. She 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, she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.

19. During the Commissioner's investigation the complainant submitted detailed representations to support her view that the Council held additional information relating to the request which it had not disclosed. With the consent of the complainant, the Commissioner provided the Council with a copy of these representations. Following this, the Council located additional information relevant to the request which it disclosed to the complainant.
20. In terms of the searches conducted in order to identify relevant information, the Council advised that the exclusive source of information relevant to the request was electronic in format as the Planning Department operate in an agile working environment where paper is used only for ephemeral note taking. The scope of the request falls within the Planning, Highways and Drainage Departments and no other Council department has been involved in the matter, with the exception of Corporate Support who would have dealt with complaints and correspondence with elected members. Searches were conducted within the Corporate Support Unit and no relevant information was identified. Searches within the other departments were undertaken using a number of keywords including: the name of the complainant and the planning agent, various versions of the site address and the planning case reference numbers.
21. The Council stated that its Planning Department operates in a paperless environment which *"is controlled by a proprietary software system with a workflow requiring all case papers to be loaded onto the system"*. The Council advised that some electronic information is automatically uploaded to the Planning Portal, for example observations submitted through the online comments systems, whilst other information has to be uploaded manually by planning officers. The Council confirmed that all planning officers work using networked resources and, because there is a strict workflow for planning applications, information is not held on personal drives.
22. The Council advised that any emails which are not required as a record are routinely destroyed as part of normal housekeeping practices. This applies to emails of a 'short-lived' nature, for example, communications setting up dates for a site meeting which are not considered to be a

record. This type of information is not required to be published on the planning portal and is deleted as it is not considered to have any continuing business value. The Council advised that emails of a short lived nature are normally deleted at the time a planning application is processed. The Council confirmed that if such emails had ever been held relevant to the request in this case, they were not deleted after the request had been received.

23. In terms of submissions/comments/objections by third parties, the Council confirmed that all third party correspondence was available to view on the public planning portal. The complainant pointed out that information relating to one objection on the planning portal listed two documents that had been provided to the Council by the objector, which had not been disclosed. The Council advised that the two documents were received with the objector's letter of 6 April 2017. The Council also confirmed that copies of the letter and the two documents were available on the planning portal.
24. The complainant also referred to a copy of an aerial photograph referred to by an objector as having been submitted to the Planning Case Officer at a meeting on 16 March 2017. The Council confirmed that it had consulted with the Case Officer concerned and he recalled being shown an aerial photograph at the meeting but no copy was given/submitted by the objector.
25. Based on the representations and evidence provided by the Council the Commissioner is satisfied that it has carried out adequate searches of where relevant information would be held. The Commissioner has not seen any evidence of any inadequate search or grounds for believing there is any motive to withhold information relevant to the request. 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 further recorded information relating to the request, other than that which it has disclosed.
26. Regulation 5(2) of the EIR states that information shall be made available "*as soon as possible and no later than 20 working days after the date of the request*".
27. In this case the request was submitted on 11 January 2019 and the Council initially stated that it did not hold any information which was not already publicly available on its planning portal. However, during the Commissioner's investigation the Council made two additional disclosures of information it had located during her investigation. Some information was disclosed on 6 September 2019 and a further disclosure was made on 10 January 2020.

28. In failing to provide all of the information held relevant to the request within 20 working days after the date of receipt, the Commissioner finds that the Council breached regulation 5(2) of the EIR.

Other matters

29. The Commissioner considers that it is appropriate to comment on the piecemeal identification of information falling within the scope of the request by the Council in this case.
30. During the course of her investigation of this complaint it was necessary for the Commissioner to query the extent of the searches conducted by the Council. Both the Commissioner and the complainant raised queries about the scope of information held relevant to the request. Most of these queries resulted in the identification of further information falling within the scope of the request and as a consequence information was disclosed on a 'piecemeal basis'. It is therefore apparent that initial searches which the Council conducted on receipt of the request were not as thorough as they should have been. Whilst the Commissioner does not expect public authorities to conduct an extensive, unfocused search of all its records in every case, she does expect that a reasonable and proportionate search is conducted at the outset to prevent such piecemeal disclosure of information occurring.

Right of appeal

31. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

32. 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.
33. 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

Joanne Edwards
Senior Case Officer
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