

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 1 August 2022

**Public Authority:** Cornwall Council  
**Address:** County Hall  
Truro  
TR1 3AY

#### **Decision (including any steps ordered)**

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1. The complainant has requested information with regards to consultants appointed and costs for delivering a flood resilience measure. Cornwall Council (the council) provided information and the complainant is not satisfied that he has been provided with all the information.
2. The Commissioner's decision is that the requested information is environmental information and so is a request under the EIR and that the council has provided all the information it holds falling within the scope of the request.
3. The Commissioner does not require the council to take any steps.

## **Request and response**

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4. On 21 August 2021 the complainant made the following information request to the council:

“List of consultants engaged with the StARR project to date.

Costs paid to the consultants as a total and also apportioned per consultant/firm.

Costs apportioned to the section north of the A390 under PA20/06955 specifically section 5.90B”

5. The council responded on 9 September 2021 providing the information to the first two parts of the request and for the third part of the request it stated that it does not code costs and budgets by planning application reference or an individual measure.
6. The complainant requested an internal review on 16 September 2021 as he considered the list of consultants provided in response to the first part of his request to be incomplete, listing three other consultants that he is aware of that were not provided on the list. He questioned whether any others had been missed off.
7. The complainant also disputed the council’s response to the third part of his request; that it was not able to provide the requested costs. He considered the council could provide at least an indication of the costs in relation to “section 5.90B”.
8. The council provided its internal review response on 14 October 2021 maintaining its initial response.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 24 October 2021 dissatisfied with the council’s response to the first and third part of his request.
10. The scope of the case is for the Commissioner to firstly determine whether the requested information falls under the EIR and then whether the council holds any further information falling within the scope of the request.

## Reasons for decision

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### Is the requested information environmental information?

11. The Commissioner has first considered whether the requested information would constitute environmental information as defined by regulation 2(1) of the EIR.
12. The council is of the position that the request does not fall under the EIR as the nature of the information is not environmental.
13. The Commissioner's guidance<sup>1</sup> on environmental information states:

"Any information" covers any environmental information about, concerning or relating to the various factors, elements and other items stated.

You should interpret "any information on" broadly. Information that would inform the public about matters affecting the environment or enable them to participate in decision-making is likely to be environmental information, even if the information does not directly mention the environment.

You should apply the test about whether the information is on or about something falling within the definitions in regulations 2(1)(a)-(f), and not whether the information directly mentions the environment or any environmental matter.
14. The council has explained the St Austell Bay Resilient Regeneration (StARR) Project is a partnership between three Flood Risk Management Authorities: the council, the Environment Agency (EA) and South West Waters. It also involves support partners Westcountry Rivers Trust and the University of Exeter. The majority of the project is being delivered by the council and the EA, with the council being the lead partner.
15. The request relates to consultants appointed and costs for delivering the project in relation to a specific area.
16. The Commissioner is satisfied that a flood resilience measure is a measure that falls under regulation 2(1)(c) that would affect or likely

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<sup>1</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/regulation-2-1-what-is-environmental-information/#eir3>

affect the state of the elements referred to in 2(1)(a). He is also satisfied that the that the information requested is "on" that measure and that the request does therefore fall under the EIR.

**Regulation 12(4)(a) – information held/ not held**

17. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
18. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide the requested information if it does not hold it at the time of the request being received.
19. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
20. With regards to the first part of the request, for a list of consultants engaged with the StARR project to date, the complainant has listed three companies that he says have been left off the list of 12 consultants that the council provided him.
21. The council's response to the Commissioner on this is that the 12 consultants it listed in its response to the request were those directly appointed by the StARR Project Partners.
22. The three that the complainant has stated were missed off would have been contractually appointed by other organisations within the StARR chain, effectively as sub-consultants. The council states it does not hold records of who its appointed consultants may have used as sub-consultants as neither the council nor StARR appointed these sub-consultants.
23. The complainant also provided a council response, dated 7 July 2020, to a previous request he made which he considers is evidence showing one of those three companies left off the list, Engineering Development Solutions, was a consultant and should have been included within the information disclosed in response to the request above.
24. The council has told the Commissioner that with regards the complainant's example of the previous request, the 7 July 2020 response stated that the Engineering Development Solutions (EDS) report was:

“Commissioned on 17 June 2020 through Cormac Solutions Limited by Mace Ward Williams Joint Venture on behalf of Cornwall Council.”

25. Cormac Solutions Limited would have appointed EDS as their sub-consultant, and Cormac Solutions was on the list disclosed in response to the request above.
26. Simply, the 12 consultants listed in response to the request above are those contracted by StARR. The identities of any sub-contractors that may have been used by those 12 consultants or other companies StARR has hired are not held in the council's records.
27. With regards to the third part of the request, the council has told the Commissioner that it is unable to provide the information for “costs apportioned to the section north of the A390 under PA20/06955 specifically the area resection 5.90B” because building has not yet started and it is awaiting its consultant Cormac Solutions to produce and submit a flood resilience package which will include the costings.
28. The council has told the Commissioner that any information held would be held electronically. The council contacted the council's Management and Service Accountants who are able to access project costs and supplier information in the council's management system.
29. The council has stated it has checked relevant emails on supplier and cost information and used key word searches on 'StARR Project' 'Par & Blazey' along with its cost codes.
30. The council has also stated that it has checked directly with its Specialist Data and Compliance officer who has confirmed that the three 'consultants' listed by the complainant are not recorded or registered in its systems.
31. The council has confirmed to the Commissioner that no information relevant to this request has been deleted or destroyed and has confirmed that it has carried out the most relevant searches with the most relevant people to establish what information it holds within the scope of the complainant's request.
32. The Commissioner is satisfied that the council has carried out relevant searches to determine the information it holds relevant to the request, and that it has adequately explained why certain information is not held.
33. The Commissioner therefore finds on the balance of probabilities that the council has provided all the information it holds falling within the scope of the request.

**Regulation 12(1)(b) of the EIR – The Public Interest Test**

34. Regulation 12(1)(b) of the EIR requires a public interest test to be carried out if a request is refused under any of the exemptions set out under regulation 12 of the EIR.
35. However, as no further information has been found to be held, the Commissioner can only find that the public interest in maintaining the exemption at 12(4)(a) of the EIR outweighs any public interest in disclosure, simply because there is no further information to disclose.

## Right of appeal

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36. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

37. 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.
38. 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 .....**

**Ben Tomes**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**