

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

**Decision notice**

**Date:** 2 November 2022

**Public Authority:** Cornwall Council  
**Address:** New County Hall  
Treyew Road  
Truro  
Cornwall, TR1 3AY

**Decision (including any steps ordered)**

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1. The complainant requested information relating to a planning application. Cornwall Council (the "council") withheld the information under the exemption for information provided in confidence (section 41 of the FOIA).
2. The Commissioner's decision is that the council wrongly handled the request under the FOIA and breached regulation 5(1) of the EIR.
3. The Commissioner requires the council to issue a new response to the request under the EIR.
4. The council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

## Request and response

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5. On 19 May 2022, the complainant wrote to Cornwall Council (the "council") and requested the following information:  
  
"....please can you provide copies of all correspondence between [redacted] and the Planning Committee in relation to the above Planning Application?"
6. The council's final position is that all the requested information is subject to the exemption for information provided in confidence – section 41 of the FOIA.

## Reasons for decision

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### Is it environmental information?

7. The following analysis sets out why the Commissioner has concluded that the council wrongly handled the request under the FOIA.
8. Regulation 2(1) of the EIR defines what 'environmental information' consists of. 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 Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner's opinion a broad interpretation of this phrase will

usually include information concerning, about or relating to the measure, activity, factor, etc in question.

10. In this case the requested information directly relates to a planning application. The Commissioner has issued numerous decision notices which reflect his view that requests relating to planning matters identify information relating to a "measure" as defined in regulation 2(1)(c) of the EIR.
11. The Commissioner considers that the information, therefore, falls within the category of information covered by regulation 2(1)(c) as the information can be considered to be a measure affecting or likely to affect the environment or a measure designed to protect the environment. This is in accordance with the decision of the Information Tribunal in the case of Kirkaldie v IC and Thanet District Council (EA/2006/001) ("Kirkaldie").
12. In view of this, the Commissioner has concluded that the council wrongly handled the request under the FOIA and breached regulation 5(1) of the EIR. He requires the council to issue a new response to the request under the EIR.

## Right of appeal

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13. 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: 0203 936 8963

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)

14. 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.
15. 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 .....**

**Christopher Williams**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**