

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

**Date:** 10 August 2022

**Public Authority:** Wrexham Borough Council  
**Address:** 16 Lord Street  
Wrexham  
LL11 1LG

**Decision (including any steps ordered)**

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1. The complainant has requested information, namely a specific digital map of their property, from Wrexham Borough Council ("the Council"). The Council has provided the complainant with a digital map of their property, however the complainant is dissatisfied with this and considers that the Council holds the specific digital map they have requested.
2. The Commissioner's decision is that the Council has disclosed all relevant recorded information within the scope of the complainant's request and he has concluded that, on the balance of probabilities, the Council does not hold any further information within the scope of that request.
3. Therefore the Commissioner requires no steps to be taken.

**Request and response**

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4. On 18 February 2021, the complainant wrote to the Council and requested information in the following terms:

"Under Freedom of Information I am requesting you send to me a digital copy of the imagery information and plans you hold on my property that was presented to me in person and on paper when [name redacted] visited this property on 29<sup>th</sup> June 2020."

5. The Council responded on 3 March 2021. It provided the complainant with a digital 1:5000 plan of the property, stating that this was taken from the same database as the one presented to the complainant during the visit of 29 June 2020.
6. After making representations as to their dissatisfaction with what they had received from the Council, the complainant made a Subject Access Request to the Council on 23 March 2021, specifically for a full colour version of the mapping gazetteer file which they stated was presented to them by [Council officer] at the meeting on 29 June 2020. The Council has since stated to the Commissioner that the information requested did not fall under the subject access provisions and that the Council has been in contact with the complainant separately about it. The Council also agrees with the Commissioner that the complainant's original request should have been considered under the EIR as the requested information is environmental.
7. Following correspondence from the Commissioner, the Council wrote to him on 16 February 2022. It stated that the digital map sent to the complainant in response to their original request bears the same information indicated on the printed copy the officer took with them to the site meeting in June 2020. The orientation or scale may have been different to the one attached but essentially the same information would have been shown as the one sent to the complainant. The Council also attached two further hard copy historic maps of the property, which it also sent to the complainant.
8. The complainant was still dissatisfied with what they had received and informed the Commissioner that the information sent by the Council was not what was requested.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 1 April 2021 to complain about the way their request for information had been handled.
10. The Commissioner has considered the Council's handling of the complainant's request and whether, on the balance of probabilities, it holds further recorded information within the scope of the complainant's request.

## Reasons for decision

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### **Regulation 5(1): duty to make information available**

#### **Regulation 12(4)(a) – information not held at the time of the request**

18. Regulation 5(1) of the EIR states that, subject to other provisions, a public authority holding environmental information shall make it available on request. Regulation 12(4)(a) provides an exception from the duty to make information available if the authority does not hold the requested information at the time of the request.
19. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
20. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
21. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. He will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, he will consider any other information or explanation offered by the public authority which is relevant to his determination.

#### **The complainant's view**

22. The complainant states that, on a Council visit to their property on 29 June 2020, they were shown a hard copy, full colour digital plan of the property which clearly defines hedge and boundary lines. As the Council has not provided a copy of this exact plan in response to their request, the complainant considers that the plan must be held by the Council and is not being provided to them.

### **The Council's view**

23. The Commissioner wrote to the Council on 30 June 2022 seeking further submissions as to whether it held the information requested by the complainant.
24. The Council responded to the Commissioner on 20 July 2022. It stated that it holds no further recorded information within the scope of the complainant's request. It informed the Commissioner that information is only available to it from two sources – the "ProPrinter" digital map which it has already provided to the complainant, and a further 1962 map which was reproduced in February 2022 on two sheets due to a straddling issue. The complainant has been provided with both of these. The officer who attended the meeting of 29 June 2020 at the complainant's property could only have printed the digital plan he brought with him from the ProPrinter system, as this is the only data source available to him.
25. The officer states, for the avoidance of doubt, that he definitely did not bring the 1962 map with him to the meeting as he would have recalled the straddling issue.
26. The Council states that the ProPrinter system used by it contains many historical layers, all in digital form. All relevant layers were used to compile a plan in response to the complainant's request. The Council informed the Commissioner that these historical layers are in monochrome and the only full colour digital plan of the complainant's property that can be produced from the system is the one which the Council provided to the complainant on 3 March 2021.
26. The Council also stated that there is no statutory requirement or business purpose for it to retain copies of documents from ProPrinter as these can be reproduced at any time.
27. The Council further stated that it has invited the complainant to its offices to view and discuss the hard copy maps, however the complainant has so far declined the invitation.

### **The Commissioner's view**

28. The Commissioner accepts that the complainant disputes that the Council does not hold further information within the scope of the request.
29. The Commissioner also recognises that, in its correspondence with him and the complainant, the Council has been forthcoming in providing any maps it does hold, and explaining its data sources.

30. Having considered all the factors of the case, the Commissioner considers that, on the balance of probabilities, the Council does not hold further information within the scope of the request.

## Right of appeal

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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: 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)

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 .....**

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