

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

Date: 10 May 2022

Public Authority: Swansea Council

Address: Data.protection@swansea.gov.uk

Decision (including any steps ordered)

1. The complainant requested all information in respect of how Swansea Council (the Council) arrived at its decision regarding the ownership of a piece of land on which a shed was located near their property. The Council provided some information, but refused part of the request citing section 14(2) (repeated request) FOIA.
2. The Commissioner's decision is that the request in its entirety should have been considered under the Environmental Information Regulations 2004 (EIR) so section 14(2) was not relevant. The Council should therefore provide a fresh response compliant with the requirements of the EIR.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant's request that is compliant with 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 the FOIA and may be dealt with as a contempt of court.

Request and response

5. On 28 January 2021, the complainant wrote to Swansea Council and requested the following information in respect of a copy of a letter they had received which was sent to their neighbour in relation to the ownership of the land to the rear of the property:

"Please provide:

1. A copy of the Council office ownership plan presentation used to inform the Council view expressed in the letter of [specified date].
2. Information that identifies how the Council view of ownership of the land on which the shed is located, as expressed in the letter, was formed.
3. All information related to the letter including reports, notes, correspondence, plans and photographs.

I am the owner of [named property] and wish to view the information used by the Council to form a view of the ownership of the land at the southern end of the garden of [named property]...on which stands a shed owned by [name of neighbour]...."

6. The Council responded on 4 September 2020 In respect of item one of the request, although the Council did not explicitly cite section 14(2) it informed the complainant that the information had previously been provided on 11 January 2021 as part of its response to an earlier FOIA request, that the information in respect of item two was taken from the Council's Geographic Information System (GIS). It refused item 3 citing section 14(2) FOIA, adding that the Council believed the request substantially repeats the complainant's request of 22 January 2021 which asked for all information related to the plan, including reports, notes, correspondence, plans and photographs.
7. Following an internal review the Council wrote to the complainant on 25 March 2021 and upheld its original response.

Scope of the case

8. The complainant contacted the Commissioner on 19 April 2021 to complain about the way their request for information had been handled. The complainant has stated that although it is true that the request relates to the same land ownership matter, the requests differ as the previous request concerned the creation of a plan whereas this one is in respect of a letter.
9. In relation to item 3 of the request, the complainant considers that the Council holds more information than has previously been provided and stated that it is difficult to believe that significant correspondence such as the letter to which they refer, would not have been created without any supporting information or records. The complainant has also referred to two individual Council employees referenced in the letter and

would like the Council to clarify whether they corresponded or worked from notes and consequently stored any relevant information.

10. Upon review of this matter, the Commissioner's view was that it was likely that the requested information fell within the definition of environmental information in regulation 2 of the EIR. When information falls within this definition any request for that information should be handled under the EIR rather than under the FOIA. The scope of the following analysis covers whether the requested information is environmental.

Reasons for decision

The appropriate legislation

11. The Commissioner notes that the Council responded to this request under FOIA. However, he has considered whether given the nature of the request, the EIR is the appropriate legislation under which to consider this request.

12. Regulation 2(1) of the EIR specifies the definition of environmental information and states:

"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..."

13. The Commissioner notes that the information in question relates to a letter in respect of the ownership of a particular piece of land. The Commissioner is satisfied that the information falls within the definition of environmental information as referred to in (a) and (c) above, and that the appropriate legislation under which to consider this request is the EIR.
14. As the information is environmental, it is excluded from consideration under the FOIA by section 39.
15. At paragraph 3 above the Council is now required to issue a fresh response to the request under the EIR. This response should either disclose the requested information or give a valid reason under the EIR as to why this information will not be disclosed.

Right of appeal

16. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

17. 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.
18. 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

Catherine Dickenson
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