

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

### **Decision notice**

**Date:** 17 January 2023

**Public Authority:** Newry, Mourne and Down District Council

**Address:** Monaghan Row  
Newry  
County Down  
BT35 8DJ

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

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1. The complainant has requested details of successful planning applications in an area of natural beauty. Newry, Mourne and Down District Council (the council) said that it does not hold the information in the format requested, and directed the complainant to remake his request to the Northern Ireland Statistics and Research Agency. It applied Regulation 6(1)(a) and (b) to refuse the request.
2. The Commissioner's decision is that the council was not correct to refuse the request on the basis that section 6(1)(a) and (b) applies.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
  - Disclose the information to the complainant in the form and format requested.
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 6 April 2022 the complainant wrote to the council and requested information in the following terms:

“I am seeking to find out in a tabular format the number of planning for new single home applications in the Mourne AONB in 2020 (Jan-Dec) and 2021 (Jan -Dec). Further, I am seeking to know how many new single home planning applications within the Mourne AONB in 2020 (Jan-Dec) and 2021 (Jan-Dec) received a granting of planning.”
6. The council responded on 7 April 2022. It said that the requested information is held by it, and it is already available to the public via its website’s planning portal. It therefore applied Regulation 6(1)(b) and refused the request for information.
7. The complainant requested that the council review its decision. He said that it was not possible to easily isolate applications falling within the AONB by using the search filters available on its planning portal. He said that he believed that a GIS mapping exercise would provide him with the information he was requesting.
8. GIS mapping data is an information format which combines a mixture of geographical data with other tabular/database information. Together, this can be manipulated to provide information as required from the database relating to specific geographical areas. GIS data would therefore provide the complainant with the information which he was seeking.
9. The council wrote to the complainant on 29 April 2022. It amended its response to argue that the requested information is not held by it in the format requested by the complainant, and that the EIR do not require it to create new information. It told the complainant that the information which he was seeking would be available from the Northern Ireland Statistics and Research Agency (NISRA), and provided a link to its web page.

## Reasons for decision

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### **Regulation 10 – Duty to transfer the request**

10. Broadly, Regulation 10(1) provides that where a public authority does not hold the information requested, but believes that another public authority holds the information, the public authority shall either transfer the request to the other public authority or supply the applicant with the

name and address of that authority, and inform the applicant accordingly within its refusal notice.

11. The council in this case, however, does hold the requested information and so Regulation 10 is not applicable to it.

### **Regulation 6 – Form and format of the information**

12. The following analysis explains why the Commissioner has decided that the council was not correct to rely upon Regulation 6(1) to refuse the request for information.

13. Regulation 6(1) states that:

“Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless–

(a) it is reasonable for it to make the information available in another form or format; or

(b) the information is already publicly available and easily accessible to the applicant in another form or format”.

14. The Commissioner considers that the use of the phrase “particular form or format” means that a requester may specify not only the physical form but also how the information is configured or arranged within that form, i.e., the format. For example, in relation to electronic information the term ‘format’ is generally used to refer to a file type, such as PDF or Microsoft Excel or CSV, and so a requester may express a preference for one of these formats. In this instance, the complainant’s clarified request was for the information in a tabular format, and that GIS data would provide this.

15. The Commissioner’s guidance on regulation 6<sup>1</sup> states that the EIR Code of Practice<sup>2</sup> explains why a preference for a particular form or format must be considered:

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<sup>1</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/form-and-format-of-information-regulation-6/>

<sup>2</sup> Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (SI 2004 no 3391) issued by DEFRA

"A public authority should be flexible, as far as is reasonable, with respect to form and format, taking into account the fact, for example, that some IT users may not be able to read attachments in certain formats, and that some members of the public may prefer paper to electronic copies". (Paragraph 22)

16. However, the duty to make the requested information available in the preferred form or format is not an absolute one. It is qualified by Regulations 6(1)(a) and 6(1)(b) in that a public authority does not have to meet the requester's preference if either it is reasonable for it to make the information available in another form or format, or the information is already publicly available and easily accessible to the applicant.
17. The council argues that the information is available from NISRA, and that it does not hold the information in the format requested by the complainant - GIS data. It has therefore sought to rely upon both Regulation 6(1)(b)- information available by other means, and Regulation 6(1)(a) - that it is not reasonable to provide the information in the format requested by the complainant.
18. The Commissioner has considered the application of Regulation 6(1)(b) to the request first. If the information is already easily accessible by the complainant, then Regulation 6(1)(b) is applicable, and the council need not comply with the request.

Regulation 6(1)(b)

19. The council argues that the requested information is available from NISRA in the format requested. However, having viewed the link concerned, the Commissioner is satisfied that the complainant would need to make another request to NISRA for the information to be provided to him.
20. The complainant argues that NISRA provides statistical data for all of Northern Ireland, and considers that the council would be able to provide the information to him very easily.

Whilst it is not absolutely clear that the information could be supplied by NISRA, the Commissioner notes that the council argues that previous information it has supplied to the complainant in a previous, similar request was provided to it by NISRA in the first instance. He also notes that NISRA's web page confirms that it is able to respond to "ad hoc"

requests for planning statistics upon request<sup>3</sup>. The Commissioner notes that information may be available to the complainant in response to such an "ad hoc" request.

21. The Commissioner also notes that in order for Regulation 6(1)(b) to be applicable, the information needs to be publicly available and easily accessible to the applicant.
22. The Commissioner is not satisfied that the information is either easily accessible, or publicly available as the complainant would need to make a request to NISRA in order to obtain the information. It is also not absolutely clear that the requested information would be provided in response to such a request.
23. In order for information to be publicly accessible, the Commissioner would expect the information to be clearly available, at least by inspection. The Commissioner does not consider information "publicly available and easily accessible" on the basis that it may be disclosed under the FOIA or EIR in response to a request.
24. The Commissioner does not, therefore, agree that regulation 6(1)(b) applies as a result of the possibility of the complainant making an information request to NISRA.

Regulation 6(1)(a)

25. Regulation 6(1)(a) requires that authorities provide the information in the form or format requested unless it is unreasonable for it to do so under the circumstances concerned.
26. The council argues that its GIS officer has confirmed that the information could be provided by interrogating its own data, but that this would take around 2 hours of work to extract from the overall data it holds.
27. The council argues that it would be unreasonable for it to provide the requested data in the format requested given the time and cost for this to occur when the data is also available and easily accessible from NISRA. It also pointed out that in providing this information it would be depriving a private sector body of funding which it would otherwise receive.

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<sup>3</sup> <https://www.infrastructure-ni.gov.uk/articles/ad-hoc-statistical-requests>

28. The Commissioner has not been persuaded that requiring work estimated to be 2 hours is unreasonable under the circumstances of this request.
29. The Commissioner's decision is therefore that the council was not correct to rely upon Regulation 6(1)(a) to refuse to provide the information in the format requested.

## Right of appeal

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30. 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)

31. 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.
32. 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 .....**

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