

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 19 September 2023

Public Authority: Plymouth City Council
Address: Plymouth
PL1 3BJ

Decision (including any steps ordered)

1. The complainant has requested copies of site accreditation certificates, audits in English and the APR for 2022 from Plymouth City Council (Council).
2. The Commissioner's decision is that;
 - On the balance of probabilities, the Council has provided all the information it holds within the scope of the request.
 - The Council breached regulation 5(2), by failing to respond to the request within 20 working days.
3. The Commissioner does not require further steps.

Request and response

4. On 4 March 2023, the complainant wrote to the Council and requested information in the following terms:

"Please supply pdf copies or access to the current site accreditation certificates to ISO 9001,14001,45001,50001 for MVV Environment Devonport Ltd as they do not appear to be available on line.

Please also provide the associated audits to each standard in English (pdf copies or site access)

Please provide the APR for 2022 in a pdf format."

5. The Council responded on 14 April 2023. It provided some information within the scope of the request. It also advised that some of the information was not held in English and some information was not held at all.
6. Following an internal review, the Council wrote to the complainant on 17 May 2023. It stated that it was upholding its original position.

Scope of the case

7. The complainant contacted the Commissioner on 18 May 2023 to complain about the way their request for information had been handled.
8. During the Commissioner's investigation the Council explained that information provided to the complainant in German actually fell outside the scope of the request and had been provided in an attempt at transparency.
9. The Commissioner cannot consider information provided outside of the EIR process. He has therefore limited his investigation to determining whether the Council holds any further information, within the scope of the request, that has not already been disclosed.

Reasons for decision

10. Regulation 2(1) of the EIR defines environmental information as being information 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)...as well as measures or activities designed to protect those elements;

- (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
11. As the requested information relates to site accreditation certificates and audits of a waste management site, the Commissioner believes that the requested information is likely to be information on measures affecting the environment. For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 5(1) – duty to provide environmental information

12. Regulation 5(1) of the EIR requires that a public authority that holds environmental information shall make it available on request. This is subject to any exclusions or exceptions that may apply.
13. In scenarios where there is some dispute about the extent of the information a public authority holds, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
14. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check that the information is not held, and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.
15. The Commissioner notes that it is not his role to determine what information a public authority ought to hold, only what it does, as a matter of fact, hold.
16. The Council explained that MVV Environment Davenport (MED) is part of a certification matrix under the control of its parent company, MVV Umwelt, a Germany energy company. The Council holds a contract with MED regarding waste management and the MED also operates an 'energy from waste' facility on the Council's behalf.

17. The Council clarified that if MED is subject to an audit, it would receive a copy of this from MVV Umwelt. This would then be stored within its information management system. The Council advised if MED did not receive a report relating to an audit which it was a subject of, this would then be requested from MVV Umwelt.
18. The Council confirmed to the complainant that, as MED is a part of a certification matrix, a multi-site approach is taken for accreditation. It explained that an organisation is able to certify multiple sites with a single certificate, with only a sample of those sites being visited for auditing purposes.
19. In the circumstances of this case, despite the 2020 audit stating that the next audit would take place in 2021 and at the Devonport site, the audit was in fact undertaken at a different site. Although the auditor selected different sites to audit, as part of MVV Umwelt's ongoing certification process, the recertification process would still apply to Devonport.
20. The Council provided the complainant with a copy of the 2021 audit which it had since obtained from MVV Umwelt. However, it maintained that it had not held this information at the time of the request and that MVV Umwelt did not hold the information on its behalf.
21. Given how easily the Council was able to obtain a copy of the 2021 audit report, the Commissioner is sceptical that this information was not held on the Council's behalf. However, the question is academic in this case as the recorded information has been provided. Whether or not the information was held on the Council's behalf would have no bearing on whether the Council had or had not complied with its duty under regulation 5(1) – because it has been provided anyway – and no bearing on any procedural breaches.
22. The Commissioner therefore declines to make a formal decision as to whether the audit report was held on behalf of the Council at the point the request was made. Such a determination should be made in a case where the outcome would have an impact on the information that might need to be disclosed.
23. The Commissioner is satisfied that, on the balance of probabilities, the requested information has been provided to the complainant and the Council does not hold any additional information within the scope of the request.

Procedural matters

24. The Council breached regulation 5(2) by failing to respond to the request within 20 working days.

Other matters

25. The Commissioner would encourage the Council to disclose information outside of its obligations under FOIA or the EIR – where it is safe to do so and providing that any obligations under the legislation are met. However, the Council should ensure that it is clear which information is being disclosed under the formal process and which is not.

Right of appeal

26. 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

27. 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.
28. 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

Roger Cawthorne
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Information Commissioner's Office
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Wilmslow
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