

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 11 February 2008

Public Authority: Monmouthshire County Council
Address: County Hall
Cwmbran
NP44 2XH

Summary

The complainant requested information relating to a Traffic Regulation Order. The public authority responded belatedly to the request and failed to supply all of the information requested. Following the Commissioner's investigation the public authority has now disclosed all of the information requested by the complainant. The Commissioner also finds that the public authority has breached Regulations 5 (2), 9 (1) and 11 (4) of the EIR.

The Commissioner's Role

1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

Background

2. The complainant made a formal complaint against the public authority (the "Council") to the Public Services Ombudsman for Wales (the Ombudsman) before submitting his request of 10 August 2006. The full details of this complaint or its outcome have not been considered by the Commissioner. What is of relevance is that as part of the Council's submissions to the Ombudsman various plans depicting the local area were adduced. The complainant having not had sight of these plans requested a copy in his request of 10 August 2006.

The Request

3. The complainant made a request to the Council on 10 August 2006 for the following information relating to a Traffic Regulation Order in Maryport Street, Usk:
 1. 'I must request to see...all plans, documents and minutes related to the traffic order, and the subsequent developments that have taken place under the Council's auspices at that site since the order came into force in 1986'.
 2. 'When the work was finished in 1986, the plans sent to the Ombudsman's office clearly show an electricity sub-station with the traffic flowing on either side of it – I would like to know why the present traffic plan (the Ordinance survey 1/2500 map) for that same year does not show these details'.
 3. 'I have been informed that once a traffic plan has been set out any substantial work to alter it would require a further traffic plan – can you tell me why the junction was altered and the sub station moved in the late eighties without such a plan? Or, if such a plan exists can I please see it'.
 4. '..... _____, in her case against my through drive (M/12568) to the planning inspectorate mentions that "Access Groups operating in the county" will be concerned about the dropped kerb that will be outside my house. I would be grateful if you could inform me who those groups are and their address/telephone number(s) so that I may contact them in connection with the appeal.'
4. The Council acknowledged receipt of the request on 14 August 2006, and issued a substantive response on 20 September 2006. In its response the Council explained that it did not hold any information on access groups as none expressed an opinion about the dropped kerb, also that some of the questions raised by the complainant were asking for reasoning and not for information, so did not fall within the ambit of the Freedom of Information Act 2000. In relation to the request for various plans the complainant was asked to make an appointment to view the plans.
5. The complainant duly arranged a meeting which was scheduled for 26 September 2006 to view the information which remained outstanding from his request. The meeting was also attended by the complainant's Planning Consultant.

The Investigation

Scope of the case

6. The complainant initially contacted the Commissioner on 19 September 2006 to advise that he had not received a response to his request; however a response was issued by the Council on 20 September 2006. Dissatisfied with this response the complainant contacted the Commissioner to seek advice in terms of the next step that he should take.

7. The Commissioner advised the complainant to submit a complaint to the Council to allow it to review its handling of the request. The Commissioner also wrote to the Council on 21 September 2006 to make it aware of the advice given to the complainant and explained that public authorities should disclose recorded information held that might satisfy a question e.g. minutes of meetings or policy documents, unless an exemption applies. The complainant wrote a letter of complaint to the Council on 28 September 2006 and listed 8 matters he wished the Council to review.
8. The complainant contacted the Commissioner on 10 July 2007 to advise that the Council had now conducted an internal review which resulted in a report setting out the outcome. The complainant provided an extract of the report drawing attention to a statement made by the Council which states that during the meeting of 26 September 2006 a search for additional information (committee minutes, drawings or other papers related to works around Maryport around 1986) concerning Traffic Orders for Maryport Street did not reveal any further information. The complainant also informed the Commissioner that following the meeting of 26 September 2006 he took the Council to court to recover expenses incurred for his Planning Consultant's fee for attending the meeting.
9. The complainant provided the Commissioner with papers pertaining to the court case which included a letter written by the complainant's Planning Consultant and an extract from the court case transcript of the Judge's comments in relation to the disclosure made by the Council at the meeting. The Commissioner notes that although the Judge did not find in favour of the complainant in respect of his claim, he however, does make some disparaging comments about the Council in terms of whether a full disclosure was made to the complainant at the meeting. The letter from the Planning Consultant explains that there was a distinct lack of background files made available to the complainant at the meeting of 26 September 2006.
10. On 20 July 2007 the complainant contacted the Commissioner to give further details of the history of the request and to explain that the level of service he had received from the Council had been poor. The complainant emphasised that the Council was advised by the Commissioner on 21 September 2006 that it should disclose any information it held which related to his request unless an exemption applied, however the Council had refused to heed this guidance.
11. The complainant has specifically asked the Commissioner to consider the following points in connection with the way his request for information had been handled by the Council:
 - That the Council did not provide him and his Planning Consultant during the meeting of 26 September 2006 with all of the information it held relating to the Traffic Regulation Order.
 - That the Council ignored the Commissioner's advice of 21 September 2006 and failed to disclose the information it held that might satisfy some of the questions raised in his letter of 10 August 2006.

- That the Council deliberately failed to supply the information it held relating to the request.
- The delay he experienced prior to receiving a response to the request.
- The delay he experienced before receiving the outcome on his complaint of 28 September 2006.

12. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 2 of the EIR.

Chronology

13. The Commissioner wrote to the Council on 18 July 2007 to seek information in respect of the request and put the following questions to the Council:

- Where within the Council is information surrounding the traffic order for the Junction at Maryport Street in Usk held?
- Is the information in question held electronically or manually? How is it filed, and what is the structure of the filing system?
- Is there a contents page or an index for the file that contains the requested information?
- What search did the Council carry out in order to locate and retrieve the requested information? Who was contacted and which departments were searched?
- _____ was required to make an appointment in order to view various plans in connection with his request (Council's letter of 20 September 2006). Please can you list and describe these plans.
- Does the Council hold a copy of the plans that were sent to the Ombudsman's office which clearly show an electricity sub-station with the traffic flowing on either side of the junction at Maryport Street in Usk?
- Does the Council hold any information on why the alterations that have been made to the Junction at Maryport Street since the late eighties have not been documented in the form of an updated traffic plan?
-in response to _____(complainant's) request for details of the Access Groups mentioned by _____, the Council states that '_____ expressed her opinion that other groups would be likely to express concern....we therefore hold no information on names and addresses.' Can the Council please clarify whether or not it is aware of any protest groups which have expressed concern about the dropped kerb which will be outside _____ house?
- Did the Council issue _____ (the complainant) with its findings in relation to his complaint of 28 September 2006? If so, kindly provide a copy of the outcome.
- Can the Council please list what information it does hold in connection with _____(the complainant's) 10 August 2006 request for information.
- Does the Council have a formal records management policy and, if so, what does it say about the retention and deletion of the type of information _____(the complainant) has requested? (Kindly provide a copy of the policy).

14. The Council responded on 15 August 2007 and provided the following information in reply to the set of questions raised by the Commissioner (above):

- The Traffic Order file is held within the Traffic Development section of the Council. The Order is held manually in a separate file within a suspension filing system and has its own unique filing reference. The information in relation to the order is readily available within the section.
 - The plans the complainant was required to arrange a meeting to view were those contained in the Maryport Street Traffic Regulation Order and the extract from the Usk resewering drawing showing the old entrance arrangements to Maryport Street car park which was initially supplied to the Ombudsman's Office.
 - The alterations made to the entrance of Maryport Street car park were not deemed to be significant and the changes made are detailed on the current Ordnance Survey mapping, which the Council regards as an adequate record.
 - Protest groups are not routinely consulted in the course of assessing a planning application. None were consulted in this case, so none have expressed an opinion on the matter.
 - There is no requirement, legal or otherwise, for the Council to retain supporting documentation for Traffic Orders, other than the actual orders and associated maps, beyond the three months necessary for possible judicial review. All information held by the Council has been provided to the complainant.
 - The Council is currently in the process of developing a formal records management policy.
15. The Council also supplied the Commissioner with a copy of its stage 2 report (this was issued to the complainant on 29 March 2007) which had considered the eight separate matters listed on the complainant's 28 September 2006 letter seeking a review. It also provided a copy of a letter which explained that a further review was conducted by the Chief Executive who wrote to the complainant on 18 May 2007 with his determination.
16. The Commissioner notes from the Council's stage 2 report that during the meeting of 26 September 2006 the only material found and made available to the complainant was a map showing sewer details, which was not what the complainant sought. In the conclusion section of the report the Council also remarks that:
- "There appears to have been a lapse in record keeping within Highways in that 'informal' observations/information relating to _____'s property were not formally documented in the appropriate working files or case notes within the department".
17. The Council's detailed report notes its failure to comply with the twenty working day timescale in responding to the request and also makes several recommendations to ensure that future requests for information are handled more appropriately.
18. The Commissioner contacted the Council following receipt of its letter of 15 August 2007 to advise that it had not supplied all of the information required to make a decision on the complaint and that it had not answered all of the questions put to it on 18 July 2007. The Commissioner specifically requested that the Council provide all of the information it held relating to the Traffic Order in

question together with a copy of the maps which were sent to the Ombudsman's office (as requested by the complainant).

19. There were various exchanges between the Commissioner and the Council between 23 August 2007 and 3 October 2007 concerning the information required to form a view on this complaint. During this time the Commissioner advised the Council that much of the information requested by the complainant fell within the scope of the EIR, specifically within Regulation 2 (1) (c), and therefore his investigation would be conducted in accordance with the provisions of the EIR. On 26 October 2007 the Council wrote to the Commissioner with a definitive list of all of the information it held concerning the Traffic Order which consisted of the following:

- A memo giving details of bodies consulted prior to the making of the order in 1986.
- A schedule revoking the order made in 1972.
- A schedule giving details of the locations of the limits of the revised order made in 1986.
- A plan entitled "Proposed Amendments to One Way Order and Parking Restrictions" supporting the order.
- A schedule giving details of the parking restrictions.
- A covering memo from Gwent County Council's Solicitor to the Chief Constable and the Chief Executive's Office passing out the above information.

In terms of the maps that were sent to the Ombudsman's office the Council confirmed that it was the following:

- The plan which forms part of the Traffic Order.
- A general, untitled plan which shows the area.
- Two maps of the Usk area at different scales, bearing details of a re-sewering project.

20. In its e-mail of 26 October 2007, the Council also advised that the complainant had viewed the content of the Traffic Order file which contains the above information (apart from the maps sent to the Ombudsman's office) on at least two occasions and had taken digital photographs of some of the content and was supplied with paper copies of specific pieces of the information relating to the Order.

21. The Commissioner wrote to the complainant on 9 November 2007 with his preliminary views which stated that the Council had breached several procedural requirements of the EIR whilst handling the request. The Commissioner also provided the complainant with the list of information the Council confirmed it held in relation to the Traffic Order and enquired whether he had been provided with all of the information listed.

22. The complainant wrote to the Commissioner on 12 November 2007 advising that he had not seen all of the information listed and that he would like a copy. He stated that this was the information he expected the Council to show him and his Planning Consultant at the meeting of 26 September 2006. The complainant also

stated that he believed the Council had deliberately withheld this information from him during the meeting of 26 September 2006 but had claimed in the court case (referred to in paragraph 8 above) that the information had been made available.

23. The Commissioner contacted the Council on 13 November 2007 and requested that it furnish him with a copy of all of the information it had confirmed it held relating to the Traffic Order so that it could be disclosed to the complainant. Although the Council offered to provide the complainant with a copy directly, in order to avert any further misunderstandings between the two parties the Commissioner advised the Council that he would supply the complainant with the information. The Council provided the Commissioner with a copy of all the information it held relating to the Traffic Order on 21 November 2007 and also enclosed a copy of a photograph taken by the complainant of some of the content of the Traffic Order file. The Council explained that this was proof that the complainant had previously been provided with all of the information relating to the Traffic Order.
24. The Commissioner wrote to the complainant on 26 November 2007 enclosing a copy of the information supplied by the Council.

Findings of fact

25. As stated in paragraph 16 above, the Commissioner notes that only one map was made available to the complainant and his Planning Consultant at the meeting of 26 September 2006.

Analysis

26. Although the Council has stated that the complainant has viewed the entire content of the Traffic Order file previously on two occasions, it is not altogether clear when this occurred. Following discussions with the complainant it seems that he had seen the contents of the Traffic Order file prior to making his 10 August 2006 request for information. This would not have included the maps which were furnished to the Ombudsman.

Procedural matters

27. The complainant's request was made to the Council on 10 August 2006; however he did not receive a substantive response from the Council until 20 September 2006. The Council has therefore breached Regulation 5 (2) of the EIR (see Legal Annex for details of Regulation 5 (2)).
28. The complainant requested a review of the handling of his request from the Council on 28 September 2006, however was not informed of the Council's decision on his complaint until 29 March 2007. The Council has therefore breached Regulation 11 (4) of the EIR (see Legal Annex for details of Regulation 11 (4)).

29. The Commissioner considers that the Council should have provided the complainant with reasonable advice and assistance in accordance with Regulation 9 (1) and should have enquired into precisely what information the complainant was seeking following receipt of his request. Even if the complainant had viewed the content of the Traffic Order file previously, the Council should have clarified whether he was seeking a copy of the information formerly shown to him. This lack of clarification appears to have led to confusion on the part of the Council as to what information remained outstanding from the request which it had not disclosed to the complainant, and deep frustration for the complainant who clearly knew of the existence of other documents as he had seen them before and could not understand why the Council was later denying him access to these papers. The Council has therefore also breached Regulation 9 (1) of the EIR (see Legal Annex for details of Regulation 9 (1)).

The Decision

30. The Commissioner's decision is that the Council did not deal with the request for information in accordance with the EIR.
- The Council failed to respond to the request within twenty working days and has therefore breached the requirement in Regulation 5 (2) of the EIR.
 - The Council failed to issue the complainant with the outcome of the internal review within 40 working days and has therefore breached the requirement in Regulation 11 (4) of the EIR.
 - The Council failed to provide the complainant with reasonable advice and assistance in connection with the request and has therefore breached the requirement in Regulation 9 (1) of the EIR.
31. However, as a result of the Commissioner's involvement, the Council has now disclosed all of the information it holds relating to the request.

Steps Required

32. The Commissioner requires no steps to be taken.

Other matters

33. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
- The complainant has maintained from the beginning of this investigation that the Council has deliberately withheld information which it knew it held by wilfully misunderstanding what information was still outstanding from his request. The Commissioner is unable to form a firm view on whether or not the Council

deliberately failed to provide the complainant and his Planning Consultant (at the meeting of 26 September 2006) with the information later disclosed as a result of his involvement. However, he strongly recommends that the Council ensures it observes the requirement to provide advice and assistance to applicants who make a request for information to it.

- The Commissioner also wishes to draw attention to the fact that it took repeated attempts to get the Council to provide a full list of all of the information it held relating to the request.
- Having read the report produced by the Council on its review of the handling of the request and the fact that it has not yet adopted a Records Management Policy as strongly recommended by the Code of Practice issued under section 46 of the Freedom of Information Act 2000, the Commissioner recommends that the Council reviews its records management systems to ensure information that should be recorded is organised accordingly. Also, that appropriate members of staff are made aware of what is held and able to locate it readily.
(Recommendations for EIR public authorities on record keeping, management and destruction are set out in the Freedom of Information Act 2000 section 46 Code of Practice).

Right of Appeal

34. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 11th day of February 2008

Signed

**Anne Jones
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Legal annex**

Regulation 2(1) In these Regulations –
“environmental information” has the same meaning as in Article 2(1) of the Directive, namely 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;

Regulation 5(1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 5(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 9. - (1) A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

(3) Where a code of practice has been made under regulation 16, and to the extent that a public authority conforms to that code in relation to the provision of advice and assistance in a particular case, it shall be taken to have complied with paragraph (1) in relation to that case.

Regulation 11. - (1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

(4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.