

Environmental Information Regulations 2004

Decision Notice

Date: 2 August 2011

Public Authority: Prestatyn Town Council
Address: 7 Nant Hall Road
Prestatyn
Denbighshire
LL19 9LR

Summary

The complainant requested access to view the original file and documents relating to a named company's work in maintaining memorial gardens in the town of Prestatyn. The Council has not provided a clear response to the request and does not appear to have applied the relevant access regime. Based on the nature of the request and the information disclosed to the complainant to date, the Commissioner considers that the Environmental Information Regulations 2004 are likely to be the relevant legislation under which the requested should have been considered. The Commissioner therefore reminds the Council of its obligations under the EIR and requires it to disclose the relevant information or apply a relevant exception to disclosure.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.
2. 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.

The Request

3. On 17 January 2011, the complainant made the following request to Prestatyn Town Council (the "Council"):

"Please may I under the Freedom of Information Act.[sic] Request a viewing of the original file and documents for [named company's] paid involvement in Ty Pendre Memorial Gardens, Prestatyn."

4. On 3 February 2011, the Council provided the following response:

"Further to your email of 17th January 2011 I have previously provided you with copy invoices and payments made [to named company] which includes work at Ty Pendre.

A copy of [named company's] contract for Ty Pendre can be supplied upon payment although this will take some time to compile as there are separate contracts for different services...

Your request for viewing of original files is declined as it does not form part of requirements as applied to Town Council."

5. The complainant wrote to the Council again on 6 February 2011 and was subsequently provided with information that the Council stated represented the agreement between it and the named company in relation to work at the memorial gardens.
6. On 6 March 2011 the complainant requested an internal review of the Council's handling of his request. The Council responded on 23 March 2011 and stated that it had no formal internal review procedure.

The Investigation

Scope of the case

7. The complainant contacted the Commissioner on 23 and 24 March 2011 to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
- The failure of the Council to conduct an internal review.
 - The failure of the Council to refer to exemptions / exceptions to disclosure.

- The lack of guidance provided by the Council; eg its failure to provide details of how he could complain about the handling of his request.
8. In an email of 27 June 2011 the complainant also stated that he was seeking access to recent information regarding the contract in question and that the information the Council had provided (accounts for the 2009/10 financial year) was up to two years old.

Chronology

9. The Commissioner wrote to the Council on 20 April 2011 to advise it that he had received a complaint and to ask for copies of any withheld information and to specify any exemptions or exceptions to disclosure on which it was relying.
10. The Council responded on 27 April 2011 and stated that, "as required by Council's FOI adopted policy" it had already provided the complainant with a copy of paid invoices for the 2009/10 financial year together with a copy of the contract with the named company for the work at the memorial gardens. The Council also stated that the complainant had previously viewed "schedule of paid accounts, paid invoices and been sent copies of all [named company's] invoices as part of Account for Audit public inspection requirements".
11. In a telephone conversation on 7 June 2011 the Commissioner advised the Council that he considered it likely that the EIR was the relevant access regime under which the request should have been considered. The Council questioned whether it had a duty to comply with the EIR. The Council also stated that it considered that it had complied with the request and was unsure what information the complainant considered to be outstanding.
12. The Commissioner wrote to the complainant on 7 June 2011 and asked him to specify the information he considered to be outstanding. The complainant responded on 27 June 2011 and stated that he was seeking access to recent information regarding the contract in question and that the information provided by the Council to date (see paragraph 8, above) was up to two years old.

Analysis

Substantive Procedural Matters

The relevant legislation

13. Based on the Council's letter to the Commissioner of 27 April 2011 it appears to have considered the request under the provisions of the Act. However, as the Council did not refer in correspondence with the complainant or the Commissioner to any particular sections of the Act, it is not clear on what basis the request was refused.
14. Furthermore, the Commissioner has considered the nature of the request and the relevant information that he has seen (a copy of the agreement between the named company and the Council in relation to the memorial gardens) and is of the view that the information is environmental information. The Commissioner has summarised his reasoning below.
15. Regulation 2(1)(c) of the EIR states that information on the following is environmental information;

"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."

In order for information on any of the above measures to be considered environmental it must be possible to link it to the elements and factors referred to in regulation 2(1)(a) and (b).

16. The agreement between the Council and the named company relates to the maintenance of memorial gardens. The agreement therefore relates to a measure that affects the environment; namely the landscape of the gardens. As such the Commissioner considers that the information constitutes environmental information and the request should have been considered under the provisions of the EIR.

Do the EIR apply to the Council?

17. In a conversation with the Commissioner's staff the Council queried whether it was required to comply with the provisions of the EIR. For the avoidance of doubt the Commissioner considers that the EIR are applicable to the Council. He would specifically draw the Council's attention to regulation 2(2)(b) of the EIR, and would point out that

community councils within Wales are specifically listed as a “public authority” in Schedule 1 of the Act.

The Decision

18. The Commissioner’s decision is that the public authority did not deal with the request for information in accordance with the EIR in that it did not apply the correct legislation when handling the request.

Steps Required

19. As the Commissioner has determined that the correct access regime for the request is the EIR he requires the Council to either provide the information requested or issue a valid refusal notice that complies with regulation 14 of the EIR.
20. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

21. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

22. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
23. In correspondence to the Commissioner the Council referred to having considered the provisions of the Act but he notes that the correspondence to the complaint makes no reference to the reason the request was refused. The Commissioner would like to draw the Council’s attention to section 17 of the Act and regulation 14 of the EIR, which set out the form and format of a refusal notice. The Commissioner has

issued guidance on how to refusal a request under the Act¹ and the EIR². Further guidance on how to handle requests for information under the Act and the EIR can be accessed via the relevant section of the Commissioner's website³.

24. The Commissioner also notes that the Council does not operate an internal review process. While there is no requirement to operate such a process under the Act (although the Code of Practice issued under section 45 recommends that public authorities adopt a complaint handling process), regulation 11 of the EIR places a requirement on public authorities, on receipt of representations from applicants, to reconsider their handling of requests. The Commissioner would expect the Council to consider the provisions of regulation 11 of the EIR in relation to the handling of future requests for environmental information.

¹http://www.ico.gov.uk/for_organisations/freedom_of_information/information_request/how_to_refuse.aspx

²http://www.ico.gov.uk/for_organisations/environmental_information/information_request/exceptions.aspx

³http://www.ico.gov.uk/for_organisations/freedom_of_information.aspx and http://www.ico.gov.uk/for_organisations/environmental_information.aspx

Right of Appeal

25. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 2nd day of August 2011

Signed

**Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Regulation 2 - Interpretation

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;
- (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 elements of the environment referred to in (b) and (c);

...

“public authority” has the meaning given in paragraph (2);

...

Regulation 2(2)

Subject to paragraph (3), “public authority” means –

- (a) government departments;
- (b) any other public authority as defined in section 3(1) of the Act, disregarding for this purpose the exceptions in paragraph 6 of Schedule 1 to the Act, but excluding –
 - (i) any body or office-holder listed in Schedule 1 to the Act only in relation to information of a specified description; or
 - (ii) any person designated by Order under section 5 of the Act;
- (c) any other body or other person, that carries out functions of public administration; or
- (d) any other body or other person, that is under the control of a person falling within sub-paragraphs (a), (b) or (c) and –
 - (i) has public responsibilities relating to the environment;
 - (ii) exercises functions of a public nature relating to the environment; or
 - (iii) provides public services relating to the environment.

Regulation 14 - Refusal to disclose information

Regulation 14(1)

If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

Regulation 14(2)

The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 14(3)

The refusal shall specify the reasons not to disclose the information requested, including –

- (a) any exception relied on under regulations 12(4), 12(5) or 13; and

- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).

Regulation 14(4)

If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.

Regulation 14(5)

The refusal shall inform the applicant –

- (a) that he may make representations to the public authority under regulation 11; and
- (b) of the enforcement and appeal provisions of the Act applied by regulation 18.