

## **Environmental Information Regulations**

### **Decision Notice**

**Date: 8 August 2011**

**Public Authority:** Powys County Council  
**Address:** County Hall  
LLandrindod Wells  
Powys  
LD1 5LG

#### **Summary**

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The complainant asked the Council to supply him with details of problems it was aware of on the Public Rights of Way network in a particular area together with the path numbers and nature of problems. The Council provided the requested information. The complainant then asked the Council to supply him with information that would allow him to identify the location of all the paths in question. He suggested that the Council supply him with copies of extracts from the relevant footpath map. The Council stated that the requested information was available from the Definitive Map and that it was available for inspection at the Council's offices. During the Commissioner's investigation the Council stated that it considered regulations 6(1)(a) and (b) of the EIR to be engaged. The Commissioner has investigated and concludes that regulation 6(1)(b) is engaged and requires no steps to be taken.

#### **The Commissioner's Role**

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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.

## Background

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3. On 11 October 2010 the complainant made the following request to Powys County Council (the "Council"):

"Please advise details of any problems you are aware of on the Public Rights of Way network in New Radnor together with the path numbers and the nature of problems."

4. In response the Council collated information about complaints it had received about paths in the area referred to and provided it to the complainant. The response included the path number, the type of complaint – eg "path obstructed" – and the number of complaints received.

5. This led the complainant to submit the request that is the focus of this notice.

6. As this case involves consideration of information held on a Definite Map, the Commissioner has provided some background:

"A definitive map is a map prepared by a surveying authority which is a legal record of the public's rights of way in one of four categories (footpath, bridleway, road used as a public path or byway open to all traffic). If a way is shown on the map, then that is legal, or conclusive, evidence that the public had those rights along the way at the relevant date of the map (and has them still, unless there has been a legally authorised change)."<sup>1</sup>

## The Request

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7. On 12 January 2011, the complainant made the following request to the Council:

"Thank you for your response 26<sup>th</sup> October 2010 re Rights of Way in New Radnor Parish.

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<sup>1</sup> <http://www.naturenet.net/row/definitivemaps.html>

I have a copy of Definitive Footpath Map 25 NW which shows some of the paths with path numbers, but without adjacent sheets I have been unable to identify the other routes mentioned.

Could you kindly let me have this information – the simplest way would be photocopied extracts from the relevant footpath map.”

8. The Council responded on 9 February 2011 and stated that the information the complainant was seeking would “be available from the Definitive Map”. The Council advised that the map could be inspected during office hours at its offices in Llandrindod Wells.
9. On 14 February 2011 the complainant asked the Council to review its handling of its decision not to provide him with the information he had requested.
10. The Council issued the findings of its internal review on 21 February 2011. It stated that its decision not to disclose the requested information was based on the provisions of the EIR but went on to say section 21 of the Act was engaged because the requested information was reasonably accessible by other means; namely through inspection of the Definitive Map at its offices.

## **The Investigation**

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### **Scope of the case**

11. On 16 March 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - He works a six day week and it is not possible for him to travel 25 miles to view the map in question.
  - He considered it unreasonable for the Council to refuse to supply the details requested, either with map extracts or in some other manner which might suit them better.
12. The Commissioner has considered whether the Council appropriately applied the relevant access legislation and whether it was correct to refuse to provide the information requested.

### **Chronology**

13. The Commissioner wrote to the Council on 6 June 2011 to clarify whether the Council had applied the provisions of the Act or the EIR and

for clarification of the section / regulation on which it had relied to refuse the request.

14. The Council responded on 10 June 2011 and stated that it considered the EIR to be the relevant legislation. It stated that it considered regulations 6(1)(a) and (b) to be relevant in this case and provided reasoning to support its application of the legislation.
15. On 1 July 2011 the Commissioner spoke to the complainant and the public authority to determine whether the information requested was held or could be provided in any way other than providing copies of the Definitive Map.

## **Analysis**

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### **Substantive Procedural Matters**

#### **The relevant legislation**

16. The Commissioner considers that the EIR, rather than the Act, is the relevant legislation in this case. The Commissioner considers that information on problems with or complaints about Public Rights of Way and information taken from the Definitive Map to fall under the definition of a measure under regulation 2(1)(c) of the EIR. He therefore considers that the information requested in this case falls under the definition of Environmental Information set out in the EIR.

#### **Is the information held by the authority in another format?**

17. The Commissioner was mindful that the complainant's request was for information that would allow him to identify the location of specific footpaths. He suggested that the easiest way to provide the information was to provide copies of extracts from the relevant footpath map (the Definitive Map) but his request was not limited to a request for information in that format. The Commissioner therefore considered whether the information was held by the Council in another form or format that would satisfy the request.
18. The Commissioner spoke to the complainant to clarify whether he was aware of another format in which the information was held by the public authority and, if so, whether he was open to receiving that information as an alternative to copies of the Definitive Map. The complainant said that he was open to receiving the information in another format but that he was not aware that the Council held it other than on the Definitive Map. He did suggest that the Council could copy the information from the Definitive Map to another map that wasn't subject to copyright.

19. The Commissioner asked the Council whether the location of the footpaths was held in a form or format other than on the Definitive Map and, if so, whether it would be prepared to disclose it to the complainant. The Council stated that some of the information is held on its electronic Geographical Information System (GIS) but the data has not been fully verified and it was aware of errors and omissions in it. The Council also stated that because the data is stored on its GIS any user of the digital dataset would require GIS software of some kind to read it, and in addition would also need appropriate backdrop mapping - in this case the Ordnance Survey MasterMap data. In summary, the Council stated that the complete and accurate data requested is held on the Definitive Map.
20. The Commissioner accepts that the requested information is held on the Definitive Map and he has therefore considered whether it was reasonable for the Council to refuse to provide extracts in the form of copies.

### **Regulation 6**

21. Regulation 6 of the EIR states that where an applicant requests that information is made available in a particular form or format, a public authority shall make it available unless it is already publicly available and easily accessible to the applicant in another form or format. In this instance, the applicant had requested that the Council provide him with copy extracts of a Definitive Map.
22. In interpreting regulation 6 the Commissioner has considered Article 3(4) of Directive 2003/4/EC from which the Regulations are transposed. Article 3(4) contains the following wording: *'where an applicant requests a public authority to make environmental information available in a specific form or format (**including in the form of copies**)'* (emphasis added) and goes on to say that a public authority shall make the information available unless it is already publicly available in another form or format or it is reasonable to make it available in another form or format.
23. The Commissioner considers that by requesting the information in the form of a copy the complainant had requested the information in a specific form and format. The authority's alternative provision of the information at its offices is publicly available and easily accessible to the applicant; albeit that he states that he has practical difficulties in terms of finding time to visit the Council's offices. The Council has countered the complainant's view by stating that he has visited its offices in the past and during one visit in February 2011 it offered him the opportunity to inspect the Definitive Map. The Council stated that the complainant declined this offer. The Commissioner has not asked for or seen

evidence to confirm the Council's view and he has included it only for the purposes of presenting a balanced view.

24. The Commissioner also notes that the Council has included the Definitive Map in its publication scheme, along with information on how to view it. The Commissioner's general view is that information will be reasonably accessible to the applicant, irrespective of their individual circumstances, if it is included in the public authority's publication scheme.
25. The Commissioner considers that the key point is that the information is publicly available and the Council has explained to the complainant how he can access it. The Commissioner therefore considers that regulation 6(1)(b) of the EIR applies and the public authority is not required to make the information available in the form and format requested.

## **The Decision**

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26. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the EIR.
27. The Commissioner requires no steps to be taken.

## Right of Appeal

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28. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

29. 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.
30. 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 8<sup>th</sup> day of August 2011**

**Signed .....**

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

## Legal Annex

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### Regulation 2 - Interpretation

#### Regulation 2(1)

In these Regulations –

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“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);...



## **Regulation 6 - Form and format of information**

### **Regulation 6(1)**

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.