

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 26 April 2018

Public Authority: Cornwall Council

Address: County Hall
Treyew Road
Truro
TR1 3AY

Decision (including any steps ordered)

1. The complainant has requested information about refuse and recycling collections in Cornwall against individual addresses and in a specific format. The Council initially provided unique property reference numbers (UPRNs), a link to its rubbish, recycling and waste webpage and waste depot dates. However the Council withheld specific addresses associated with the UPRNs under section 21 of the FOIA (information reasonably accessible by other means), as these could be obtained from Ordnance Survey (OS). The Council also applied section 43 of the FOIA (commercial interests exemption). The Commissioner asked the Council to review its response under the EIR and the Council then maintained it was commercial information under regulation 12(5)(e) and it was not in the public interest to release it. The Council also maintained that it did not hold the collection database as it said that this information was held by a contractor.
2. The Commissioner's decision is that Cornwall Council has not provided sufficient evidence to support the engagement of Regulation 12(5)(e). She also finds that the Council does hold information about what type of refuse is collected from individual addresses and when, and breached regulation 3 by not supplying it to the complainant. She also finds that the Council has breached regulation 6 by failing to supply the information in the format requested, or explaining to the complainant why this cannot be done.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Disclose the withheld information to which Regulation 12(5)(e) has been applied.

- Disclose the collection data about what type of refuse is collected and when, from individual addresses, as used by the Council to update its own website.
 - Under Regulation 9 (advice and assistance), provide the complainant with details of the exact format the collection data is held by Council to ascertain if this meets his requirements or can be reasonably formatted to do so.
4. The public authority 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 6 June 2017, the complainant wrote to Cornwall Council and requested information in the following terms:

'Please can you provide the data for refuse, recycling, plastic pot and garden waste collection days, organised by address. Please include address and UPRN for each property, as well as any data required to convert schedule codes to calendar dates, including week codes for fortnightly collection and changes for bank holidays etc. Please provide this in an open, machine readable format, such as CSV. Please avoid closed formats such as database binary formats. I need the raw data rather than access to a web service or similar. If possible, please include rollout dates for the plastic pot recycling trial.'

6. The Council responded on 30 June 2017. It provided an excel spreadsheet of UPRNs (unique property reference numbers); a link to its refuse, recycling and waste website; and depot dates for plastic pot and tub recycling, but none of this was by property. The list of addresses associated with each UPRN was withheld from disclosure, and the Council cited the exemptions under section 21 (reasonably accessible by other means) and additionally, section 43 (commercial interests) of the FOIA. It went on to explain that that the information sought was available from Ordnance Survey (OS). It said that the information had been supplied to the Council under licence for a fee from Ordnance Survey and that release would be against the terms of the licence. The Council said that the disclosure would also be prejudicial to Ordnance Survey's and the Council's commercial interests. It said that the public interest did not favour disclosure.

7. On 30 June 2017 the complainant requested a review of the Council's response. He did not agree with the Council's use of sections 21 and 43 of the FOIA and objected to the provision of the website link as it did not provide collection information in the format he requested.
8. On 28 July 2017 the Council responded. It maintained its original position stating that the OS licence will not allow release of the address data sought, and that the data is available under licence from Royal Mail and OS, and therefore exempt under section 21.
9. On 28 November 2017 the Commissioner contacted the Council and requested that it review its response under the Environmental Information Regulations (EIR). The Council responded on 22 December 2017, providing the UPRNs but again withheld the associated address details under regulation 12(5)(e) of the EIR. It said that release of the information could compromise the confidentiality of commercial or industrial information, covered by law to protect legitimate economic interest. As with its initial consideration under FOIA, the Council went on to say that the information had been supplied under licence for a fee from OS which prevents release of the information, and that release would be detrimental to OS's commercial interests. It stated that, in all the circumstances, public interest favours non-disclosure of the information. Again the Council provided a link to its refuse, recycling and waste website; and separate dates for plastic pot and tub recycling, but not by property.

Scope of the case

10. The complainant contacted the Commissioner on 31 July 2017 to complain about the way his request for information had been handled. He did not believe that either sections 21 or 43 applied and that the Council had breached section 17 (refusal of a request) as the actual waste collection data (as opposed to addresses) hadn't been provided. In essence the information provided had no meaning in relation to the specifics of the request.
11. The Commissioner requested the Council review its response under EIR, which it duly did, engaging regulation 12(5)(e). The Council also failed to provide other information within the scope of the request that did not fall within the application of 12(5)(e). The Commissioner therefore considers the scope of the case to be:
 - whether the Council was right to engage the exception, and if yes, whether the public interest favoured withholding the information in all the circumstances, and

- whether it held some of the information not supplied (regulation 3) and if it did, complied with the required format (regulation 6)

Reasons for decision

Is the information environmental information?

12. Regulation 2(1) of the EIR defines environmental information as 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) and (b) as well as measures or activities designed to protect those elements'.

13. As the request is specifically about refuse (i.e. waste) collections (which is a measure/activity), the Commissioner considers the request to be clearly about environmental information.

Regulation 12(5)(e)

14. Regulation 12(5)(e) of the EIR provides that a public authority may refuse to disclose information if its disclosure would adversely affect *'the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest'*.
15. The Council had argued that the information had been supplied under licence for a fee from OS which prevents release of the information, and that release would be detrimental to OS's commercial interests. The Commissioner considers that in order for this exception to be engaged, there are a number of conditions that must be met. These are:

- the information is commercial or industrial in nature;

- it is confidential under either the common law of confidence, contract, or a statutory bar;
 - the confidentiality is protecting a legitimate economic interest; and
 - the confidentiality will be adversely affected by disclosure.
16. The Commissioner wrote to the Council on 7 February 2018 requiring it to explain how each of these were met in this particular case. The Council responded on 22 February 2018, and included a copy of the licence agreement it held with GeoPlace, a Limited Liability Partnership jointly owned by the Local Government Association (LGA) and OS. It also provided a copy of the Public Service Mapping Agreement (PSMA) Member Licence.

Is the information commercial or industrial in nature?

17. The Commissioner's guidance on this states:

'For information to be commercial in nature, it will need to relate to a commercial activity, either of the public authority or a third party. The essence of commerce is trade. A commercial activity will generally involve the sale or purchase of goods or services, usually for profit.'

"Industrial" is generally understood to describe the processing of raw materials and the manufacture of goods in factories, as opposed to their sale or purchase.'

18. In response to this question, the Council has stated:

'The information has been supplied to the Council under licence which prevents us from releasing this information....Therefore release of the same would affect the commercial interests of the licence.'

It also said that OS were consulted on the request and stated:

"disclosure would be likely to substantially prejudice Ordnance Survey and/or Royal mail's and/or GeoPlace's commercial interests. Such prejudice would arise from the fact that, even if the information were released with the appropriate copyright/database right acknowledgment, it would be difficult to monitor the subsequent use of the address data, and there would be considerable costs incurred in monitoring use and taking enforcement action against infringers".

19. The Commissioner has reviewed the contracts supplied to her and it is not clear how the specific information requested by the complainant is

commercial in nature falling within the terms of the contract, and neither has this been explained by the Council. To simply say it is covered by a licensing agreement, but without demonstrating exactly how or why, is not sufficient.

20. The complainant has requested address information, initially with UPRNs, although he has made it clear in his review letter that UPRNs are not essential. Nor does he require postcodes. He requires the house name / number and the road e.g. xx Penny Lane. He has argued that this information is Council owned data, and supplied to OS as part of the PSMA. The complainant has also noted that information provided to the Council as part of the GeoPlace licence is not charged for, contrary to the Council's assertions in its communications with the complainant. The complainant has also supplied the Commissioner with the OS Policy Statement on UPRNs which says:

*'If you are licensed for an OS Address product for your own internal business use (IBU)*1, you are of course licensed to use the UPRN under the terms of your IBU licence.*

In addition, our UPRN policy is that you (i.e. an IBU licensee for an OS Address product) may use UPRNs which you have sourced from an OS Address product on a royalty-free, perpetual basis, as follows:

- 1. For your own IBU, following the end of your Ordnance Survey IBU licence; and*
- 2. To sub-license UPRNs to third parties for any purpose free of any licensing restrictions (both during and following the end of your OS IBU licence), PROVIDED THAT you have not extracted UPRNs by using or making reference to the coordinates within OS Address products data*2.*

Apart from the above, no other licensing restrictions apply, and you do not even need to acknowledge copyright or database rights.

The complainant has requested street names and numbers, with UPRNs if possible, and does not require postcodes or coordinates. As the street names and numbers are supplied by the Council in the first place, he does not consider information is derived from an OS Address Product and can therefore be supplied, along with UPRNs.

21. It is not the Commissioner's role to determine the precise nature of contractual definitions nor adjudicate on the interpretation of contractual clauses. Nor does the Commissioner know precisely what background information was supplied to OS resulting in their position above. Having studied the detail of the request, and considered the Council's minimal representation regarding the licensing agreement, the Commissioner is

not satisfied that that the Council has adequately demonstrated the requested address information (with or without UPRNs) is commercial or industrial in nature. As a result she considers that Regulation 12(5)(e) is not engaged at this point and so has not gone on to consider the confidentiality conditions outlined above or the public interest test.

Regulation 6

22. Regulation 6 states:

(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.

(2) If the information is not made available in the form or format requested, the public authority shall—

(a) explain the reason for its decision as soon as possible and no later than 20 working days after the date of receipt of the request for the information;

(b) provide the explanation in writing if the applicant so requests; and

(c) inform the applicant of the provisions of regulation 11 and of the enforcement and appeal provisions of the Act applied by regulation 18.

23. The complainant made the following specific format request:

'Please provide this in an open, machine readable format, such as CSV. Please avoid closed formats such as database binary formats. I need the raw data rather than access to a web service or similar.'

24. In addition to the Council's application of 12(5)(e) to the address information, for information relating to what refuse is collected and when, it signposted the complainant to its website and gave depot collection dates, despite his request for raw data. It did not explain why the information could not be provided in the format requested, thereby breaching regulation 6(2)(a). When the Commissioner asked the Council why it had not provided the information in the format requested, the Council explained to her (but not the complainant) that the website

could be queried for each individual address (advising that this could be obtained from OS under license). Having reviewed the UPRN list provided to the complainant, this would be in excess of 65,000 properties. Even if the complainant was to obtain the address information from OS, the Commissioner does not consider individual interrogation of a website for over £65,000 addresses to be 'easily accessible to the applicant in another form or format.'

25. Although the Council has not formally cited regulation 6(1)(b) along with its website details and depot collection information provided to the complainant it is assumed that the Council considers this to be an alternative avenue to access the request information. However, given the number of properties involved, the Commissioner finds regulation 6(1)(b) has not been satisfied and therefore the Council has breached regulation 6(1). Additionally, as the Commissioner does not consider regulation 12(5)(e) to be engaged, the reference to OS for the obtaining of the address information cannot be relied upon by the Council.

Regulation 3(2)

26. Regulation 3(2) of the EIR states that:

'For the purposes of these Regulations, environmental information is held by a public authority if the information –

(a) is in the authority's possession and has been produced or received by the authority; or

(b) is held by another person on behalf of the authority.

27. It has already been noted that the Council signposted the complainant to its website for collection information. The Council informed the Commissioner that it did '*not hold a central list of this information*' but went on to say:

'the information is held against property data which is how it is identified both on the contractor system, but also how it operates to feed through to the Council.'

28. On further investigation, the Council said that the information requested was not held by the Council, but by the waste contractor delivering services on its behalf. However, the Council routinely accesses this information as it used it to update its refuse, recycling and waste website so that residents are able to check collection dates for their property.
29. The Commissioner therefore considers that information about the type of refuse collected by day and property is received by the Council for its own purposes and therefore held by the Council under regulation

3(2)(a). The Commissioner also finds that the waste collection contractor holds the information on behalf of the Council (as well as for its own contractual purposes), fulfilling regulation 3(2)(b) on the basis that it feeds directly through from the contractor's to the Council's system to provide a search service of waste collections by property.

30. The Council supplied the Commissioner with the contract held with the waste company, along with a schedule detailing commercially sensitive information. The Commissioner has reviewed both the contract and the schedule and can see nothing that prevents the Council from releasing the refuse collection details to the complainant. Nor has the Council made any representations about why the information would be prevented from being released by the terms of the contract.
31. The Commissioner has not been able to ascertain exactly what format the Council holds the collection information in, and whether or not it can fully meet the complainant's requirements. Therefore under regulation 9 (advice and assistance) she requires that the Council liaises with the complainant to explain exactly what collection information is passed from the contractor to the Council to generate the information held on its website and whether this can be provided in a format that meets the complainant's requirements.

Right of appeal

32. 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: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF