

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 30 January 2020

Public Authority: Monmouthshire County Council

Address: foi@monmouthshire.gov.uk

Decision (including any steps ordered)

1. The complainant has requested follow on information from Monmouthshire County Council in respect of all data concerning a planning application to build houses in Raglan. Monmouthshire County Council confirmed that the complainant could view the information either via the internet, at one of its hubs or at its premises in County Hall. The Commissioner's decision is that Monmouthshire County Council has complied with its obligations under regulation 6 of the EIR. The Commissioner does not require the public authority to take any steps.

Request and response

2. On 7 May 2019 the complainant wrote to Monmouthshire County Council and requested the following information:

"Please could you send me all DaTA in file on Richborough planning application for houses in Raglan, - following in from my last request in December...

Please note – I would happily read any data on file via MCC's website.

But apparently it is not accessible by those with Apple equipment, owing to MCC not providing suitable links."

3. The Council responded on 5 June 2019. It stated that:

...if you require information by post and not in the format readily available, I will liaise with the service area to discuss the cost of printing and posting to you.

We can refuse a request if deciding whether we hold the information would mean we exceed the cost limit. We do hold the information in a readily available format and I understand the teams have invited you to our offices to help you view this information...

4. *I have copied my planning colleagues so that they can investigate the cost and we can either refuse this request or do the work at an extra charge."*

5. Following correspondence from the complainant, the Council further stated on the same date:

"You were offered the information in a format that was readily available and we have refused to supply you the information in another form as it was not reasonable or practicable to provide the information."

6. Further correspondence between both parties continued which resulted in the Council setting up a formal complaint to be dealt with via an internal review which would not only consider the Council's response, but also its procedural handling of the request.

7. The Council contacted the complainant on 2 July 2019 requesting additional time to respond and issued its internal review on 2 August 2019, which stated:

"The provision of the Act that the Council is using to refuse the request is S21 of the Freedom of Information Act. There is a requirement for the Council to make all Environmental Information available for the public. The Council has not withheld any information pertinent to this request and it is all publicly available via the electronic system.

8. The Council further stated that:

"For this particular enquiry the information requested ...is readily available online, [name of complainant] ...has not been able to access it using her Apple device. Several other solutions have been offered to [name of complainant] by members of the Planning Team, though [name of complainant] has not taken up the offers."

Scope of the case

9. The complainant contacted the Commissioner on 2 August 2019 to complain about the way her request for information had been handled. The complainant has acknowledged that there is a link but has stated that she cannot read it and thinks that the problem may be her Adblocker. She has further stated that she can read planning applications and backgrounds for two other Welsh public authorities.

10. The Commissioner considers that the scope of her investigation is firstly to determine whether the request has been considered under the appropriate legislation, and also whether the Council has complied with its duties under regulation 6 of the Environmental Information Regulations 2004 ('the EIR').

Reasons for decision

The appropriate legislation

11. The Commissioner has first considered whether the information is environmental in accordance with the definition given in regulation 2(1) of the EIR:

"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..."

12. The Commissioner notes that the information in question relates to planning and considers that this type of information falls within the scope of 'measures' defined by regulation 2(1)(c). She has therefore concluded that the appropriate legislation under which to consider this request/complaint is the EIR.
13. The Commissioner further notes that although the Council acknowledged that the information was environmental in nature and generally considered the request under the EIR, it refused the request citing section 21 of the Freedom of Information Act 2000 ('the FOIA'). The Commissioner would wish to highlight the inconsistency in this response and would point that it should not have cited an exemption from

different legislation as there are some significant differences between both pieces of legislation.

Regulation 6(1) – Form and format of information

14. Regulation 6(1) provides that:

"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.*
15. The Commissioner accepts that where a public authority makes information available for inspection it is considered to have made it publicly available under regulation 5 of the EIR. However, the issue is whether the Council has complied with its obligations under regulation 6 to provide the information in the form and format requested by the applicant.
16. The Commissioner notes that the Council makes this type of information routinely available via its website. However, the complainant has stated that she would willingly access it this way but is unable to do so as she originally believed the problem was that the Council's planning portal website was not configured to work with Apple devices, hence her request for the information in hard copy format.
17. However, the Council subsequently informed the complainant that its technical staff have confirmed that the public access system for viewing planning applications has been configured to work with all operating platforms, including Apple, and this is routinely tested by the Planning Team. Further, the officer dealing with the request had successfully accessed the system in question from both their own Apple and Android mobile devices.
18. The complainant subsequently associated the problem with the tracking blockers on her device and stated that she believed they may be picking up the Council's trackers and further stated that she had not encountered problems accessing any other Council's files.
19. Throughout its various correspondence with the complainant, the Council has maintained its initial refusal to supply the information in hard copy format on the basis that it was not reasonable or practicable to do so. However, the Council has repeatedly offered to make the

information available to the complainant for inspection at its USK Head Quarters or at one of its Hubs. The complainant however considers this a waste of resources and has not taken up this offer having stated in her request for an internal review that the Council's response lacks consistency since it had sent the information in respect of her original request in hard copy format.

20. The Council did acknowledge to the complainant that there had been inconsistencies in the past with some documents having been issued in print format as a goodwill gesture even though they were publicly available online. It has further stated that it cannot sustain this level of resource and costs going forward therefore in order to ensure consistency for all future FOI/EIR requests, it will operate the following policy:
 - (a) *"It will consider any requestor who has a particular circumstance that might mean they cannot access the portal, visit the HQ Usk or a HUB and will consider the reasonableness of the request on a case by case basis, taking into consideration any factors that prevent the requestor from accessing the information. Where we determine that the information is freely available to the requestor we will apply the exemption under section 21 of the Freedom of Information Act 2000 or state why we have not made the information publicly available under the EIR.*
 - (b) *It will be consistent with the application of the regulations and not offer a printing service as a goodwill gesture.*
 - (c) *Where a requestor wants a document printed or sent by email we will consider the reasonableness of the request and document the decision."*
21. Again, the Commissioner would wish to highlight in relation to point (a) that a public authority cannot rely on an exemption from a different piece of legislation as referred to in more detail in paragraph 13 of this notice.
22. The Council has further argued that several other solutions have been offered to the complainant although she had not taken up any of the offers.
23. These included the Council suggesting to the complainant that if she could confirm the specific documents she has been unable to access, further tests could be undertaken for those documents to ensure that any hyperlinks were not broken.
24. However, the complainant informed the Council that as she has no access to the Council's files she would not know what to ask for.

25. The Commissioner considers that both the complainant and the Council have entrenched positions and either the complainant could take the Council up on its offer to view the information at one of its premises or the Council could have made the information available to the complainant in hard copy format as it had done previously. However, she also notes that the whilst the Council has done this on a previous occasion, it is within its rights to adopt a more consistent approach going forward. Additionally, she is not aware of any barrier the complainant would encounter to viewing the information at one of the Council's premises and has therefore concluded that the Council has complied with regulation 6 of the EIR.

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: 0300 1234504

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

**Catherine Dickenson
Senior Case Officer
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Wycliffe House
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