

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 14 November 2022

Public Authority: Ceredigion County Council
Address: Penmorfa
Aberaeron
SA46 0PA

Decision (including any steps ordered)

1. The complainant requested various information in respect of Ty'r Ffynnon, a property within the boundaries of Ceredigion County Council ('the Council'). Following the Commissioner's investigation, the Council reconsidered items 1, 2, 3 and 9 of the request under the Environmental Information Regulations 2004 ('the EIR'). It applied regulation 12(4)(b) (request manifestly unreasonable) in respect of item 3, and maintained its position that it did not hold information relevant to items 1, 2 and 9 of the request.
2. The Commissioner's decision is that if any information is held in respect of items 1, 2 and 9 of the request, that it is the complainant's own personal data. Similarly, information in respect of item 3 of the request would also be the complainant's own personal data. He has therefore, used his discretion to consider whether the Council is entitled to rely on regulation 5(3) of the EIR to refuse to provide the requested information.
3. The Commissioner's decision is that the Council is entitled to rely on regulation 5(3) to refuse to provide the requested information. He does not require the Council to take any steps.

Request and response

4. On 27 March 2021, the complainant wrote to the Council and requested the following information:

"Q1. A copy of the local searches as provided to [name redacted] upon my purchase of Ty'r Ffynnon which completed in January 2013.

- Q2. A copy of the planning file on Ty'r Ffynnon – including anything relating to the campsite – from the year 2000. Include all letters, emails, submissions and notes.
- Q3. A copy of all emails, letters, notes and reports, enforcement officer actions, emails, letters, notes and reports and any other correspondence relating to, or referring to Ty'r Ffynnon since 2000; and in particular, the campsite or camping ground.
- Q4. A copy of Ceredigion County Council's policy on Campsite and Caravan site permissions, whether planning approved or 'established use'.
- Q5. A copy of the document outlining the criteria for, and types of, permissions for Touring Caravan Parks, Campsites and Camping Grounds in Ceredigion, eg, Full Planning or 'Established Use'.
- Q6. A full list of all Touring Caravan Parks, Campsites and Camping Grounds in Ceredigion.
- Q7. A copy of each and every National Non Domestic Rates Notice for Ty'r Ffynnon &
- Q8. A list of all National Non Domestic Rates Notices for Touring Caravan Parks, Campsites and Camping Grounds in Ceredigion.
- Q9. Details of all instances and of all information shared with outside agencies and/or individuals in relation to Ty'r Ffynnon and the campsite; in particular, in relation to permissions or restrictions."
5. The Council responded on 24 August 2021. It stated that it does not hold relevant information in respect of items 1, 2 and 9, it provided information in relation to items 4, 5 and 6 of the request, and a small amount of information in respect of item 3. It refused to provide information relevant to items 7 and 8 of the request citing section 40 FOIA.
6. Following an internal review the Council wrote to the complainant on 5 November 2021. It upheld its position that it does not hold information in respect of items, 1, 2 and 9 of the request, it now cited section 12 in respect of item 3, upheld its decision to refuse items 7 and 8 on the basis section 40 FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 8 November 2021 to complain about the way their request for information had been handled. They were not satisfied with the Council's decision that it does not hold

relevant information in respect of items 1, 2 and 9 of their request, its reliance on section 12 FOIA in respect of item 3, or its application of section 40 regarding items 7 and 8 of their request.

8. Following the Commissioner's investigation, the Council re-considered the request under the EIR. It cited regulation 12(4)(b) for item 3 of the request and provided the information relevant to items 7 and 8 it had previously withheld on the basis of personal information.
9. The complainant has subsequently confirmed that they are now satisfied with the Council's response in relation to items 7 and 8 of their request but remains dissatisfied with its response in respect of items, 1, 2, 3 and 9 of their request.
10. The following analysis will determine whether the requested information is the complainant's personal data and therefore, exempt from disclosure under regulation 5(3) (personal information) of 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. Although the Commissioner has not seen the requested information, he considers that planning and changes to the use of the land is a 'measure', as defined by regulation 2(1)(c), which is likely to affect the elements of the environment referred to in regulation 2(1)(a), namely land and landscape. As the request relates to planning, local searches and the use of the land, the Commissioner considers that the request would fall to be considered under the EIR.

Regulation 5(3) – personal information

13. The duty to make environmental information available on request is imposed by regulation 5(1) of the EIR. Regulation 5(3) provides that regulation 5(1) does not apply to information that is the personal data of the requester.
14. The Commissioner has first considered whether any of the requested information is the personal data of the complainant. If it is, the EIR does not require the Council to disclose this information.
15. Section 3(2) of the Data Protection Act 2018 (DPA) defines personal data as:

"any information relating to an identified or identifiable living individual."
16. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
17. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
18. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
19. In this case, the complainant has requested information relating to a property in their ownership. By way of background, the complainant purchased the property in January 2013 and was informed that it was a single banded property in Band E with no restrictions. Shortly after purchasing the property, the complainant was informed that there was a holiday

holiday let restriction on the cottage attached to the property and that the Council's Senior Enforcement Officer was dealing with a planning issue with the previous owner.

20. As the complainant noted at the time, this had implications for the value of the property. Attempts to resolve the issue with the Council continued. Then in late 2015, an issue over Council Tax re-banding came to light based on historical usage of the property.
21. Based on the above, it is clear that not only the information from the date the complainant purchased the property in January 2013 would be biographically significant to the complainant, but as information held prior to this date is having a direct bearing on both the value of the property and the rate of Council Tax, that this would also be biographically significant to the complainant and therefore constitute their own personal data.

Other matters

22. Although they do not form part of this decision notice the Commissioner wishes to highlight the following matters of concern:

Correct access regime

23. Article 15 of the GDPR gives an individual the right to request copies of personal data held about them – this is referred to as the right of subject access. Although the Commissioner has not viewed the information in question, he is satisfied that it constitutes personal data relating to the complainant.
24. In the Commissioner's opinion, responsibility for applying exemptions and determining whether a request should be considered under the FOIA, EIR or the DPA rests with the public authority and not the requestor. The Commissioner encourages public authorities to consider requests under the correct regime in the first instance. In this case the Council should have instigated its own procedures for handling subject access requests much earlier in its dealings with the complainant. Ideally, this should have been at the time it received the request.
25. The approach of the Commissioner where a request is made for information which is the requester's own personal data is that the public authority should deal with the request as a subject access request. This action should be taken without it being necessary for the requester to make a further request specifying article 15 of the GDPR.

26. The Commissioner therefore recommends and expects the Council to now consider whether the information requested, which is exempt from disclosure under regulation 5(3) of the EIR, could be disclosed to the applicant in accordance with its obligations under article 15 of the GDPR.

Right of appeal

27. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.
29. 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
Information Commissioner's Office
Wycliffe House
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