

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 19 December 2022

Public Authority: Rhondda Cynon Taf County Borough Council

Address: The Pavillions
Cambrian Park
Clydach Vale
Tonypany
CF40 2XX

Decision (including any steps ordered)

1. The complainant has requested from Rhondda Cynon Taf County Borough Council (the Council) information about coal tips. The Council withheld the information under regulation 12(4)(d) of the EIR – material which is still in the course of completion.
2. The Commissioner's decision is that the exception is engaged, however, the balance of the public interest favours the information being disclosed.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld information.
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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 21 November 2021, the complainant wrote to the Council and requested information in the following terms:

A) The list of all coal tips within the boundary of Rhondda Cynon Taf?

B) The name and locations of the 23 coal tips with category D within the boundary of RCT?

C) The name and locations of the 52 coal tips with category C within the boundary of RCT?

D) The name and locations of the 95 coal tips with category B within the boundary of RCT?

E) The name and locations of the 89 coal tips with category A within the boundary of RCT?

F) The name and locations of the 44 coal tips with category R* within the boundary of RCT?

G) How many coal tips is RCTC responsible for the name and locations and what category risk status are they?

H) How many coal tips are in private ownership the name and locations and what category risk status are they?

I) How many coal tips are The Coal Authority responsible for the name and locations and what category risk status are they?

Andrew Morgan Rhondda said work is being undertaken regularly to monitor and inspect coal tips for any movement or activity.

J) How regular are coal tips monitored and inspected, coal tips category D, category C, category B, category A and category R*?

K) How many surveyors and engineers are employed to monitor and inspect coal tips for any movement or activity in the 303 coal tips."

6. The Council responded on 21 December 2021. It provided some information within the scope of the request but refused to provide the remainder, citing regulation 12(4)(d) of the EIR as its basis for doing so.
7. Following an internal review the Council wrote to the complainant on 31 January 2022. It maintained its reliance on regulation 12(4)(d) to withhold the information at parts A-H of the request.

Reasons for decision

Regulation 12(4)(d) – material in the course of completion

8. Regulation 12(4)(d) of the EIR provides that a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.
9. The Commissioner is satisfied with the Council's explanation that data surrounding the coal tips within its boundaries continues to be gathered and verified, to feed into a document which is due to be released by the Welsh Government regarding all coal tips throughout the country. Whilst the Council had previously stated that the information was going to be published in the first quarter of 2022, the timeframe for publication has now been extended to Spring 2023. As such, the Commissioner finds that regulation 12(4)(d) of the EIR is engaged. He has therefore gone on to consider the associated public interest test.

Public interest test

10. In considering the public interest arguments in favour of disclosing the requested information, the Council stated:

"The Council accepts that there will always be a public interest in disclosure of environmental information to promote transparency and accountability of public authority decision making when it comes to issues such as coal tips. In particular, providing public awareness and understanding of environmental matters and important decisions around the safety of coal tips in a local authority area.

The Council also acknowledges that there has been more local interest over recent years due to landslides in the borough bringing concerns to residents and the public wanting to know locations of all coal tips in their local area."

11. In considering the public interest arguments in favour of maintaining the exception, the Council stated:

"The Council considers the public interest in maintaining this exception lies in the fact that the information is part of a document that is to be released by the Welsh Government and if the information were released before being accurate and verified it could be misleading to the public. That in itself could bring a high volume of calls and queries from the public requiring explanations once the information is released into the public domain. The Council feel that there is no public interest in hindering and distracting officers from completing the work by

answering queries from the public concerning any inaccurate information.

The balance of the public interest test in this case favours non disclosure, placing particular weight on the timing of the request in respect of its potential harm and distraction in the process of completing the final report of all coal tip data in Wales.

We feel that an earlier release of the incomplete material will result in inaccurate and incomplete information being disclosed prematurely, thus misleading the public and maybe causing confusion.

When the report is complete it will be published with supporting contextual narrative. The Council feel that it is not in the public interest to release the incomplete data prematurely. We believe the public interest would be best served if the information were released with the supporting contextual narrative rather than releasing the data without the narrative which could lead to confusion and error and could result in a raised number of public concerns/queries that could delay the publication of the report."

12. The complainant argued that they are not requesting anything to do with ongoing issues with the coal tips, rather they are seeking information which the Council already possesses. They further argued that to compile the list which states how many coal tips are within the Council's boundary they would already had to have known the location of each coal tip. Therefore, the information would not be misleading and it would not have to spend time explaining any decisions.

The Commissioner's conclusion

13. Regulation 12(2) of the EIR states that a public authority shall apply a presumption in favour of disclosure.
14. The Commissioner has considered both the Council's and the complainant's arguments, and in this case he is not persuaded that the public interest arguments which the public authority has put forward for withholding the information are sufficiently compelling so as to outweigh the EIR's presumption in favour of disclosure. The subject of coal tips is of great public interest, particularly given the history of dangerous incidents surrounding coal tips in Wales. That interest is further heightened for the residents of Rhondda Cynon Taf following the Tylorstown landslip which occurred in 2020. The Commissioner considers that it is of greater interest to the public to be aware of where these potentially dangerous sites are located, in order that the public may take appropriate measures to keep themselves safe, rather than to shield the

Council from having to answer any queries which may arise from the disclosure of the information.

15. The Commissioner, therefore, finds that the balance of the public interest favours disclosure in this case, and the Council should go ahead and disclose the requested information.

Right of appeal

16. 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

17. 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.
18. 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 Fletcher
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF