

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 20 February 2023

Public Authority: Lydney Town Council
Address: Council Chambers
Claremont House
High Street
Lydney
GL15 5DX

Decision (including any steps ordered)

1. The complainant requested information from Lydney Town Council (the Council) relating to a proposed "Greenway" path. The Commissioner issued a decision notice ordering the Council to respond. Following the decision notice, the Council provided a response to the complainant's request. The complainant has complained further to the Commissioner that the Council has not provided all the information it holds.
2. The Commissioner's decision is that the Council has provided the recorded information it holds within the scope of parts 1 and 2 of the request, however it is not clear whether the Council holds recorded information within the scope of part 3 of the request. Therefore the Commissioner finds regulation 12(4)(a) of the EIR is not engaged.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - issue a fresh response to part 3 of the complainant's request in accordance with the EIR.
4. The Council 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 25 July 2022 the Commissioner issued decision notice IC-169259-N7W2¹ ordering the Council to issue a substantive response to the following information request made on 26 March 2022.

"Due to the above ongoing concerns we would formally request that the following three questions are answered as an open government request under the Freedom of Information Act 2000.

- Question 1 - Please advise when and where the Public Consultation took place in Spring 2021, what format the consultation took, [bearing in mind Covid restrictions at that time] and when and where this was advertised?
- Question 2 - The letter states that following this consultation, there was an overwhelming level of support giving a clear mandate to recommend approval of the application and your duty is to represent the wishes of the majority of your residents. Please provide us with documentation supporting this claim especially in relation to the Norchard Link?
- Question 3 - The letter also states you have a responsibility to do what you can to mitigate anyone disadvantaged by the path, please advise what action Lydney Town Council have taken with regards to the upset caused to Doonaree and The Homestead residents?"

6. The Council issued its response on 15 August 2022, following clarification of the request– see annex to decision notice IC-169259-N7W2.

- For part 1 of the request it attached the Lydney Forward Report which it stated gives details of the format and dates. It also provided the newsletter that gave prior notice to the consultation.
- For part 2 of the request the Council stated that the results of the survey are provided in the Lydney Forward Report. The Council clarified that although the report was not specific to the Greenway

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021216/ic-169259-n7w2.pdf>

Project / Norchard link it showed clear support for improved walking and cycling facilities. That was the 'mandate' referred to.

- For part 3 of the request the Council responded stating that it is not the lead council and it is not a decision in its hands. But said it was content that consideration of the Greenway will be considered carefully by all the partner organisations, which it listed.
7. The complainant requested an internal review on 17 August 2022 as they did not consider that the Council had provided a sufficient response to the request.
 8. The complainant contacted the Commissioner on 31 August 2022 to state that they were not satisfied with the response received from the Council.
 9. The Council provided its internal review on the 21 September 2022. It determined that the request should be handled under the EIR and upheld its initial response. It did also provide links to the lead council's website where all publicly held information is available about the project.

Scope of the case

10. The complainant has contacted the Commissioner further to complain about the Council, specifically that the information requested has not been provided and about the timeframes it has taken to respond.
11. The scope of the case is for the Commissioner to determine whether the Council holds any further information falling within the scope of the request.
12. With regards to whether the Council has responded within the required timeframes, the Commissioner has already found that the Council breached regulation 5(2) of the EIR, in previous decision notice IC-169259-N7W2, as it did not respond to the request within the required 20 working days. He will therefore, in this decision notice with respect to response timeframes, only consider whether the Council provided its internal review response within the required timeframes.

Reasons for decision

Regulation 12(4)(a) of the EIR – Information held/ not held

13. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
14. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide the requested information if it does not hold it at the time of the request being received.
15. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
16. The complainant has told the Commissioner that they need clarification on the information provided, however the Commissioner has explained to the complainant that a public authority is not required to create new information in order to provide explanations or clarification to satisfy a request. It only has to provide the recorded information it holds.
17. It is also not in the Commissioner's remit to determine how a public authority chooses to interpret information it holds.
18. The Council's position is that for part 1 and 2 of the request the Lydney Forward Report contains the majority of the recorded information held by the Council. The remaining is in the provided newsletter.
19. It states it is not the lead authority on this matter, and it has used and interpreted this report to make the statements it made within the letter referred to in the complainant's request.
20. It has explained that West Dean Parish Council is leading the Greenway Project and the route of the Greenway is the subject of a planning application that will be determined by Forest of Dean District Council.
21. The Commissioner on review of the responses to parts 1 and 2 of the request, is satisfied that, on the balance of probabilities, the Council has provided the information it holds falling within the scope of parts 1 and 2 of the request.
22. For part 3 of the request, the Council's response is that it is not the lead council and so it is not in its hands. The Commissioner has reviewed the

responses to the complainant and although the Council has given explanations around which organisation is mainly responsible for the Greenway, it is not clear, in its response to the complainant or in its response to the Commissioner's enquiries whether it actually holds any recorded information within the scope of this part of the request.

23. As it is not clear whether the Council holds any recorded information falling within part 3 of the request, the Commissioner finds that regulation 12(4)(a) of the EIR is not engaged.
24. The Commissioner therefore requires the Council to issue a fresh response to part 3 of the complainant's request clearly stating whether or not it holds any recorded information -within the scope of what has actually been requested and if so either provide the recorded information or issue a valid refusal notice under the EIR.

Regulation 11(4) of the EIR - Timeframes for providing an internal review

25. Regulation 11(4) of the EIR requires a public authority to carry out an internal review within 40 working days following receipt of a request for one to be carried out.
26. In this case the complainant requested an internal review on 17 August 2022 and the Council provided it on 21 September 2022. This is inside the required 40 working days.
27. The Commissioner finds that the Council complied with regulation 11(4) of the EIR.

Other matters

28. When responding to requests for information, it is important that a public authority clearly states whether or not the specific information being requested is held or not. The Council's response to part 3 of the request provides an overview and explanations to the complainant, but it is not clear as to whether it actually holds recorded information or not within the scope of this part of the request.
29. It may be beneficial for the Council, when responding to future information requests, to take note of this and ensure it clearly states whether the requested information is actually held or not before either providing it or issuing a valid refusal notice.

Right of appeal

30. 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

31. 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.
32. 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

Victoria James
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF