

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 27 June 2024

**Public Authority:** Rhondda County Borough Council  
**Address:** The Pavillions  
Cambrian Park  
Tonypany  
CF40 2XX

#### **Decision (including any steps ordered)**

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1. In two separate requests, the complainant asked for various information in relation to health concerns posed by geese at Aberdare Park. Rhondda Cynon Taff County Borough Council ('the Council') provided a response to most items of the requests, and confirmed that it did not hold information in respect of two items of request one.
2. The Commissioner's decision is that the Council does not hold relevant information in respect of the water tests of the lake or risk assessments and method statements regarding public health concerns posed by the geese. However, the Council has failed to demonstrate that it has provided all relevant information in respect of some items of both requests.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - In respect of request one – reconsider its response to the operation and maintenance of the boats and either provide additional information or confirm that no additional information is held.
  - In respect of request two –
    - (a) confirm whether it holds reports relating to the response from the Public Health Team in respect of the Hygiene rating of the

cafeteria, and correspondence to and from Natural Resources Wales in relation to public health concerns regarding the geese, and either disclose the information or cite a valid exception.

- (b) Revisit its response to the request in relation to the cleaning of the playground and the running and installation costs of the aeration system in the lake, and either provide additional information, cite a valid exception under the EIR or confirm that no additional information is held.

- 4. The Council must take these steps within 30 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 one and response**

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- 5. On 24 July 2023, and as part of a broader complaint to the Council, the complainant requested the following information regarding cleaning at Aberdare Park:

"...the contamination of the park's lake, exacerbated by recent rainfall, requires regular monitoring and testing. Therefore, I request access to the results of water tests conducted over the past two years...."

Additionally, I seek clarification on the practice of power washing footpaths around the park lake...

Moreover, in compliance with the Public Health (Wales) Act 2017, I would like to enquire about the Council's efforts to enforce smoking restrictions within Aberdare Park, specifically in designated areas such as public playgrounds. I would appreciate information on the implementation of the relevant signs to indicate smoking free zones within the park, as well as any actions taken to prevent smoking within 5 meters of play equipment, as specified in Section 8 of the Act.

...I kindly request copies of Risk Assessments, COSHH details, and Method Statements pertaining to the cleaning of goose excrement from paths, grassed areas, the boating lake, as well as the operation and maintenance of boats and the splash pad.

Lastly, I seek clarity on the discharge point of the boating lake water, whether it flows into a culvert leading to an open watercourse, storm drain, or foul sewer."

6. The Council acknowledged the complainant's letter on 26 July 2023. It informed them that it had passed the request to its Freedom of Information Team ('the FOI Team') in order that it could co-ordinate a response to their email. It also informed the complainant that it would pass all correspondence between themselves to the FOI Team so that it could see the exchange of information to date.
7. Not having received a substantive response, the complainant requested an internal review on 25 August 2023.
8. Following an internal review, the Council wrote to the complainant on 2 October 2023. It confirmed that it did not hold information in respect of water tests on the lake and risk assessments and method statements in respect of health concerns posed by the geese. It also provided a response to the remaining items of the request.

### **Request two and response**

9. On 7 October 2023, the complainant wrote to the Council's Chief Executive in respect of concerns regarding the cleaning and hygiene at Aberdare Park. The correspondence contained the following requests for information:

"Can you explain how the public health department has awarded a 5-star rating to the Aberdare Park Café? I understand the Council Public Health Team has been made aware of the issue relating to the mess made by the geese and its potential impact. Can I have a copy of the reports relating to the response of your Public Health Team?"

... on 6 July I was informed "Currently Aberdare Park staff are power washing the area twice a week and brushing on a daily basis to try to keep the areas clean" HSE method – prevent any dust from getting into the air by wetting down the work area. Do not use high-pressure washers as this creates contaminated airborne droplets.

What methods are now being used to clean grass and tarmac areas soiled with goose droppings?

What methods are being used to clean and sanitize play area equipment from contaminated hazardous waste goose droppings?...

The council has introduced aeration systems within the lake why was this introduced what did it cost to purchase and install and the daily running cost?...

I am informed that the council has used chemical aquatic herbicides in the lake to treat algae what algaecides were applied and how often is this procedure carried out?

I am informed that you have been in contact with NaturalResourcesWales with reference to your public health problem with geese; can I have copies of all correspondence in relation to questions asked and answers received from Natural Resources Wales?..."

10. The Chief Executive of the Council acknowledged the request on 10 October 2023. Having not received a substantive response, the complainant contacted the Council on 6 November 20213 and requested an internal review.
11. The Chief Executive responded to the complainant's correspondence on 30 November 2023 including a response to the complainant's requests detailed above. It also provided a response to certain items in request one which had either not been previously responded to, or where more detailed information was considered appropriate.
12. The complainant contacted the Council on 1 December 2023 expressing concerns that they had received incomplete responses to their requests of 24 July 2023 and 7 October 2023 and had not received copies of requested documents.
13. On 12 December 2023, the Council contacted the complainant requesting full details of the issues they considered outstanding so that they could be considered accordingly.
14. The complainant responded the following day, expressing their reluctance to reiterate information already provided to both the legal department and the Chief Executive.
15. The Council responded on 14 December 2023 and repeated its request for the complainant to provide details of what issues they considered outstanding. It added, without those it was not possible to provide an appropriate response.

### **Scope of the case**

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16. The complainant contacted the Commissioner on 30 December 2023 to complain about the way their requests for information had been handled. The complainant considers that the responses are incomplete, and is not satisfied that they did not receive copies of the requested documents.
17. The complainant is also concerned that the Council has confirmed that it holds no recorded information regarding risk assessments or method statements for the removal of goose excrement and considers it raises

doubts regarding the Council's compliance with essential Health and Safety regulations.

18. The Commissioner would point out that his remit does not extend to a consideration of the Council's compliance with Health and Safety regulations. This will not therefore form part of his investigation.
19. The scope of the Commissioner's investigation is to consider whether the Council has complied with the requirements of regulation 12(4)(a) of the EIR to provide information it holds in respect of water tests on the lake and risk assessments and method statements in relation to health concerns posed by geeset. He will also consider whether the Council has complied with its obligations under regulation 5(1) of the EIR to provide all relevant information it holds in respect of all other items of the requests.

## Reasons for decision

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### **Regulation 12(4)(a) –Information not held at the time of the request**

20. Regulation 12(4)(a) of the EIR says that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
21. In scenarios where there is some dispute between whether the public authority holds relevant information, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
22. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
23. The Commissioner asked the Council for details of its search. The Council informed the Commissioner that no searches were carried out. It added that:

"Both the Council's Head of Leisure, Sports & Parks and the Parks Operations Manager were contacted to see if they held any recorded information relating to [name redacted] request. No searches were necessary as both officers would already be aware if the information were held as they would be involved and provide approval for such actions to take place, i.e. water testing, risk assessments etc."

24. The Commissioner notes that in its response to the complainant's first request, the Council confirmed that it did not hold information in respect of water tests on the lake, risk assessments, COSHH (Control of Substances Hazardous to Health) details and Method Statements. In order to determine whether the Council has complied with regulation 12(4)(a) he has considered its response to the water tests of the lake separately from the risk assessments and Method Statements.

#### Water tests of the lake

25. The complainant requested water tests of the lake at Aberdare park conducted over the last two years, however, the Council informed the complainant that no tests had been conducted over this time period.
26. The Council confirmed that it had not undertaken any tests of Aberdare Lake, although water 'levels' are periodically inspected and maintained. It added that water quality checks are carried out annually by Welsh Water but the Council is not made aware of the results of those checks.
27. The Commissioner has considered the Council's response to this item of the request. Although the complainant may have expected the Council to have conducted water tests of the lake, the Commissioner would not expect the Council to hold recorded information of tests which it has confirmed were not undertaken. Additionally, the Commissioner accepts that the Council does not hold the results of the annual water quality tests of the lake carried out by Welsh Water. On this basis the Commissioner is satisfied that the Council does not hold relevant information in respect of this item of the request.

#### Copies of Risk Assessments, COSHH details and Method Statements

28. The request for the above was in relation to the cleaning of goose excrement from paths, grassed areas and the boating lake.
29. The Council informed the complainant that no recorded information is held of risk assessments or method statements for removing goose excrement. It added that it was something that is currently being considered.
30. The Commissioner has considered the Council's response and its comments regarding its records management of information in respect of the park. He notes that although the Council stated that 'no search had been undertaken', it subsequently confirmed that it had contacted both the Council's Head of Leisure, Sports & Parks and the Parks Operations Manager to see if they held any recorded information.
31. The Commissioner only requires the Council to conduct a reasonable and proportionate search in respect of each item requested. In this case, the

Commissioner considers that the Council contacted its two most relevant individuals for details of information in respect of risk assessments and method statements regarding the cleaning of goose excrement from the various surfaces at Aberdare Park. He also considers that it is reasonable to assume that these individuals would be aware of any relevant risk assessments and method statements. The Commissioner has therefore concluded, on the balance of probabilities, that the Council does not hold relevant information in respect of this item of the request.

### **Regulation 5 – duty to make available environmental information on request**

32. Regulation 5 of the EIR requires that a public authority that holds environmental information shall make it available on request. This is subject to any exclusions or exceptions that may apply.
33. It is similar to regulation 12(4)(a) and involves an almost identical consideration as outlined in paragraphs 21 and 22 of this notice.
34. The Commissioner has considered the Council's response to each request, and each item of the requests separately:

### **Request one**

#### Smoking restrictions

35. The complainant wanted details regarding the Council's efforts to enforce smoking restrictions within the park, but specifically in designated areas such as the playground. They particularly wanted information regarding the implementation of relevant signs to prevent smoking within five meters of the play equipment.
36. In its letter of 2 October 2023, the Council informed the complainant that signs are placed on the entrance to the playground with regard to enforcement. It further informed the complainant that Park Rangers are required to approach the public and inform them of the non-smoking rules within public playgrounds. In the event that the rules are not adhered to, enforcement officers are asked to visit the area.
37. The complainant was further informed on 30 November that some signage in the park had been vandalised and removed, with new signage on order. With regard to monitoring, the Council confirmed that it is undertaken by enforcement officers and park staff do not undertake this role. It further confirmed that it was not aware of any issues relating to people smoking in these areas.
38. The Commissioner has considered the Council's response of 2 October 2023 above, and whilst it did not provide all relevant information it held

at the time of its response, he considers that the Council's more comprehensive response provided on 30 November 2023 means that it has now complied with this aspect of the complainant's request.

#### Operation and maintenance of boats

39. In respect of the operation of boats, the Council informed the complainant in its response of 2 October 2023 that boat maintenance is undertaken prior to the start of each season. The Council does not however appear to have provided any further detail regarding this item.
40. The Commissioner considers that it would not be unreasonable for the Council to hold more information in respect of this item of the request. For example, he would have expected to see details of what was involved with the boat maintenance, and how they were operated during the season. He is not therefore satisfied that the Council does not hold additional relevant information regarding the operation and the maintenance of the boats.

#### Operation of the splashpad

41. In relation to the splashpad, the Council confirmed in its letter of 2 October 2023, that testing for bacteria had been undertaken, all of which had returned a clear result.
42. In the letter from the Chief Executive dated 30 November 2023, the complainant was further informed that the splashpad was independently tested for bacteria in July and August and both tests results were completely clear of harmful pathogens.
43. During the course of the Commissioner's investigation, the Council provided a copy of the splashpad water test results.
44. The Commissioner is satisfied that the Council has now provided all information it holds in respect of this item of the request.

#### Discharge point of boating lake water

45. The complainant requested information in respect of the discharge point of the lake water. The Commissioner notes that the Council did not refer to this aspect of the complainant's request in its internal review of 2 October 2023. However, in the letter from the Chief Executive dated 30 November 2023, the Council confirmed that the water which is discharged from the lake is discharged into storm drains.
46. The Commissioner is satisfied that the Council has now provided all relevant information in respect of this item of the request.



## **Request two**

### Cafeteria

47. The complainant asked a number of questions in respect of the cafeteria. They wanted to know how the public health department had awarded it a 5 star rating, particularly as it was their understanding that the Council had been made aware of the issue relating to the mess made by the geese and its potential impact. They also requested a copy of the reports relating to the response of the Council's Public Health Team.
48. In the letter from the Chief Executive dated 30 November 2023, the complainant was informed that the cafeteria is inspected annually by RCT Food Hygiene Officers. It provided details of the areas inspected and confirmed that outdoor seating and eating areas do not form part of this inspection. It added that if evidence of any issues within the cafeteria area relating to geese or any other wild animal came to light, these would be investigated, and relevant action taken.
49. Having considered this response, whilst the Commissioner notes that the Council appears to have addressed the complainant's queries regarding the inspection and findings of the reports, it did not include any reference to the requested reports to either confirm they were held, or to cite a valid exception under the EIR for withholding. The Commissioner cannot therefore conclude that the Council has complied with this aspect of the request.

### Cleaning methods of grass and tarmac

50. The complainant requested details of the current methods used to clean the grass and tarmac areas soiled with goose droppings. They also requested copies of all correspondence in relation to the health problem posed by the geese between the Council and Natural Resources Wales (NRW).
51. The Council confirmed that the paths around the lake are blown every morning with a leaf blower to keep them clear. It added that a mini road sweeper cleans and scrubs around the lake twice a week with the waste being recycled in dedicated recycle bays at its depot. It further confirmed that the area around the café and the lake is jet washed weekly which is done outside of peak hours to reduce aerosol.
52. The complainant was further informed that the above methods are undertaken in line with the laid down risk assessments required for the activities. Additionally, discussions have taken place with NRW and RSPB, both of whom were currently unable to assist with the wild fowl

issues although the Council confirmed that discussions remained ongoing.

53. Having considered the Council's response, whilst the Commissioner is satisfied that it has provided an explanation in respect of cleaning methods at the park, the Council has made no reference to the complainant's request for a copy of the correspondence between itself and NRW in respect of the public health problem posed by the geese. The Commissioner is therefore unable to conclude that the Council has complied with this item of the request.

#### Cleaning methods of play area equipment

54. In respect of the complaint's request for details of cleaning methods of the play area equipment, in its letter of 30 November 2023, the Council confirmed that the cleaning of playground equipment and safety surfaces is undertaken by the Play Team. It further informed the complainant that in view of their concerns, they had been asked to undertake more regular inspections of the area and to report on the incidence of mess within the area in order that a more effective plan can be implemented if required.
55. Having considered the Council's response to this item of the request, the Commissioner would have anticipated some details of when and how the play area equipment is cleaned. He cannot therefore conclude that the Council has complied with its obligations to provide all relevant information in respect of this item of the request.

#### Aeration system in the lake and Algaecides

56. The complainant asked various questions regarding the aeration systems installed in the lake including why it was introduced and for details of their installation and running costs. They also requested various details of the algaecides, including how often the procedure is carried out.
57. The Council informed the complainant that three waterfalls had been installed in the lake in 2022 to circulate the water and improve oxygen levels. It added that the floating pump systems provided much needed aeration, with the consequent improvement in the water quality benefiting the fish.
58. The Commissioner notes that the Council did not make any reference to the installation or running costs of the aeration systems. The Commissioner is therefore unable to conclude that the Council has provided all relevant information in respect of this item of the request.

59. In respect of algaecides, the Council confirmed that the water is treated monthly with Lake Shadow, a natural look dye designed for large bodies of water to control algae and aquatic weed growth.
60. The Commissioner considers that the Council has provided a full response to this item of the request.

## **Procedural matters**

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### **Regulation 11 – Representations and reconsideration**

61. Regulation 11 of the EIR, concerns representations and reconsideration and regulation 11(4) states that a public authority:  
  
“...shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.”
62. The Commissioner notes that the complainant expressed dissatisfaction with the Council’s response to their second request for information on 1 December 2023. However, although there followed correspondence between both parties, the Council failed to undertake an internal review. The Commissioner has therefore recorded a breach of regulation 11(4) of the EIR.

## **Other matters**

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### **Request handling and interaction between both parties**

63. The Commissioner notes that the Council did not follow its standard request handling process in respect of the complainant’s second request for information, but was sent a response directly from its Chief Executive.
64. The Commissioner considers that if the Council had followed its standard request handling process it may have provided a more comprehensive response to this request for information.
65. The Commissioner also notes that although the complainant continued to express dissatisfaction with the Council’s responses to both items of their request, that the Council refused to consider the complainant’s concerns until the complainant provided full details of the issues they considered outstanding. However, for their part, the complainant expressed their reluctance to reiterate information already provided to both the legal department and the Chief Executive.

66. The Commissioner considers that neither response was helpful in terms of resolving the outstanding matters regarding the complainant's requests.

## **Right of appeal**

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67. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

68. 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.
69. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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