

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

Date: 8 June 2021

Public Authority: Causeway Coast and Glens Borough Council

Address: Cloonavin
66 Portstewart Road
Coleraine
BT52 1EY

Decision (including any steps ordered)

1. The complainant has requested information from Causeway Coast and Glens Borough Council ("the Council") relating to a certain property address. The Council provided the complainant with some of the requested information, however it stated that it did not hold the remainder.
2. The Commissioner's decision is that the Council on the balance of probabilities does not hold the remaining requested information. The Commissioner has also decided that the Council has breached regulation 14(2) of the EIR by not providing a refusal notice within the specified timeframe.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 2 July 2019 the complainant made the following request for information:

"As owner of the above property [address redacted]..... I request that you please address the following;

In your email you state, "*...that lime render was used, and that is what we specified, Lime Render...*". This is a vague response - I need to know:

The number of coats and method of application?

Please provide me with a copy of the specification referred to by you in your email of 31 May 2019, and by [Council staff member] in his email to [name redacted] dated 25 May 2017.

I have submitted an application for Grant Assistance to a Historic Building. You state, "*... that there is no link between your previous repair work...*" I believe there is.

I would like the colours of the proposed front repair and your repair (CC&tGBC's) to match. It is noted that in your repair, the render was not struck out in Ashlar style, with just horizontal lines and no verticals. I do not want to make the same mistake. Please provide a copy of the specification for the lime render finish so we can establish how this mistake occurred.

You state in your reply to [name redacted] that, "*...our small repair is less than 10% of the surface area...*" my advisor suggests the render replacement of your repair is considerably more than 10% of the surface area. Accordingly, please provide a copy of the specification that gives the quantities of the render specified in the tender documents of the "Lump Sum Contract" that your repair was carried out under.

Please confirm which of the options for render repair in, *RFI 207 dwg No, PP.01 – working drawing*, was decided on. Was it, option A: Partial re- plastering of wall, or option B: Re-plaster wall complete?

Please provide a copy of any variations/change orders to the contract where more, or less, re-plastering work was required than that specified in the contract.

Please provide a copy of the Certificate of Practical Completion.

Please give the date any retention held under the contract was paid.

I don't have any record of you contacting me as the owner of the above property to carry out works to the left side gable (your repair).

Did you seek my permission to carry out your repair?

The complainant followed that request up with a further request by letter on 4 July 2019, namely:-

"I ask again that you provide me with the specification for the re-plastering for options A and B, mentioned in, *RFI 207 dwg No, PP.01 – working drawing*, that was carried out under your contract.

Was the lime that was used hydraulic or non-hydraulic?

The strength of the lime in lime/ sand ratio for each coat?"

5. On 4 July 2019 the Council responded stating that it had already provided all information it held within the scope of the complainant's requests to a family member of the complainant who it believed to be the owner of the property. The complainant wrote challenging this and stating that she now authorised a specified individual to deal with the Council on her behalf.
6. On 27 August 2019 the Council again responded to the complainant stating that the Council was refusing to provide her with the requested information as it had previously been provided to a family member. On 5 September 2019 the complainant again challenged this response and sought an internal review of the Council's handling of her request for information.
7. The Council responded to this on 4 October 2019 stating that it acknowledged the complainant's rights under information rights legislation and that a response would be issued to her and/or the authorised individual as soon as possible.
8. The Council then responded further to the complainant stating that it held limited information against the complainant's specified property address and that therefore it considered that anything not held against that address was not held at all by the Council.
9. After receiving correspondence from the complainant, the Commissioner wrote to the Council on 27 April 2020 requesting that it provide the requested information to the complainant if it is held or apply an exemption under the EIR, as the Commissioner considered that the requested information was environmental. The Commissioner also recommended that, if the Council held information regarding the

complainant's property which it considered to be her personal data, it should provide her with the information as if under a SAR (Subject Access Request).

10. The Council wrote to the complainant stating that it was experiencing delays due to the current Covid-19 pandemic and would be in touch when it was in a position to respond to the Commissioner's letter.
11. Having not received a response to that or subsequent chaser letters, the Commissioner served an Information Notice on the Council on 10 December 2020 requiring it to respond.
12. The Council provided a response to the complainant's request on 15 March 2021 in which it provided some information relating to the property but stated that the remainder was not held by it. The complainant was not satisfied with that response and asked the Commissioner to further investigate.

Scope of the case

13. The Commissioner wrote to the Council on 12 May 2021 with several queries regarding its response.
14. The Commissioner has considered the Council's handling of the complainant's request.

Reasons for decision

Is the requested information environmental?

15. In determining the appropriate legislation, the Commissioner had regard for her own guidance:-

Regulation 2(1) of the EIR provides the following definition of environmental information:

"...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;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c);

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)."

16. In the circumstances of this case, the requested information is on a measure likely to affect the state of the elements of the environment described above. Decisions regarding grants and repairs to property would affect the land and surroundings in which the property is situated. The Commissioner has therefore decided that the requested information is environmental information and has considered it accordingly.

Regulation 5 of the EIR

17. Regulation 5(1) of the EIR states that:

"Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request."

18. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the

authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.

19. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
20. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the Council and other information or explanation offered by the Council which is relevant to her determination.
21. The Commissioner is sympathetic to the purpose of the complainant's requests, being for more explicit details of decision making by the Council in regard to issues that may be of concern to the community. It is possible that there are gaps in the documentation of decisions in this respect. However, it is not within the Commissioner's remit to investigate whether, or how, decisions should have been documented, or if due process was followed in making them, but rather to uphold the right of access to information that is recorded.
22. In responding the Commissioner's questions, the Council states that it holds no further information within the scope of the complainant's request other than that which it has already provided to the complainant. It informed the Commissioner that it had carried out e-mail searches of the e-mail accounts of all persons involved and that discussions took place with all persons connected or involved. An audit was also carried out to ensure that project documents requested on record have been forwarded. All mail correspondences were checked to see if they were in any way associated with the complainant's request.
23. The Council informed the Commissioner that, if information were held, it would be in the form of hard copies as well as in electronic format. The Council stated that, in addition to the electronic searches conducted, searches for hard copies & directories were conducted within the relevant service delivery areas concerned.
24. The complainant stated that the Council should hold a Certificate of Practical Completion for works having been carried out on the specified property. The Council informed the Commissioner that the works were considered Minor Maintenance Works, and therefore, a Practical

Completion Certificate is not required and is not held by the Council. The Council also refutes the complainant's claim that the maintenance works were carried out under a specific form of contract (NEC3) within the Council and therefore states that it does not hold any information in relation to that contract.

25. The Commissioner understands an underlying purpose of the requests from the complainant's perspective is to ensure that issues are considered and that decisions are made appropriately in the Council. However, the EIR are limited to giving the public the right to access information that is held, rather than any determination of what information *should* be held.
26. The Commissioner has found no evidence that information exists that is being withheld. Having considered the Council's responses, and in the absence of any evidence to the contrary, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any further information within the scope of the requests.
27. The Commissioner therefore considers that the Council complied with its obligations under regulation 5 of the EIR in respect of providing the complainant with information held by it/informing the complainant that such information was not held.

Procedural Matters

28. Regulation 5(1) of the EIR states that, subject to any exceptions, if held, environmental information must be made available on request.
29. Regulation 5(2) requires that the information be made available promptly, and in any event no later than 20 working days after the date of receipt of the request. Regulation 14(2) requires that refusal notices are also issued within that time frame.
30. As the Council did not provide a proper response to the complainant's requests until 15 March 2021, this was beyond the time frame required by regulation 14(2).
31. As a final point, the Commissioner would seek to remind the Council that there is an exception under regulation 12(4)(a) of the EIR for information which is not held by the public authority, so this should have been cited in the refusal notice.
32. The Commissioner is sympathetic to the issues experienced by the Council at this time with limited resources during the pandemic. However in providing this reconsidered response well after the original

request, and in response to the Commissioner's intervention via the service of an Information Notice, the Commissioner must conclude that the Council failed to issue its refusal notice within the stipulated timescales and thus breached Regulation 14 of the EIR.

33. As the refusal notice has been issued, no further steps are required from the Council.

Right of appeal

34. 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

35. 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.
36. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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