

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

Date: 9 December 2022

Public Authority: Wrexham County Borough Council
Address: Guildhall
Wrexham
LL11 1AY

Decision

1. The Commissioner's decision is that Wrexham County Borough Council ('the Council') does not hold the requested information about the location of any buried livestock and regulation 12(4)(a) of the EIR is engaged in that regard. However the Council breached regulation 9 and regulation 14 of the EIR which concern advice and assistance and refusing a request respectively.
2. The Commissioner does not require the Council to take any corrective steps.

Request and response

3. The complainant made the following information request the Council on 20 May 2022:

"I'm trying to find out if you have any information available on the location of livestock buried in Wrexham, due to Foot and Mouth, Anthrax and BSE, since your records began?"

The area I am interested in is surrounded by the following Roads, marked in yellow on the attached map:

From Cefn Road, Bryn Estyn Road, Erlas Lane, Redwither, on to Abenbury Road and then back up onto Cefn Road. I believe a lot of the land is part of the Cefn Park Estate.”

4. The Council’s final position was to uphold its “nil response” response to the request.

Reasons for decision

5. This reasoning covers whether, on the balance of probabilities, the Council holds recorded information within scope of the request and also covers procedural aspects of its handling of the request.
6. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information to the extent that it does not hold the information when it receives the request.
7. Regulation 9 of the EIR places a duty on a public authority to provide an applicant with advice and assistance if it is reasonable to do so.
8. Under regulation 14 of the EIR a public authority’s refusal must specify the reason(s) not to disclose the requested information including the exception on which it is relying.
9. The Council’s response to the request dated 15 June 2022 stated:
“I am writing to inform you that this is a nil response from Wrexham County Borough Council.”
10. The Council upheld this response in its internal review of 12 August 2022.
11. In answer to the Commissioner’s questioning, the Council advised that it had liaised with its Contaminated Land section who confirmed that the Council does not hold the requested information. That section advised that the [Animal and Plant Health Agency](#) may hold relevant information.
12. The Commissioner considers that the Council has consulted the relevant part of its organisation and has considered the matter to a satisfactory degree. On the balance of probabilities, he will accept that the Council does not hold the information the complainant has requested and is therefore entitled to rely on regulation 12(4)(a) of the EIR.
13. Although regulation 12(4)(a) is a qualified exception, the Commissioner’s position is that it is not necessary to consider the associated public interest test as to do so would be illogical; the public interest cannot favour disclosing information which is not held.

14. Regarding procedural matters, the Commissioner finds that the Council did not comply with regulation 9 of the EIR. It would have been straightforward for the Council to have referred the complainant to the Animal and Plant Health Agency when it responded to the request in June 2022. This advice and assistance would have potentially meant it was not necessary for the complainant to go on to exhaust the Council's internal review process or to submit this complaint to the Commissioner. The complainant may also have been able to access the information they are seeking a lot sooner.

15. Regarding regulation 14, the Commissioner considers that the Council's 'refusal' of the request is ambiguous and unhelpful – it is not clear what a "nil response" may mean. As it acknowledged in its correspondence to the Commissioner, the Council should have simply stated that it does not hold the requested information. It should have also stated that, as such, it was relying on regulation 12(4)(a) of the EIR.

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: 0300 1234504
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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Cheshire
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