

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

Date: 10 October 2012

Public Authority: Monmouthshire County Council
Address: County Hall
Cwmbran
NP44 2XH

Decision (including any steps ordered)

1. The complainant requested information about the removal of conifer trees sited on a particular piece of land. Monmouthshire County Council ('the Council') stated that it did not hold the information requested. The Commissioner's decision is that the Council did not hold the information requested. The Commissioner does not require the Council to take any steps.

Request and response

2. On 15 June 2012, the complainant contacted the Council in relation to conifer trees located on a piece of land in front of a particular property in Llandogo, and requested information in the following terms:

"Why do the Trees still remain on this area, after all this time?"
3. The Council responded on 15 June 2012 referring to a previous request for information the complainant had submitted to the Council in respect of the trees in question, which had asked "Why have they still not been removed?". The Council confirmed that its response to the original request (and subsequently confirmed in the internal review) was that the information was not held. The Council stated that the position remained the same. The Council also advised that, were any documents held relevant to the question, they would have been provided previously.

4. On 15 June 2012, the complainant requested an internal review of the Council's handling of the request. He stated that he did not recall receiving any information relating to why the trees had not been removed. Mr Law again requested that the Council "forward any documentation that explains why the trees have not been removed or any other different angle why they have not been removed".
5. The Council provided the outcome of its internal review on 18 June 2012 and re-iterated that it did not hold any information relevant to the request.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant did not make any reference to any specific areas of concern he had regarding the way that the Council handled his request.
7. The Commissioner wrote to the complainant on 24 September 2012 to confirm that the scope of his investigation would be to establish whether the Council held any information relevant to his request, and if so, whether any of that information should be disclosed.

Reasons for decision

Background

8. The Commissioner understands that the request in this case relates to a dispute about ownership of the piece of land on which the conifer trees are situated, which has been on-going for approximately 20 years, and was the subject of a court case in 1994. The complainant is acting on behalf of a resident who lives near the land in question and maintains that the piece of land forms part of the public highway, and as such it falls under the Council's responsibility. The Council maintain that the mapping referred to in the Court Judgment is insufficiently accurate to identify ownership of the land in question.
9. There has been significant correspondence over a period of several years between the resident living near the land (and third parties acting on her behalf including the complainant) regarding the matter of land ownership and the conifer trees planted on it. During the course of this request, the complainant has referred to specific items of correspondence, from 1992 which he believes confirms that the piece of land in question forms part of the public highway. He believes that this

demonstrates that the Council should have removed the trees in question at an earlier date.

10. The Commissioner has no role in the dispute regarding ownership of the land in question, or whether the trees in question should be removed by the Council. His remit in this case is to establish whether the Council has complied with the EIR in its handling of this request.
11. As referred to in paragraph 3 of this notice, the request in this case follows on from an earlier request for similar information submitted by the complainant. This earlier request was considered by the Commissioner in a decision notice he issued on 30 August 2012 under case reference number FER0445919¹. In that case, the request differed slightly in that it asked a number of questions about the trees in question, one of which was "Why have they still not been removed?".
12. When the Commissioner contacted the Council about this complaint, it confirmed that, as the request of 15 June 2012 was almost identical to part of the request considered in case reference FER0445919 its representations as to why the information requested is not held are the same for both cases. In reaching a view on this case, the Commissioner has therefore referred to his analysis in the earlier decision notice, at paragraphs 16 to 19.

Regulation 12(4)(a) – information not held

13. Regulation 12(4)(a) of EIR states that a public authority may refuse to disclose information to the extent that it does not hold that information when a request is received.
14. In cases such as this where there is some dispute as to whether a public authority holds information falling within the scope of the request the Commissioner has been guided in his approach by a number of Tribunal decisions which have used the civil standard of the balance of probabilities, i.e. whether on the balance of probabilities the Commissioner is satisfied that no further information is held.² In deciding where this balance lies the Commissioner will take into account the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering, where appropriate, any

¹http://www.ico.gov.uk/~media/documents/decisionnotices/2012/fer_0445919.ashx

² See *Bromley v Information Commissioner* [EA/2006/0072].

other reasons offered by the public authority to explain why the information is not held.

15. Therefore, the Commissioner will consider both:
 - the scope, quality, thoroughness and results of the searches and
 - other explanations offered as to why the information is not held.
16. The Council advised that it has never had any reason to hold any information about the trees in question. It does not hold any records to suggest that information relevant to the request has ever been destroyed. The Council confirmed that there is no business need for it to hold any information about the removal of the trees in question. No planning permission would have been required for the trees to be planted and as such no planning records exist. The Council also confirmed that it is not required to maintain the trees in question through any commitment, statutory or otherwise, for example as part of any highways maintenance programme.
17. In view of the background to this request, the Council advised that the only files which would have any realistic prospect of containing any relevant information about the trees in question would be ones relating to the land ownership dispute. These files are held within its Legal and Highways departments and the records consist of both paper and electronic files.
18. The Council confirmed that all manual records relating to the land ownership dispute were searched in order to identify any relevant information. In relation to electronic records, whilst they are stored within a searchable structure network, the Council's view is that it would have been difficult to identify all relevant search terms which would reliably identify any relevant information. As such, in relation to electronic records held, the Council considered the relevant folders and the documents within each folder. Any document which was considered to have any chance of containing any relevant information was opened and checked. The Council considered this to be a reasonable and proportionate search, given the background and the fact that there was no reason why the Council would hold the information requested.
19. After considering all the information before him, the Commissioner is satisfied that, on the balance of probabilities, the Council does not any information relevant to the request.
20. Regulation 12(1)(b) of the EIR requires that all exceptions, including regulation 12(4)(a), are subjected to a public interest test. However, it is not possible for the Commissioner to carry this out given his finding

that the Council does not hold the information to which the public interest could apply.

Right of appeal

21. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

22. 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.
23. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF