

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

**Date:** 30 April 2013

**Public Authority:** Perranzabuloe Parish Council  
**Address:** Chyanhale  
Ponsmere Valley  
Perranporth  
TR6 0DB

**Decision (including any steps ordered)**

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1. The complainant has requested information in relation to a Dog Control Order ('DCO') on Perranporth beach. The Commissioner considered that the request should have been handled under the Environmental Information Regulations 2004 ('the EIR') and has decided that, on the balance of probabilities, no further information exists in relation to point 1 of the request but the council has not provided an adequate response to point 2 of the request in accordance with the EIR.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - In relation to point 2 of the request, the Commissioner reminds the council of its obligations under regulation 5(1) of the EIR and requires that the council issues a fresh response under the EIR.
3. The public authority 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 the Act and may be dealt with as a contempt of court.

**Request and response**

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4. On 26 July 2012 the complainant made the following request for information via the 'WhatDoTheyKnow' website:

"1. How many people contacted the council to oppose the Dog Control Order enforced on Perranporth beach, prior to its introduction.

2. How many people have contacted the council since the introduction of the DCO, to complain about its introduction."

I do not need names, obviously, and neither am I requesting copies of the information. Just numbers will be fine, thank-you."

5. The council responded on 16 August 2012 stating that it does not have statistical figures from the hundreds of letters, emails and pro-forma's which were received and that the only figures the council has were included in the report which the complainant was sent on 2 August 2012.
6. The complainant expressed dissatisfaction with the response on 16 August 2012 and 6 September 2012. The council responded on 12 September 2012 stating that it had conducted an internal review and it did not collate any numbers after the report was produced and that the only statistical figures collated were in the report which had been provided.
7. The complainant replied to the council on 12 September 2012 stating that it had misunderstood what she was asking and that she would like the original figures for the number of supporters and objectors to the DCO before the working group put together their report. She also queried the use of the term 'pro-forma' in relation to the figures in the report.
8. On 5 October 2012, a councillor replied to the complainant stating that it has about 2200 letters because 'the post bag continued to grow after the working groups proposals' but to collate the information from those letters would take the request over the limit for the cost of compliance. The council also stated that, in this instance, 'pro-forma' means 'that they came from the same source or had the same format'.
9. There is additional correspondence on this matter on the 'WhatDoTheyKnow' website. The Commissioner is aware that some of the correspondence refers to an earlier related request and has only detailed those most relevant to the handling of this request.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 1 October 2012 to complain about the way her request for information had been handled.

11. As the Commissioner considered that the request should have been handled under the EIR, he has considered whether the council has complied with its duty under regulation 5(1) to make available the information it holds.
12. Although the council appeared to apply the exemption for the cost of compliance to the request in its correspondence with the complainant on 5 October 2012, the Commissioner has not considered this because it has not been referred to by the council during the Commissioner's investigation.
13. On 28 February 2013, the complainant informed the Commissioner that she was also unhappy with the response received to a request made to the council on 19 June 2012 for copies of the 18 reports used as a basis on which to introduce a DCO on Perranporth beach (referred to in paragraph 9). That request has not been considered as the complainant confirmed via 'WhatDoTheyKnow' on 2 August 2012 that the request was completed and re-confirmed this to the Commissioner during a phone call on 18 March 2013.
14. In correspondence to the Commissioner, the complainant has alleged that the entire consultation process was rigged by two out of three councillors who sat on the 'Dog Control Order Implementation Working Group'. She believes that the council did all they could to try and reduce the number of complaints against the DCO which she believes was brought in for all the wrong reasons and not because there was actually any real problem with dogs on the beach. The complainant also alleges that a councillor has made threats to increase the size of the DCO zone and the length of time it is in place each year if any more members of the public make further FOI requests to the council. The Commissioner has not commented on or considered these allegations as it is not within his jurisdiction to do so.

## **Reasons for decision**

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### **Is the information environmental?**

15. Environmental information must be considered separately under the terms of the EIR. Regulation 2(1)(c) of the EIR provides that information on plans, activities, measures etc. affecting or likely to affect the elements of the environment will be environmental information. One of the elements listed is land. The Commissioner has considered the purpose of an exclusion of dogs on beaches. It is clear that at least in part, the DCO is intended to protect against individuals being exposed to dog faeces and urine on the beaches. It is clear that allowing dogs on to the beaches affects the land. In the Commissioner's view, the use of the

word 'on' indicates a wide application and will extend to any information about, concerning, or relating to the various definitions of environmental information. He therefore considers that the information should be considered under the EIR.

### **Duty to make available environmental information on request**

16. 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."

17. Point 1 of the request in this case asked for 'How many people contacted the council to oppose the Dog Control Order enforced on Perranporth beach, prior to its introduction'. The complainant clarified to the council that she wanted the original figures for the number of supporters and objectors to the DCO before the working group put together their report.

18. As the council issued a proposed DCO for formal consultation between 8 January 2011 and 10 February 2011, the Commissioner considered that the request was likely to relate to the number of people who contacted the council during this consultation period. However, he was also aware that the request may relate to the number of people who contacted the council during and before the consultation period. He therefore contacted the complainant to establish exactly what figures the request was seeking and on 18 March 2013 the complainant confirmed that she was requesting the number of supporters and objectors during the consultation period.

19. The council maintain that the figures requested are those within the working group report that the complainant has a copy of.

20. The Commissioner notes that the figures in the working group report total 1298. He therefore sought an explanation from the council as to what the 2200 pieces of correspondence that the council alluded to in correspondence with the complainant referred to. The council assured the Commissioner that the figure of 2200 quoted by a Councillor was an estimate made from the volume of paper in the files in the office but that those files also included 'various Defra papers and working group reports etc' which were not taken into consideration when the figure of 2200 was estimated. The council reiterated that the figures in the working group report relate to how many people contacted the council during the DCO consultation period.

21. The complainant has argued that as the working group report states that some of the figures are 'pro forma', the council must have 'original

figures' to hand and she believes that these would show that more than 1298 people contacted the council during the consultation period.

22. The council did not response to the Commissioner's request to explain exactly what the council meant by 'pro forma' in the working group report. However, the Commissioner notes that the working group report refers to a website/email 'pro forma' on the 'dogsloveperranporth' website which promotes keeping Perranporth beach dog friendly. When the complainant questioned the use of the term 'pro forma', the council explained that it may have been the wrong term but that it means that the representations came from the same source or had the same format. It stated that campaigners had put a standard format on the website for people to use and customise as they wished and that the working group noticed that some representations were of this same structure and called them by the term 'pro forma'.
23. The Commissioner has considered the complainants argument in relation to the term 'pro forma' and the council's explanation as to the use of the term and does not believe there is any reason to conclude that the use of the term 'pro forma' means that the figures quoted in the working group report must be understated. The council has confirmed that the figure of 1298 in the working group report is correct. The Commissioner considers that the figure of 2200 was an overestimation by a councillor made due to a lack of rigour in the handling of the request. He is satisfied that on the balance of probabilities, further information is not held by the council. Accordingly, he does not consider that there was any evidence of a breach of regulation 5(1) of the EIR in relation to point 1 of the request.
24. Point 2 of the request in this case asked for 'How many people have contacted the council since the introduction of the DCO, to complain about its introduction'. In its responses to the complainant, the council didn't specifically address this part of the request.
25. During a telephone call to the council on 14 March 2013, the Commissioner enquired whether the council had received complaints about the DCO since its introduction. The council responded that it had received correspondence since the introduction of the DCO, some complimenting the council, some saying the area should be decreased but that it would need to go through this correspondence to provide a complete answer. In an email to the Commissioner on 10 April 2013, the council stated that the Chairman has spent hours going through all of the correspondence received since the introduction of the DCO on Perranporth beach in 2011 and detailed the number of complaints against the DCO it had received.

26. Therefore in not providing the number of complaints received since the introduction of the DCO to the complainant in response to the request, the Commissioner considers that the council has breached regulation 5(1) of the EIR.

## Right of appeal

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27. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

28. 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.
29. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**