

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 16 June 2014

Public Authority: Powys County Council
Address: County Hall
Llandrindod Wells
Powys
LD1 5LG

Decision (including any steps ordered)

1. The complainant requested a copy of the Definitive Map for a particular area. Powys County Council ('the Council') refused to provide the information citing regulation 6(1)(b) of the EIR as it considered the information requested to be publicly available and easily accessible. The Commissioner's decision is that the information is publicly available and easily accessible, and therefore regulation 6(1)(b) is engaged. The Commissioner requires no steps to be taken.

Request and response

2. On 14 September 2013, the complainant wrote to the Council and requested information in the following terms:

"I would like to have a copy of the definitive map of the paths that we discussed. See below for the areas noted. A reasonable charge would be acceptable of course".
3. The Council responded on 26 September 2013 and advised that the Definitive Map was a public document and available to view at its officers in Llandrindod Wells. The Council explained that it was unable to provide an extract of the Definitive Map as it was "subject to copyright restrictions".

4. The complainant wrote to the Council again on 28 September 2013 stating that he wanted to "make a formal application for information from the definitive map". He requested information in the following terms:

"A plain paper colour copy at a scale of 1:10000 of the Definitive Map in the following area:

Area marked on the OS Explorer Map 216, crown copyright 2011 in the squares defined by 324000/301000 to 327000/303000 which is within the in the Powys county area.

To be clear, it is the area between Forden and Stockton including the farms of Ackley and Llettygynfach and all the footpaths in between. It also includes the Welsh side of the Access area of Gunley wood".

The complainant also stated that he wanted to "receive all the information available – including any diversion maps or addenda that may be held by the council and are needed to ensure that I am fully aware of the public rights of way in the area".

5. The Council issued a refusal notice on 18 October 2013 stating that it would be unable to provide a copy of the information requested, however it confirmed that the working copy of the Definitive Map was available to view at its offices in Llandrindod Wells.
6. On 22 October 2013 the complainant asked the Council to conduct an internal review into its handling of the request, and its refusal to provide relevant copies of the Definitive Map.
7. The Council provided the outcome of its internal review on 6 December 2013. It confirmed that it considered the request to fall under the provisions of the EIR. As the Definitive Map was available to view at its offices the Council stated that it considered regulation 6(1)(b) of the EIR to apply and, as such, it refused to provide a copy of the information requested.

Scope of the case

8. The complainant contacted the Commissioner on 13 January 2014 to complain about the way his request for information had been handled.
9. The scope of the Commissioner's investigation into this case is to determine whether the Council was correct to rely on regulation 6(1)(b) in relation to the information requested.

Reasons for decision

Background

10. As this case involves consideration of information held on a Definitive Map, the Commissioner has provided some background:

"A definitive map is a map prepared by a surveying authority which is a legal record of the public's rights of way in one of four categories (footpath, bridleway, road used as a public path or byway open to all traffic). If a way is shown on the map, then that is legal, or conclusive, evidence that the public had those rights along the way at the relevant date of the map (and has them still, unless there has been a legally authorised change)."¹

11. The Council advised the Commissioner that the requirement for a Definitive Map and statements was introduced by the National Parks and Access to the Countryside Act 1949. The legislation governing the compilation of Definitive Map and statements, their review and amendment has altered since; principally by the Countryside Act 1968 and the Wildlife and Countryside Act 1981. Section 57(5) of the Wildlife and Countryside Act 1981 sets out the Council's responsibility in terms of making the Definitive Map available for inspection and states that:

"As regards every definitive map and statement, the surveying authority shall keep –

- (a) a copy of the map and statement; and
- (b) copies of all orders under this Part modifying the map and statement,

available for inspection free of charge at all reasonable hours at one or more places in each district comprised in the area to which the map and statement relate and, so far as appears practicable to the surveying authority, a place in each parish so comprised; and the authority shall be deemed to comply with the requirement to keep such copies available for inspection in a district or parish if they keep available for inspection there a copy of so much of the map and statement and copies of so many of the orders as relate to the district or parish.

¹ <http://www.naturenet.net/row/definitivemaps.html>

12. The Council explained that the area it covers is the third largest land mass in Britain and, excluding the Brecon Beacons National Park area, involves approximately 8,155 kilometres of Rights of Way. The resulting Definitive Map involves over 300 sheets of A1 paper and is divided into the former county areas of Radnorshire, Montgomeryshire and Breconshire. The area referred to in the request in this case falls within the former county of Montgomeryshire.
13. The Council holds a definitive base document without modification details, and a single working copy which is kept updated and annotated with modification details. In relation to the area covered by the request in this case, this is an Ordnance Survey sheet SJ20SE, published in 1969. As legal orders can be made throughout the year, the Council advised that it is not possible to retain more than one working copy of the Definitive Map updated.
14. The Council advised that relevant copies of the Definitive Map are provided to third parties for specific purposes, for example landowners are provided with relevant copies covering the areas owned by them, in order that they understand and comply with rights of way on their land.
15. In 1969, following publication of the Definitive Map for the former county of Montgomeryshire, each community council in the area was provided with copies of each of the A1 sheets of the Definitive Map for their community area. These were provided for the purposes of being consulted in respect of planning applications, rights of way modification order applications and for viewing by members of the public. In addition, the Council provides community councils within its area with details of modification order applications as part of the consultation process. These consultation orders include the relevant extracts of the Definitive Map. However, with 110 community councils in its area, revised copies of the relevant areas of the Definitive Map are only reissued to community councils once they have gone through a formal legal process to lawfully update and republish them. Currently the Council advises that this happens once every few decades.
16. The Council is in the process of developing a digital interpretation of the Definitive Map from working copies it holds. However, each area has to be validated which involves checking legal orders made over the past four decades and adding or amending many thousands of paths. For the old Montgomeryshire county area alone, this involves checking against approximately 400 legal orders in detail. The Council envisage that once this work has been completed, the digital representation will be the Definitive Map, and so it can be republished, and eventually placed on

the Council's website, with relevant instructions in respect of copyright issues.

The relevant legislation

17. The Commissioner considers that the EIR, rather than the FOIA, is the relevant legislation in this case. The Commissioner considers that information about Public Rights of Way and information taken from the Definitive Map falls under the definition of a measure under regulation 2(1)(c) of the EIR. He therefore considers that the information requested in this case falls under the definition of environmental information set out in the EIR.

Regulation 6 – Form and format of information

18. Regulation 6(1) of the EIR states that:

"Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless –

(a) it is reasonable for it to make the information available in another form or format; or

(b) the information is already publicly and easily accessible to the applicant in another form or format.

19. In interpreting regulation 6 the Commissioner has considered Article 3(4) of Directive 2003/4/EC from which the Regulations are transposed. Article 3(4) contains the following wording: 'where an applicant requests a public authority to make environmental information available in a specific form or format (**including in the form of copies**)' (emphasis added) and goes on to say that a public authority shall make the information available unless it is already publicly available in another form or format or it is reasonable to make it available in another form or format.

The Council's position

20. The Council's position is that regulation 6(1)(b) applies to the request as copies of the Definitive Map are available to view at its offices in Llandrindod Wells.

21. Following the complaint to the Commissioner, the Council confirmed that it reviewed the matter in light of the Commissioner's revised guidance on regulation 6 issued in February 2014². In terms of the format of the information requested in this case, the Council confirmed that the Definitive Map and legal working copy are both in black and white. The annotations on the legal working copy are in colour. The scale of these two documents is at 1:10560. In his request for information of 28 September 2013 the complainant expressed a preference for "a plain paper colour copy at a scale of 1:10000". In light of this, whilst not exactly meeting the terms of the request, the Council considers that the legal working copy of the Definitive Map provides "relevant environmental information as effectively and as an equivalent to that requested".
22. The Council confirmed again that the information requested, whilst not on its website, is publicly available to view at its offices in Llandrindod Wells. It re-iterated that relevant copies of the Definitive Map are held by community councils, and again available to view in situ. The Council also confirmed that information on how members of the public can access the Definitive Map is published on its web pages³. In addition, the Council's publication scheme contains a section "Rights of Way, Advice about Definitive Map searches and modification orders" which provides a link to these details⁴.
23. In considering whether the information is reasonably accessible the Council considered the distances travelled within a rural area (like Powys) against those travelled in more urban areas. In addition, the Council referred to a previous decision notice issued by the Commissioner in case number FS50382240⁵. This case related to a request to the Council for a copy of the Definitive Map. The applicant in the case needed to travel a distance of 25 miles to view the information at Council offices. The decision notice states that "The authority's

2

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Detailed_specialist_guides/form-and-format-of-information-eir-guidance.pdf

³ <http://www.powys.gov.uk/index.php?id=1829&L=0>

⁴ <http://www.powys.gov.uk/index.php?id=5417&L=0>

⁵ http://ico.org.uk/~media/documents/decisionnotices/2011/fs_50382240.ashx

alternative provision of the information at its offices is publicly available and easily accessible to the applicant”.

24. As a result of its involvement with the complainant in this case, the Council is aware that the distance between his home and its offices in Llandrindod Wells is approximately 41 miles each way. In context, the length of the county of Powys from north to south is 110 miles. The Council also considered the distances people are required to travel for employment, shopping, visiting public libraries, doctors, hospitals etc within its area. The Council also stated that, in considering whether the information is reasonably accessible, it took into account the Aarhus implementation Guide⁶. Page 55 of this guide refers to access to environmental information and in terms of information being reasonably accessible, it states that a distance of 200km from an applicant's home “would probably not be a satisfactory response”. The Council is of the view that even if the distance an applicant had to travel was over 200km from their own home to view information in situ, this guide suggests that there could be circumstances where this is considered reasonable.
25. The Council advised the Commissioner that the complainant visited its offices in Llandrindod Wells on 18 October 2013 to view the relevant extract from the Definitive Map for the Forden area and to discuss related issues. During this visit, the complainant advised officers that he had visited that day as he was working in Rhayader, which is approximately 10.5 miles from the Council's offices. During the visit the complainant was provided with access to the legal working copy of the Definitive Map (which is annotated with details of modification orders made). In addition, the complainant was given access to view a copy of the digital interpretation as members of the public sometimes find this an easier document to view. However, officers explained that the digital interpretation is not a correct interpretation of the Definitive Map (as explained in paragraph 16). At this meeting the complainant was advised that the officer was not in a position to photocopy the relevant extracts of the Definitive Map, but the Council understands that the complainant took pictures of the relevant documents with his telephone.
26. In terms of the position regarding copyright, the Council confirmed that, as the legal working copy of the Definitive Map is based upon OS base data, copyright restrictions applied to the documents. This means that the Council is only able to provide A3 size copies of the A1 sized maps.

⁶ <http://www.unece.org/fileadmin/DAM/env/pp/acig.pdf>

Copyright restrictions would obviously then affect any recipient's ability to reproduce any information supplied. At his visit to the Council on 18 October 2013, the complainant was reminded of the copyright restrictions associated with the Definitive Map.

27. The Council confirmed that access to the Definitive Map has to be by appointment due to the very limited staffing resources it has. The Council covers a very large geographical area and it only has 1.6 Rights of Way officers, whose duties include the maintenance and continuous review of the Definitive Map, as a legal record. The Council advise that copying portions of the Definitive Map in response to general requests received would place an additional burden on what is already a very limited resource. The Council also advised that its budget position is well documented in the press⁷. As with many other local authorities a balance has to be achieved in the provision of its services against its budget position.
28. The Council recognises the need to strike a balance between increasing public access to environmental information and other factors such as:
 - the potential number of requests being made for copies of the Definitive Map, when in fact an OS map would provide the information requested,
 - the potential damage to legal working copies in providing regular copies of the Definitive Map. In some cases the documents are around 45 years old, and
 - the lack of resources available to produce copies as and when required for members of the public, taking into account officer time spent identifying the relevant extracts, copying and posting.
29. In summary the Council's position is that regulation 6(1)(b) applies as the information requested is publically available and easily accessible in a comparable format for the following reasons:
 - The specific format of information requested is not held because the Definitive Map is at a scale of 1:10560 and not 1:10000 as

⁷ <http://www.bbc.co.uk/news/uk-wales-mid-wales-26440456> ,
<http://www.bbc.co.uk/news/uk-wales-mid-wales-26321897> ,
<http://www.bbc.co.uk/news/uk-wales-mid-wales-25562414>

requested, nor is it in colour apart from the handwritten confirmed modifications. Therefore a colour copy at the scale requested could not be provided.

- The Council provides an opportunity for members of the public to physically inspect the Definitive Map at its offices. As Powys is geographically the largest county in Wales, this is inevitably going to require some travelling to inspect it, unless the applicant lives in or near to Llandrindod Wells.
- The Council also provides the ability for those requesting to see relevant extracts of the Definitive Map, to consult their local Community Council.

The complainant's position

30. In his complaint to the Commissioner the complainant re-iterated his preference for provision of a photocopy or scanned copy of the area of the Definitive Map in question as opposed to having to drive 80 miles to access/view the information. The complainant confirmed that he had visited the Council's offices but he advised that this involved a journey of 84 miles in total. He also had to pay for parking and wait for an officer to show him "out of date OS maps with incomplete information as to the rights of way on them". The complainant also said that at no time was he advised that he could photograph the maps. The complainant does not consider, therefore that the information can be properly described as being "easily accessible".

The Commissioner's position

31. The Commissioner notes that some of the information requested is held on the Council's electronic Geographical Information System (GIS). However, the data has not been fully verified and the Council is aware of errors and omissions contained in the information on the GIS system. In addition, as the data is stored on its GIS any user of the digital dataset would require GIS software of some kind to read it, and in addition would also need appropriate backdrop mapping - in this case the Ordnance Survey MasterMap data.
32. Although the information held on the Definitive Map is at a slightly different scale to that requested, and the information is primarily in black and white, the Commissioner accepts that the requested information is held on the Definitive Map and he has therefore considered whether it was reasonable for the Council to refuse to provide extracts in the form of copies.

33. The Commissioner considers that by requesting the information in the form of a copy the complainant has requested the information in a specific form and format. The Council's alternative provision of the information at its offices is publicly available and easily accessible to the applicant. The Commissioner notes the complainant's position in relation to the distance he lives away from the Council's offices, which might make inspecting the information requested more difficult for him. The Council has also countered the complainant's view by stating that he has visited its offices in the past and during a visit October 2013 it provided him the opportunity to inspect the relevant extracts of Definitive Map.
34. In terms of any discrepancy regarding rights of way shown on the Definitive Map, the Commissioner notes that the Council has explained to the complainant how it handles complaints from the public about an issue on a public right of way.
35. The Commissioner also notes that the Council has included the Definitive Map in its publication scheme, along with information on how to view it. The Commissioner's general view is that information will be reasonably accessible to the applicant, irrespective of their individual circumstances, if it is included in the public authority's publication scheme.
36. The Commissioner considers that the key point is that the information in this case is publicly available and the Council has explained to the complainant how he can access it. The Commissioner therefore considers that regulation 6(1)(b) of the EIR applies and the public authority is not required to make the information available in the form and format requested.

Right of appeal

37. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

38. 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.
39. 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
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