

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

Date: 12 January 2015

Public Authority: Cornwall Council
Address: County Hall
Treyew Road
Truro
TR1 3AY

Decision (including any steps ordered)

1. The complainant requested a report into the failure of a specific project called Tourism and Rural Access in Cornwall ("TRAC"). Cornwall Council ("the council") refused to provide the information, using the exception under 12(4)(d) of the Environmental Information Regulations 2004 ("the EIR"). This exception concerns information that relates to material that is still in the course of completion, unfinished documents or incomplete data. During the Commissioner's investigation, the council published the final report and disclosed a copy of the draft report held at the time of the request to the complainant. The Commissioner has found procedural breaches of regulation 5(2) and 14(2) of the EIR. He does not require any steps to be taken.

Request and response

2. On 13 May 2014, the complainant requested information from the council in the following terms:

"Report into the failure of the TRAC project (draft)"

3. The council replied on 25 June 2014. It confirmed that it held the draft report but it said that it was considered to be excepted under regulation 12(4)(d) of the EIR. The council said that it was not in the public interest to disclose the information.
4. The complainant requested an internal review on 27 June 2014.
5. The council completed an internal review. The copy provided to the Commissioner by the complainant shows the date of that review as 8 August 2014. It said that it wished to maintain its position. The council added that the report would be complete within the next four weeks and would at that time be available.

Scope of the case

6. The complainant contacted the Commissioner on 13 August 2014 to complain about the way his request for information had been handled. He complained to the Commissioner about the following issues:
 - Some of the information is not environmental
 - The council incorrectly withheld the draft report using the exception under 12(4)(d)
 - The council did not respond to the request itself or the request for an internal review within 20 working days
 - The council failed to state in its initial response when the finished document would be available and when it did provide the final report it was outside of the estimated time indicated and was dated 21 July 2014
 - The council's reliance on the exception was not genuine.
7. For clarity, the Commissioner did not consider that the final complaint had merit since the complainant did not present any persuasive evidence to support this allegation.

Reasons for decision

Regulation 2

8. Regulation 2 of the EIR describes the meaning of "environmental information" for the purposes of the EIR. It provides that any

information on activities affecting or likely to affect the land will be environmental information.

9. In this case, the complainant has questioned whether or not the council should have responded to the request under the EIR in its entirety. He said that although the information has been produced by the council's Environment Team, he does not consider that the report contains any "specific" environmental information other than references to the acquisition of land.
10. The Commissioner obtained a copy of the report from the council. He notes that the information relates to the TRAC project, another known as "CYCLE" and another called Caradon Hill Area Heritage Project ("CHAHP"). The first project concerned the creation of multi-use trails at Bude and Launceston together with enabling a 3km extension to the Launceston Steam Railway. The second concerned the creation of cycle routes, way-marking and the promotion of cycle touring. The final project concerned heritage works and the creation of a multi-use trail.
11. Having considered the information, the Commissioner did not agree with the complainant's assessment. The Commissioner has observed in many previous decision notices that he believes that regulation 2 should be interpreted broadly to cover any information relating to activities affecting the environment and it need not be restricted to information that discusses specific environmental impacts as suggested by the complainant. In the Commissioner's view, the council was right to consider the information under the terms of the EIR as all of the information relates to activities that would affect the land in the form of the projects discussed in the report.

Regulation 5(2)

12. Regulation 5(2) provides a general duty to make environmental information available within 20 working days. The complainant has complained to the Commissioner that the exception was not engaged at the time of his request. In this case, the council published the final report and provided a copy of the draft report that was held at the time of the request to the complainant during the Commissioner's investigation. In such circumstances, the Commissioner will not conduct an analysis of whether or not the exception was correctly applied. He will record however that the information was disclosed at a late stage and accordingly find a breach of regulation 5(2).

Regulation 11(4)

13. There is no statutory deadline for completing an internal review under the Freedom of Information Act 2000 ("the FOIA"). However, regulation

11 of the EIR provides that a public authority should notify a requester of its internal review decision as soon as possible and no later than 40 days after receiving the request for an internal review.

14. The complainant requested an internal review on 27 June 2014. The copy of the review provided to the Commissioner by the complainant shows the date of the review as 8 August 2014 however the council said in correspondence to the Commissioner that it had been completed on 1 August 2014. When the Commissioner sought clarification, the council confirmed that it could have been sent at a later date but it was unable to clarify precisely what had happened. Regardless of the date the review was actually sent, it was within the statutory deadline provided by the EIR.

Regulation 14(2)

15. Regulation 14(2) provides a duty to issue a refusal notice as soon as possible and within 20 working days. The Commissioner notes that the council did not provide its refusal notice within 20 working days. It therefore breached regulation 14(2) of the EIR.

Regulation 14(4)

16. Regulation 14(4) provides the following:

"If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed".

17. The council's initial refusal notice did not contain an estimation of time. It conceded in its internal review that it should have provided this information and it did so. The council said that it estimated that the information would be complete within four weeks. Although this fault was rectified by the internal review, the authority should have provided an estimate of the completion date in its initial response and the Commissioner therefore finds a breach of regulation 14(2) for this reason.
18. The Commissioner notes that the complainant has raised concerns about the fact that the council's estimated time for publication of the final report proved to be inaccurate. The fact that the report was not completed by the time estimated by the council is not in itself a breach of the EIR. The wording of regulation 14(4) only provides that an estimate is provided, if possible, of the date when the information is expected to be complete. This allows for the possibility that the estimation may subsequently prove to be inaccurate. The council has also clarified that although the report was dated 21 July 2014, it was not

completed at that time. The council said that although the bulk of the report had been written, it was still awaiting financial data, as well as director and cabinet approval and was therefore still considered to be a draft at the time of the council's internal review. The council said that it assumes that the "version control date" was not amended once the sign off had been obtained.

Right of appeal

19. 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@hmcts.gsi.gov.uk

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

20. 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.
21. 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
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Water Lane
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