

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

Decision notice

Date: 20 February 2017

Public Authority: Carmarthenshire County Council
Address: County Hall
Carmarthen
SA31 1JP

Decision (including any steps ordered)

1. The complainant requested information relating to the conditions associated with a particular planning application. The Commissioner's decision is that the Carmarthenshire County Council ('the Council') breached regulation 14(2) & (3) of the EIR in failing to respond to the request within the required timescale. However, as a response has now been provided the Commissioner requires no steps to be taken.

Request and response

2. On 26 September 2015 the complainant wrote to the Council and requested information in the following terms:

"In relation to the Full Planning Permission Granted decision notice issued on 2015-09-09 for planning application number E/32334 [RETROSPECTIVE PERMISSION IS BEING SOUGHT FOR THE CREATION OF A NEW SITE ACCESS AND ENTRANCE TO PANTYBRYN WHICH IS TO BE USED TO ALLOW MAINTENANCE AND SERVICING OF THE WIND TURBINE GRANTED UNDER PLANNING REF: E/27329 TO OCCUR ON THE APPLICANTS LAND (Retrospective) AT LAND AT PANTYBRYN, HEOL DDU, AMMANFORD, SA18 2UG], please provide all recorded information the Council holds in relation to the implementation, proposed variation,

approved changes or enforcement action (as appropriate) of Conditions 2 & 3.

3. The complainant wrote to the Council again on 25 October 2016 to query why he had not received a response to his request.
4. The Council responded on 5 December 2016 and confirmed that it did not hold the specific information requested.

Scope of the case

5. The complainant contacted the Commissioner on 25 October 2015 to complain that the Council had failed to respond to his request. He requested that the Commissioner issue a decision notice concerning the Council's failure to respond within the statutory timescales.
6. The Commissioner wrote to the Council on 17 November 2016 and reminded it of its obligations in terms of the timescales for responding to requests for information.
7. The Commissioner has first considered whether the request is for environmental information that should be handled under the EIR, rather than the FOIA. She has then considered whether the Council has handled the request in accordance with the appropriate access regime.

Reasons for decision

Correct access regime

8. The Commissioner has first considered whether the information requested by the complainant is environmental information as defined by the EIR.
9. The Commissioner considers that the information requested falls within the definition of environmental information as provided by regulation 2(1)(c): "measures (including administrative measure), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect these elements".
10. The information requested in this case relates to planning conditions associated with a particular planning application. The Commissioner is

satisfied that the withheld information falls within regulation 2(1)(c) because it is information on, or relating to, a measure (planning and development of land) which is designed to protect the elements referred to in regulation 2(1)(a); namely land, landscape and natural sites.

Regulation 5 – the duty to make environmental information available on request

Regulation 14 – refusal of request

11. Under regulation 5(1) of the EIR public authorities have a general duty to make environmental information available when it is requested. When the information is not held, public authorities should issue a refusal notice, in accordance with regulation 14 that cites the exception under regulation 12(4)(a) of the EIR. This exception applies when information is not held.
12. In this case, the request was made on 26 September 2016 and the Council responded on 5 December 2016. The Council stated that it did not hold the specific information requested, but did not specifically refer to regulation 12(4)(a). However the Council provided copies of related information concerning an enforcement investigation relating to the site in question.
13. In failing to state that the information requested was not held within 20 working days the Council breached regulation 14(2). In failing to state that it was relying on regulation 12(4)(a) the Council breached regulation 14(3).

Right of appeal

14. 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

15. 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.
16. 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
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