

## **Freedom of Information Act 2000 (FOIA) Environmental Information Regulations**

### **Decision Notice**

**Date:** 1 November 2019

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

#### **Decision (including any steps ordered)**

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1. The complainant requested information relating to a particular planning application. Carmarthenshire County Council does not hold the requested information but failed to issue a refusal notice stating this within the statutory time for compliance. Therefore the Commissioner's decision is that the Council failed to comply with regulation 14(2) of the EIR. Since the Council has now issued a substantive response the Commissioner does not require any remedial steps to be taken in respect of this particular request.

#### **Request and response**

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2. On 14 August 2019 the complainant wrote to the Council. He advised that he was seeking information about a specific planning application, but had been unable to locate it on the Council's planning portal. The complainant asked the Council to provide him with advice and assistance under section 16 of the FOIA to locate the requested information. The complainant also asked about the applicable fee for the planning application.
3. The Council acknowledged receipt of the complainant's correspondence on 14 August 2019 but did not provide any further response.
4. The complainant contacted the Council on 13 September 2019 to complain that he had not received a response. The complainant advised that he had contacted the Commissioner, and asked when he would receive a response to his correspondence.

5. The Council contacted the complainant on 16 September 2019 to apologise for not having responded, but unfortunately only part of the correspondence was sent. The Council sent a substantive response on 17 September 2019 which clarified that the request fell under the EIR rather than the FOIA. The Council stated that it did not hold the requested information since it had not received the planning application specified. It provided explanatory information about applicable fees.

## Scope of the case

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6. The complainant contacted the Commissioner on 13 September 2019 to complain that he had not received a response to his request. The complainant provided a link to his request on the What Do They Know (WDTK) website. The Commissioner contacted the complainant on 16 October 2019 to advise that she was unable to access details of the request on WDTK. The complainant subsequently provided the Commissioner with a copy of the relevant correspondence.
7. Although the complainant had received a response to his request, he asked that the Commissioner issue a decision notice recording the delay in responding. The complainant also expressed concerns about the availability and ease of access of information via the Council's planning portal.
8. Under regulation 18 of the EIR the Commissioner can only issue a decision notice in respect of a particular request for information. She has commented on the wider issues raised by the complainant at Other Matters below.

## Reasons for decision

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### **Regulation 5: time for compliance**

### **Regulation 14: refusal notice**

9. Regulation 5(1) of the EIR requires a public authority to make environmental information available on request, subject to any exceptions to disclosure. Regulation 5(2) states that the authority must make environmental information available, subject to regulation 5(1), no later than 20 working days after the request is received.
10. Regulation 14(2) provides that where a public authority intends to refuse any part of a request it must issue a refusal notice no later than 20 working days after the request is received. Regulation 12(4)(a)

provides an exception from the duty to disclose environmental information to the extent that it is not held at the time of the request.

11. In this case the Council did not hold the requested information. Therefore it was not obliged to comply with regulation 5(2), but it ought to have issued a refusal notice citing the exception at regulation 12(4)(a) within 20 working days.
12. In this case the Council's substantive response was issued just outside of the 20 working day time for compliance. The Commissioner therefore finds that the Council failed to comply with regulation 14(2) of the EIR in respect of this request.

### **Regulation 9: advice and assistance**

13. Regulation 9(1) of the EIR requires a public authority to provide advice and assistance to applicants and prospective applicants.
14. The Commissioner considers that the Council's response of 17 September 2019 fulfilled its duty to provide advice and assistance with regard to the complainant's specific request. This is because the complainant made it clear that he was seeking information relating to a particular planning application, and the Council clarified that it had not in fact received such a planning application. Therefore the Commissioner finds that the Council complied with regulation 9(1) in respect of the request of 13 August 2019.

### **Other matters**

15. As set out at paragraph 8 above the Commissioner's decision relates to the handling of a particular request for information. However she notes that the complainant has raised wider issues about the way the Council routinely publishes information on its website, specifically its planning portal.
16. Although it does not form part of the decision, the Commissioner wishes to remind public authorities that the proactive publication of official information is a key aspect of information rights legislation. Section 19 of the FOIA requires that authorities make information available through their publication scheme, and regulation 4 of the EIR sets out a similar obligation in respect of environmental information.
17. Accordingly, the Commissioner expects public authorities to take appropriate steps to ensure that proactive publication initiatives such as planning portals provide an effective and accessible route of access to the public. This will help public authorities demonstrate compliance with

the FOIA and EIR, and will help the public exercise their rights in a timely manner.

18. The Commissioner uses intelligence gathered from individual cases to inform her insight and compliance function. This aligns with the goal in "Openness by Design"<sup>1</sup> to improve standards of accountability, openness and transparency in a digital age. The Commissioner's approach is set out in more detail in her Regulatory Action Policy.<sup>2</sup>

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<sup>1</sup> The Commissioner's strategic plan on access to information. See [https://ico.org.uk/media/about-the-ico/documents/2615190/openness\\_by\\_-\\_design\\_strategy\\_201906.pdf](https://ico.org.uk/media/about-the-ico/documents/2615190/openness_by_-_design_strategy_201906.pdf)

<sup>2</sup> <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

## Right of appeal

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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 123 4504  
Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 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 .....**

**Sarah O’Cathain  
Senior Case Officer  
Information Commissioner’s Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**