

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

Decision notice

Date: 15 December 2020

Public Authority: Cornwall Council
Address: Dalvenie House
Treyew Road
Truro
TR1 3AY

Decision (including any steps ordered)

1. The complainant requested information regarding a planning application and a particular Councillor's involvement in planning matters.
2. The Commissioner's decision is that Cornwall Council (the Council) failed to respond to two valid information requests within 20 working days and has therefore breached regulation 5(2) of the EIR.
3. As the Council has now responded to the requests, the Commissioner does not require the Council to take any steps as a result of this notice.

Request and response

Request one

4. On 24 January 2020, as part of a code of conduct complaint form, the complainant wrote to the Council and requested information in the following terms:

"When did councillor Woods become involved in advising and assisting in organising the objections to this application?"

"Please see the aerial view of Trerank (your website) in 2005 and this clearly shows the extensions that have been added to [content redacted] making it a 3 or 4 bedroomed property. Can you advise when these plans were submitted for the various extensions as they were not there on the 1978 deeds."

5. The Council provided a response on 29 April 2020, although the complainant states that this was never received. The Council resent the response to the complainant on 8 June 2020.

Request two

6. On 9 March 2020 the complainant wrote to the Council and requested information in the following terms

"can you please advise how many times over the last 12 months a Councillor has taken more than one role in this type of planning committees?"

7. As she had not received a response to this request, the complainant wrote to the Council again on 5 May 2020 to repeat her request.
8. The Council responded to the request on 3 June 2020.

Scope of the case

9. The complainant contacted the Commissioner on 2 July 2020 to complain about the Council's failure to respond to several information requests within the statutory time limits. In particular, she was dissatisfied as she believed the Council was blaming her for the delays as it stated that, due to the complex nature of its multiple interactions with her, staff had not realised that requests for information were embedded within her code of conduct complaint correspondence.
10. The Commissioner wrote to the complainant on 20 August 2020 to ask her to provide copies of her requests for information and the Council's responses as evidence to support her complaint.
11. The complainant provided sufficient evidence regarding two of her requests for information, which are detailed above at paragraphs four to eight.
12. The complainant asserted that there were other requests which were responded to late, but she did not provide sufficient evidence to support this and the Commissioner cannot consider these requests in this notice.

13. The complainant also provided evidence of what she believed to be valid requests for information that were responded to late. However, these were not valid requests for information and the Commissioner cannot comment on the Council's response to such correspondence in this notice.
14. The scope of this case and the following analysis is to consider whether the Council has complied with its obligations in relation to the time for compliance at regulation 5(2) of the EIR with regard to requests one and two.

Reasons for decision

Regulation 2 – Is the requested information environmental?

15. Environmental information must be considered for disclosure under the terms of the EIR rather than the FOIA.
16. Regulation 2(1)(c) of the EIR defines environmental information as any information on "*measures (including administrative measures) such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in [2(1)](a) and (b) as well as measures or activities designed to protect those elements.*"
17. The requests in this case are for information relating to planning matters. The Commissioner is satisfied that the requested information is on a measure that would or would be likely to affect the elements listed in regulations 2(1)(a) and is, therefore, environmental under regulation 2(1)(c).

Regulation 5(2) – Time limits

18. Regulation 5(1) of the EIR states that "*a public authority that holds environmental information shall make it available on request.*"
19. Regulation 5(2) of the EIR states that such information shall be made available "*as soon as possible and no later than 20 working days after the date of receipt of the request.*"
20. The complainant stated that once her requests were transferred to the correct team to be dealt with most were responded to on time. She believed that staff training was required with regard to recognising information requests.

21. The Commissioner's published guidance for requesters¹ advises not to bury requests amongst lengthy correspondence on other matters or underlying complaints. She would advise the complainant to submit her requests separately to any complaints correspondence in future.
22. However, the Commissioner considers that the requests in question constituted valid requests for information under the EIR and, ultimately, it was the Council's responsibility to ensure that such requests were recognised and handled in accordance with the legislation.
23. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue responses to the requests within 20 working days, the Council has breached Regulation 5(2) of the EIR.

¹ <https://ico.org.uk/your-data-matters/official-information/>

Right of appeal

24. 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@justice.gov.uk

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

25. 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.
26. 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

Ben Tomes
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SK9 5AF