

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 1 February 2023

**Public Authority:** Rhondda Cynon Taf County Borough Council

**Address:** The Pavilions  
Cambrian Park  
Clydach Vales  
Tonypany  
Rhondda Cynon Taf  
CF40 2XX

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

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1. The complainant has requested information relating to footpaths, bridleways and byways.
2. The Commissioner's decision is that, on the balance of probabilities, Rhondda Cynon Taf County Borough Council (the Council) does not hold the requested information.
3. The Commissioner does however find that the Council breached Regulation 5(2), by not responding to the request within 20 working days.
4. The Commissioner does not require the public authority to take any further steps.

#### **Request and response**

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5. On 21 April, the complainant wrote to the Council and requested information in the following terms:

"Can you supply me with photocopies of the relevant pages in the "definitive statement" that show each of the following footpaths, Bridleways and By Way that is attached in a Claimsregister.pdf document, they should have been added to the "definitive statement"

since 1991 up to the present day. Could you also send me an up to date claims register, please?

Also, can you send me evidence (photocopies) to show that the same footpaths, Bridleways and By Way have been added to the "definitive map" (paper copy) and also on the "digital map" that is normally located here <https://my.rctcbc.gov.uk/myRhondda.aspx> but doesn't seem to have the footpaths etc updated?

A random page from your "definitive statement" that I have previously been sent by RCTC ... where I can't seem to find where the newly DMMOs are supposed to be "recorded"/added" by law. (Full size attached for your ref.)

I take it for granted that you follow the attached [dmno-flow-chart.pdf](#) "flowchart" regarding the Definitive Map Modification Order (DMMO)? Please inform me if that is correct, if you don't follow the flowchart attached, please let me have the one you do follow or the protocol that you follow, please"

6. The Council responded on 24 June 2022. It provided some information within the scope of the request.
7. Following an internal review the Council wrote to the complainant on 8 August 2022. It provided some additional information regarding the request.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 27 June 2022 to complain about the way their request for information had been handled.
9. The Commissioner considers whether, on the balance of probabilities, the Council holds the requested information.

### **Reasons for decision**

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#### **Regulation 5 - duty to make environmental information available on request**

10. Under regulation 5(1) of the EIR, and subject to a number of EIR provisions, a public authority that holds environmental information shall make it available on request.

11. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held, and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.
12. A Definitive Map Modifications Order (the DMMO) is an application/legal order made to a local County Council or Unitary Authority to change the Definitive Map and Statement (DMS). The DMS is a statutory record of public rights of way.<sup>1</sup>
13. The Council advised that the request is "impossible", as the DMS is not required to have an entry for each claimed route entered on the register of DMMO applications.
14. The Council went on to explain that DMMO (also referred to as the claims register or register of claims)<sup>2</sup> is a register of all applications made to modify the DMS which details different public right of way and nothing more.
15. The Council confirmed that only a small number of these applications have led to the making of a DMMO and thereafter amended the DMS. These changes will not be shown on the DMS until it has gone through a consolidation exercise to incorporate all the legal changes, and is then republished with a new relevant date.
16. The Council stated that effectively until such a time that the DMS is republished, the information being requested will not exist. The Council advised that due to this the DMMO and DMS must be read in conjunction with all amending orders. It further advised that the DMMOs effectively serve the same function as the DMS.
17. The Council confirmed that all copies of the DMMO which have lead to the DMS being amended have been provided to the complainant. However it is not possible to republish the DMS after every legally authorised change.

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<sup>1</sup> [Definitive Map Modification Orders | Recording, Changing and Closing Public Rights of Way | Worcestershire County Council](#) [How to apply for a Definitive Map Modification Order - Ramblers](#)

18. In regards to the searches undertaken to locate the requested information, the Council confirmed that the register of the DMMO applications and individual DMMO application in case folders (held by the Countryside Section) have been searched.
19. The Council confirmed that all searches that were carried out were done so using the DMMO reference "A763", the Council advised that for ease of reference, scanned copies of DMMO are labelled with their respective application number.
20. The Council confirmed that the DMS was last updated on 15 June 2015 and by a confirmed DMMO, however the official copy for the requested area has the date of 1 January 1971 and was published 20 December 1990. The Council confirmed that the DMS is not republished after each DMMO is confirmed and the DMS must be read in conjunction with all subsequent DMMOs .
21. The complainant advised the Commissioner that certain paths should have been added to the DMS by the Council under the Wildlife and Countryside Act 1981<sup>3</sup>. The complainant suggested that either the Council is not adhering to the legislation or they do hold the requested information.
22. The complainant also explained that additional legislation the Council should be following is "Guidance for Local Authorities on Public Rights of Way October 2016" which advised on page 39 at Section 5.11 "Authorities are responsible for Definitive Maps and Statements. They have a duty to keep them as up to date as possible, taking account of all of the available evidence in order to maintain a Definitive Map and Statement of the highest attainable accuracy. Authorities should give priority to producing an up to date Map and Statement on which all public rights of way are recorded and which covers all of the areas for which they are responsible."
23. The complainant suggested that either the Council is not adhering to the both of these legislations or they do hold the requested information and are not providing it.

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<sup>3</sup> Provided by complainant - 5.11 Authorities are responsible for Definitive Maps and Statements. They have a duty to keep them as up to date as possible, taking account of all of the available evidence in order to maintain a Definitive Map and Statement of the highest attainable accuracy. Authorities should give priority to producing an up to date Map and Statement on which all public rights of way are recorded and which covers all of the areas for which they are responsible.

24. The complainant stated that the DMMO are not the same as the DMS, the complainant explained by being sent the DMMO's the Council was sending the wrong documents and what the complainant requested.

### **The Commissioner's Decision**

25. Although the Commissioner recognises the complainant's concerns around the Council's adherence to the Wildlife and Countryside Act 1981 and Guidance for Local Authorities on Public Rights of Way October 2016, the Commissioner has no jurisdiction over these matters and therefore will not be making any judgement on this matter.
26. The Commissioner decision is, based on the balance of probabilities, that the Council does not hold further information within the scope of the complainant's request.

### **Procedural Matters**

27. Under Regulation 5(2) of EIR a public authority is obliged to respond to a FOIA request within twenty working days. In this case the Council failed to respond to the request within the statutory time for compliance. It therefore breached Regulation 5(2) EIR in the handling of this request.

## Right of appeal

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28. 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: 0203 936 8963

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)

29. 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.
30. 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** .....

**Catherine Fletcher**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**