

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

Decision notice

Date: 29 November 2018

Public Authority: Carmarthenshire County Council
Address: foia@carmarthenshire.gov.uk

Decision (including any steps ordered)

1. The complainant requested information regarding planning compliance with National Grid defined safety protocols. Carmarthenshire County Council ('the Council') provided some information and applied regulation 6 of the EIR to one part of the request. During the course of the Commissioner's investigation the Council disclosed some additional information relating to the request. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any further recorded information relevant to the request. However, the Commissioner finds that the Council breached regulation 5(2) of the EIR in failing to provide the requested information within the required timescale. The Commissioner does not require any steps to be taken.

Request and response

2. On 28 April 2017 the complainant wrote to the Council regarding planning compliance associated with National Grid defined safety protocols. He referred to 5 points (listed (a) to (e)) within the protocol and requested information in the following terms:

"With reference to the above protocol described by National Grid's Asset Protection Team, please can you provide all information that the Council holds for the period between 1 January 1998 and 13 March 2015 in respect of:

- 1) *Dates and copies of correspondence exchanged between Carmarthenshire County Council and National Grid.*
- 2) *The dates that GIS Shape Files were received from National Grid, the file size and SHA256 message digest for each, and the date applied to the LPA's GIS platforms used in Crescent Road (it may be easiest if you just output the logs from revision control system for these elements into a human readable form for the latter limb).*
- 3) *Dates, venues and names of attendees for meetings held between the LPA and National Grid.*
- 4) *The method of working prescribed by the LPA to safely compare applications received with electronic/desktop records.*
- 5) *The name, job title and professional accreditation of each employee that Carmarthenshire County Council considered to be [sic] defined as a competent person for the purpose of this role.*

Additionally, please can you confirm if Carmarthenshire County Council now holds a copy of the ENA's "Separation between Wind Turbines and Overhead Lines/ENA Engineering Recommendation LXX" document. National Grid is a transmission licensee as defined by the 1989 Electricity Act, this document is the national guideline. If so, on which date did the Planners read sections 4 & 4.1 (Separation Between Wind Turbines and Overhead Power Lines & Toppling Distance) and Annex B (Diagrammatic representation of falling clearances)?"

3. The Council responded on 14 June 2017 and provided some information, stated other information was not held, and applied regulation 6(1) of the EIR to part 2 of the request. The Council also asked for clarification in relation to parts 4 and 6 of the request.
4. On 1 December 2017 the complainant contacted the Council and requested an internal review of its handling of the request. He indicated he was dissatisfied at the absence of information relating to parts 1 and 3 of the request. In relation to part 2 of the request the complainant explained that he was aware that the GIS shape files were available through other means. He confirmed that he had actually requested details as to when the Council applied the images to its own internal systems and how the integrity of the updates was validated. The complainant also provided clarification in relation to parts 4 and 5 of the request. Finally, he pointed out that the Council had not addressed the last part of the request (last paragraph) where he asked it to confirm receipt of a particular document and provide the date on which its planners read sections 4 & 4.1 and looked at the picture in Annex B of the document.

5. The Council provided the outcome of its internal review on 28 February 2018. It confirmed that it had provided the information held relevant to part 1 of the request, confirmed it considered regulation 6(1) of the EIR applied to part 2 of the request and stated it did not hold information relating to part 3 of the request. In respect of part 4 of the request the Council confirmed that it did not hold any policies or procedures falling within the scope of the request and instead officers worked to relevant legislation and Welsh Government guidance. As such, it considered regulation 6 applied to part 4 of the request. The Council also provided information relevant to part 5 of the request.

Scope of the case

6. The complainant contacted the Commissioner on 6 April 2018 to complain about the way his request for information had been handled.
7. Following correspondence with the complainant, the Commissioner agreed that the scope of her investigation would be to establish whether the Council held any further recorded information relating to parts 1 to 4 and the un-numbered sixth request (which the Council had not addressed at all at the point of his complaint to the Commissioner). The Commissioner has also investigated whether the Council complied with its procedural obligations in respect of its handling of the request.
8. During the course of the Commissioner's investigation the Council disclosed additional information relating to part 2 of the request and confirmed that it did not hold any further recorded information relating to the request.

Reasons for decision

Regulation 5 – Duty to make environmental information available on request

9. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request.
10. 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 argument. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by

the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held, she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.

11. The Council confirmed that information relating to the request would be held within its Planning Services department, with the exception of information relating to part 2 of the request. Further, based on the wording and the specific subject matter associated with the request, the Council identified that it related to one particular area within Planning Services.
12. Following receipt of the request, contact was made with the FOIA co-ordinator within Planning Services, who in turn made enquiries with the Council's Development & Built Heritage Manager and the Information & Systems Manager. Searches were conducted of email mailboxes, calendars and the document management system within Planning Services. Other than the information which has been disclosed, no additional information was identified.
13. The Council acknowledged the possibility that some information relevant to the request may have been destroyed in line with normal retention policies but it was not aware that such information had actually been deleted/destroyed nor does it have a record of any such deletions.
14. The request in this case refers to the Council's compliance with a protocol described by National Grid's Asset Protection Team ('the NG Protocol'). Each of the five numbered requests relate to points within the NG Protocol which the complainant listed in his request. As well as details of the searches undertaken, the Council provided the Commissioner with some additional representations to explain the absence of any further recorded information relating to some parts of the request, which are summarized below.
15. Part 1 of the request is for dates and copies of correspondence the Council had exchanged with National Grid. In his original request the complainant referred to information within the NG Protocol which indicates that National Grid writes to each Local Planning Authority ('LPA') once a year to confirm that the registered contact details they hold are accurate. In its initial response to this part of the request the Council disclosed one email dated February 2017 and confirmed that it did not hold any other emails because such emails are deleted once they are actioned.

16. In response to the Commissioner's enquiries, the Council confirmed that these annual emails from National Grid are dealt with by the Information & Systems Manager within Planning Services who checks that the relevant contact details are correct. If the contact details are inaccurate, he/she would make any updates and also contact the Council's Geographic Information Systems (GIS) team and provide a link to the National Grid shape file, to enable them to update the Council's GIS systems. Once actioned, the emails are then deleted and as such the Council does not hold any earlier emails relating to the request.
17. Part 3 of the request is for information about meetings held between National Grid and the Council as LPA. The NG protocol indicates that National Grid physically visits each LPA once every five years. The Council's position is that it does not hold any recorded information about such meetings.
18. The Council confirmed to the Commissioner that meetings have taken place between its Planning Services team and National Grid during the period covered by the request (1998 to 2015). The Council explained that the purpose of such meetings is to provide updates to the LPA, confirm that the Council is working with up-to-date plans relating to National Grid assets and confirm contact information etc. The Council stated that it does not take minutes of every single meeting held between its officers, or between officers and external organisations. The Council confirmed that no notes or minutes are taken at meetings with National Grid as they are considered to be informal meetings where no business is decided which would require actions to be formally recorded. The Council also confirmed that, in determining whether any information was held relevant to this part of the request, searches were conducted of officer calendar/diaries and meeting/visitor books.
19. The last (unnumbered) part 6 of the request asks whether the Council holds a specific document, and if so, the date that the Council's planners read specific sections of it. Until the involvement of the Commissioner, the Council had failed to address this request. However, during the Commissioner's investigation the Council subsequently wrote to the complainant to confirm that, at the time of the request, the Council (as LPA) did not hold a copy of the document in question. As such, the Council did not hold any recorded information or details as to when its planners read certain parts of the document in question.
20. Based on the representations and evidence provided by the Council the Commissioner is satisfied that it has carried out adequate searches of where relevant information would be held. The Commissioner has not seen any evidence of any inadequate searches or grounds for believing there is any motive to withhold information relevant to the request. Based on the searches undertaken and the other explanations provided

the Commissioner is satisfied that on the balance of probabilities, the Council does not hold any further recorded information relating to the request, other than that which it has disclosed.

21. Regulation 5(2) of the EIR states that information shall be made available *"as soon as possible and no later than 20 working days after the date of the request"*.
22. In this case the request was submitted on 28 April 2017. The Council provided some information on 14 June 2017 and sought clarification in relation to parts 4 and 5 of the request. Following receipt of the required clarification (on 1 December 2017) the Council responded to parts 4 and 5 of the request on 1 March 2018. During the course of the Commissioner's investigation the Council disclosed some additional information held relevant to the request.
23. In failing to provide all of the information held relevant to the request within 20 working days after the date of receipt, the Commissioner finds that the Council breached regulation 5(2) of the EIR.

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@hmcts.gsi.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

David Teague
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