

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 20 June 2023

Public Authority: Rhondda Cynon Taf County Borough Council
Address: The Pavilions
Cambrian Park
Tonypany
CF40 2XX

Decision (including any steps ordered)

1. The complainant requested information from Rhondda Cynon Taf County Borough Council ("the Council") relating to the treatment of Japanese Knotweed by Landtech UK ("Landtech") on behalf of the Council. The Council provided some information within the scope of the request but denied holding some of the requested information. The complainant believes the Council holds further information within the scope of parts 2, 5 and 6 of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any further information within the scope of parts 2, 5 and 6 of the request beyond the information it has already disclosed.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 18 July 2022, the complainant made a 10 part request to the Council for information relating to the treatment of Japanese Knotweed. The parts of the request which are relevant to this complaint are as follows:

Part 2 of the request: "Supply me with all emails regarding /relevant to my issue of the 'spray records' between all officers of RCTC involved and Landtech UK including the legal dept of RCTC working back to August 2021?"

Part 5 of the request: "A copy of the final contract/s (not draughts) regarding the commissioned work. Please redact personal information and any discussion of prices (££) for the past 3 years working back from 2021?"

Part 6 of the request: "I would now like the 'spray records' for all the boroughs of RCT for the past 3 years working back from when the commissioned work started July/August?? 2021 from Landtech UK, if they have been contracted with RCTC for the spraying of Japanese Knotweed for the past 3 years, if not then any other contractor who was asked to commission the work for the previous 2 years 2020/2019 along with the contractor's details?"

5. On 5 September 2022 the Commissioner issued a decision notice under case reference IC-187180-M4Z5 which found that the Council had failed to respond to the request within 20 working days and had therefore breached regulation 5(2) of the EIR. This decision notice required the Council to issue a substantive response to the request in accordance with its obligations under the EIR.
6. The Council subsequently provided a substantive response and carried out an internal review. The complainant has made a new complaint to the Commissioner regarding parts 2,5 and 6 of the request.
7. Regarding part 2 of the request, the Council has provided copies of three emails, however the complainant believes that the Council holds further emails within the scope of this part of the request.
8. Regarding part 5 of the request, the Council's position is that no information is held within the scope of this part of the request. The complainant's view is that it is unlikely that there is no written agreement regarding the provision of these services.
9. Regarding part 6 of the request, in its response to the request the Council stated that it would request this information from Landtech. The Council has since stated in its internal review of 16 December 2022 that Landtech do not keep spray records. At the same time it provided copies of invoices that Landtech sent the Council for the treatment of Japanese Knotweed during this period. The invoices include an invoice date and some very limited information about what the invoice is for, some include descriptions of locations or the chemicals used however many

are very vague. The complainant believes there is an obligation for detailed spray records to be kept under the Plant Protection Products Regulations.

Scope of the case

10. The scope of this case is to consider whether the Council holds any further information within the scope of parts 2, 5 and 6 of the request, beyond that which it has already disclosed.
11. During the course of the Commissioner's investigation the Council acknowledged that any spray records held by Landtech would be held by Landtech on behalf of the Council for the purposes of the EIR.

Reasons for decision

Regulation 12(4)(a) – information not held

12. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information "to the extent that it does not hold that information when an applicant's request is received".
13. The Council's position is that it has disclosed all of the information it holds within parts 2,5 and 6 of the request. The complainant believes the Council holds further information within the scope of these parts of the request.
14. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any further information which falls within the scope of the request (or was held at the time of the request).
15. This reasoning covers whether, on the balance of probabilities, the Council holds further information within the scope of parts 2,5 and 6 of the request.
16. Regarding part 2 of the request, the Commissioner asked the Council to provide details of the searches it had carried out to identify information within the scope of this part of the request. He also asked the Council to address a point raised by the complainant as their basis for believing further emails were held; the Council had included a statement from Landtech on the issue of spray records when writing to the complainant previously, which it seemed would likely have been provided to the

Council via email. However, no email containing the quoted statement was provided in response to their request.

17. The Council provided details to the Commissioner about the searches it had carried out to identify emails within the scope of this part of the request. It stated that these type of records would only be held by the Countryside Manager and the Invasive Species Officer, therefore emails held by these officers were searched but none related to spray records. It stated that the search terms used were "spray record" and "Landtech UK".
18. The Council also provided the Commissioner with a copy of the email from Landtech which contained the quoted statement referred to by the complainant. This email was dated 6 October 2022 so was not held at the time of the request. It was therefore not in scope of the request.
19. Given the information provided by the Council about the searches it has carried out and its explanation as to why the email containing the quoted statement referred to by the complainant had not been identified as being within scope of the request, the Commissioner is satisfied that, on the balance of probabilities, no further information is held within the scope of this part of the request.
20. Regarding part 5 of the request, the Commissioner would consider the term contract in this case to refer to any written agreement between the two parties about the terms under which the contractor will deliver the contracted service. In a situation where a public authority has contracted a third party to deliver services it seems unlikely that the public authority would not hold a written agreement that sets out the terms under which those services are provided, including, for example, the rate that the public authority will pay for those services. However, having been provided with this definition by the Commissioner, the Council maintains that it does not hold any such written agreement.
21. In its submissions to the Commissioner the Council stated the following regarding whether a contract is held,

"The Council does not have a formal contract as such. Landtech carry out spraying work under the Council's direction at varying sites and submit an invoice depending on the amount of time and herbicide used.

The basis for this seasonal work is our Knotweed Treatment Programme document. This document is currently about 120 pages long and includes details of all sites being treated currently (including personal data). The document is constantly changing with sites removed from treatment when the Japanese Knotweed

is under control and sites are added when treatment is needed at new sites. Officers meet with Landtech at the beginning of the season and discuss additions and removals. They then carry out the work and invoice as described above. There is no document where costs etc are set out. Services and costs are agreed (by discussing the treatment programme) when officers meet with Landtech at the beginning of the treatment season.”

22. Although it is unusual that no contract is held in the circumstances, given the explanation provided by the Council, the Commissioner is satisfied that on the balance of probabilities the Council does not hold any information within the scope of part 5 of the request. In his view the Knotweed Treatment Programme document described by the Council is not within scope of part 5 of the request.
23. Regarding part 6 of the request, during the course of the Commissioner's investigation the Council acknowledged that any spray records held by Landtech would be held by Landtech on behalf of the Council for the purposes of the EIR. However, the Council's position is that no further information within the scope of part 6 of the request, beyond that which has already been disclosed, is held by either the Council or by Landtech.
24. In relation to this the Council stated,

“The Council do not hold detailed spray records. Records of spray treatments are held by the Contractor. However, they do not complete individual forms for each site and each treatment.”
25. Within its submissions to the Commissioner the Council provided evidence of it having consulted Landtech as to whether such records were held. Landtech responded stating that it does not complete detailed spray records for each area treated.
26. Given the explanation provided by the Council the Commissioner is satisfied that on the balance of probabilities the Council does not hold any further information within the scope of part 6 of the request, beyond the information that had already been disclosed.

Right of appeal

27. 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

28. 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.
29. 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

Victoria James
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF