

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 31 July 2023

Public Authority: Swansea Council

Address: Civic Centre
Oystermouth Road
Swansea
SA1 3SN

Decision (including any steps ordered)

1. The complainant requested various information from Swansea Council (the 'Council') in respect of their insurance claim against the Council. After initially refusing part of the request in reliance on regulation 12(5)(b) (the course of justice) of the EIR the Council subsequently disclosed the information to the complainant outside of the EIR, and on the understanding that they would not share it with anyone else. However, the complainant believes that the Council holds more information relevant to their request. The Commissioner's decision is that the Council has complied with its obligations under regulation 5(1) of the EIR. The Commissioner does not require the Council to take any steps.

Request and response

2. On 16 February 2023, the complainant wrote to the Council in respect of their recent insurance claim [reference number redacted] which had been declined on the basis that the named road was inspected in December 2022 by the highways department. Although the complainant did not number their requests, the Commissioner has followed the Council's numbering for simplicity. The complainant stated:

"The insurance department have said I need to speak to you about the report and the previous repair work.

1....I would like you to provide me with a copy of that report in December 2022. This section of the road that damaged my wheel appears to have been repaired on a number of occasions and is next to a pedestrian island to allow people to safely cross the main road.

I would expect that the report will cover this section of the road in detail due to the previous repair and high risk nature of being near a pedestrian crossing on a main A road.

2. If the report does not confirm how the assessment of the road was complete Eg on foot or by vehicle please can you confirm this information.

3. Please can you also confirm how many people were involved in this review and how you deemed it adequate, as a 100mm pot hole has appeared shortly after the inspection.

4. Please also provide any video or photo evidence to confirm the adequate inspection.

5....100mm pot hole does not open up overnight unless the previous repair was not fit for purpose or the inspection report is inadequate...I would like your procedure on repair [of] substantially damaged roads.

6. As your most recent repair appears to have just filled the hole with tarmac. The tarmac does not appear to be the same grade as the road tarmac adjacent to the repair. Also, if you fill the hole completely with topcoat tarmac there is no substantial sub base to stop the hole from reopening to another substantial hole. It is my belief that this is what happened. As you have a report to confirm the damage was not there in early December 2022

7. In addition to the above I would like.....all previous repairs to that strip of the new cut road including all photos. "

3. The complainant raised the following additional questions on 23 February 2023 which again follow the Council's numbering for simplicity:

8. "What I want [it's] an explanation to how a 100mm hole has appeared on a section of road that the highways say was inspected within that month. I want the report and all previous repairs to that section of the road. I've inspected the recent repair and it's clear a lorry has turned up and tarmac just poured in. [It] doesn't even look like it's been compacted down by a machine.

9. In addition I would like confirmation of how this pothole opened up [show] suddenly and no debris in the area? You would expect this based

on the fact your report will clearly show the road was fine less than a month earlier.”

4. The council responded on 2 March 2023. It provided a response to some items of the request, but stated that it was withholding information in respect of item one and item seven of the request in reliance on regulation 12(5)(b) of the EIR. This position was upheld at the Council's internal review letter dated 6 April 2023.
5. The complainant was subsequently given access to the requested material and responses to their further questions outside of the provisions of the EIR, after giving an undertaking that they would not share the information further.

Scope of the case

6. The complainant contacted the Commissioner on 12 April 2023 to complain about the way their request for information had been handled. They stated that they had tried to make an information request via email on a number of occasions but it was only when they complained that it was raised as an information request. The Commissioner has discussed this in greater detail in the 'Other matters' section of this notice.
7. The complainant also expressed dissatisfaction with the Council's record keeping stating that the Council was either refusing to provide the repair details or it doesn't have records of the repair. They added that it would not provide the physical evidence to support their insurance claim, only a summary via email. The complainant further stated that although the Council has now provided the report relevant to their request, the start and end time on the report is the same, therefore questioning the veracity of the report. The complainant subsequently requested screenshots of other inspection reports to compare the start and end times, but stated that the Council has refused.
8. The Commissioner would point out that it is not part of his remit to comment on the veracity of the information provided in response to a request for information under the EIR His remit is solely to determine whether the Council has provided all relevant information it holds.
9. The Commissioner also notes that the request for screenshots are follow on requests after the disclosure of information relevant to the request, and outside the scope of his investigation.
10. The scope of the Commissioner's investigation is to determine whether the Council has complied with its obligations under regulation 5(1) of the

EIR in respect of the original request and subsequent request outlined in paragraphs 2-3 of this notice.

Reasons for decision

Regulation 5(1) – duty to make available environmental information on request

11. Regulation 5 of the EIR requires that a public authority that holds environmental information shall make it available on request. This is subject to any exclusions or exceptions that may apply.
12. Regulation 5(1) of the EIR provides a general right of access to environmental information held by public authorities. In cases where a dispute arises over the extent of the recorded information held by a public authority at the time of the request, the Commissioner is not expected to provide categorically whether or not further relevant information is held. He is only required to make a judgement based on the civil standard of the balance of probabilities as to the likelihood of whether additional information is held.
13. Having asked the Council to provide details of its searches, the Commissioner was informed that the searches were carried out on its proprietary software system called MAYRISE. It added that the MAYRISE Highways system holds all asset information, street gazetteer, maps and records of all defects. Maintenance schedules and details of any complaints received from the public are transmitted automatically from this central system.
14. The Council further explained that electronic reporting cuts considerable amounts of paperwork, eliminating the keying in of reports, as well as allowing more consistent and accurate reporting. Additionally, MAYRISE Highways automates client service functions and simplifies the management of highways maintenance contracts, recording defects and generating schedules of cyclic maintenance using street gazetteer.
15. The Council added that the way into the system to conduct a search is via GIS (street gazetteer) and is completely paperless and network driven. It added that no other method of recording such as paper files or local information on individual laptops would work.
16. It also confirmed that no records have been deleted prior to the request.
17. In terms of its responses, the Council has stated that it has provided all relevant information it holds, either in terms of the report or answers to the complainant's questions. It also informed the Commissioner that it

did not consider the following items (as detailed in paragraphs 2-3 of this notice) constituted valid requests for information but a position statement from an officer, but has responded to them through the normal course of business:

- The second part of question three which asked “how you have deemed it adequate”
 - The first part of question 8 which states “What I want is an explanation of how a 100mm hole has appeared on a section of road that highways says was inspected within that month.
18. The Commissioner considers that as they did not constitute valid requests for information under the EIR, that the Council’s approach to both bullet points above was reasonable.
19. The Commissioner has considered the complainant’s request, the Council’s responses to the complainant’s various questions and details of its searches. He is satisfied that the Council undertook a reasonable and proportionate search of its records and on the balance of probabilities it does not hold any further recorded information relevant to the requests. He has therefore concluded that the Council has complied with its obligations under regulation 5(1) of the ER

Other matters

20. The Commissioner has considered the complainant’s comments that they had tried to make an information request via email and had been told on a number of occasions that they had to submit it in writing via a hard copy letter.
21. The Commissioner contacted the Council about this who confirmed that this was not in relation to the request for information, but to its insurance department in respect of their insurance claim. It added that at the time, correspondence to its insurance department needed to be in hard copy format.
22. The Commissioner considers that this was a mis-understanding and is therefore satisfied that the Council was not refusing to process EIR requests submitted via email.

Right of appeal

23. 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

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

24. 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.
25. 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 Dickenson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF