

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 21 March 2024

Public Authority: Carmarthenshire County Council
Address: County Hall
Carmarthen
SA31 1JP

Decision (including any steps ordered)

1. The complainant requested various information in respect of high hedges from Carmarthenshire County Council ('the Council'), and its GIS (Geographic Information System). The Council provided some information and informed the complainant that it did not hold relevant information in respect of other items of their request.
2. The Commissioner's decision is that the Council does not hold information in respect of updates to its GIS system (item 5). However, he has also concluded that it does hold information regarding the accuracy of the system (item 4). The Commissioner is also satisfied that it has now provided all information it holds in respect of planning enforcement site visits in relation to high hedges, (item 8). However, in failing to provide the full breakdown requested in item 8 of the request within the required timescales for compliance, the Commissioner has recorded a breach of regulation 5(2) of the EIR.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide information held in relation to the accuracy of the GIS system (item 4 of the request).
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court

pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 19 June 2023, the complainant wrote to the Council and requested the following information:

"1. Please provide a copy of the guidance the Council holds which is used to determine the action hedge height....

2. Please confirm the name and manufacturer of the GIS system used by the Planning Enforcement team, along with the version number of the software.

3. Please confirm the number of staff members trained and certified to use the GIS system.

4. Please confirm the resolution and accuracy of the GIS system (in all three dimensions).

5. Please provide the date(s) the GIS system received updates, and the source(s) of those updates, within the last three years.

6. How many High Hedges complaints have been received in the last three years?

7. How many High Hedges complaints have resulted in a Remedial Notice being issued in the last three years?

8. How many site visits, per the Council's protocol, have been conducted by the Planning Enforcement team in the last three years? For clarity, where a visit has been made, please identify if each of these visits happened prior to the Council making a decision (per the protocol) or during a subsequent Appeal/request for rectification. "

6. The Council responded to the request on 14 July 2023. It provided information in respect of items 1, 6, 7 and 8 and stated "not applicable" in relation to items 2-5 of the request.

7. On the same date, the complainant expressed dissatisfaction with the Council's response to items 2-5 and item 8 of their request. They also expressed dissatisfaction with its consideration of the request under the Freedom of Information Act ('the FOIA') as opposed to the EIR.

8. Following an internal review the Council wrote to the complainant on 15 August 2023. It reconsidered the request under the EIR, and provided

amended responses to items 2-5 of the request. In respect of item 8, the Council maintained that its original response to give the figure for the total site visits conducted by its Planning Enforcement team, as opposed to those for high hedges was correct as the question had not specified high hedges. However, it also confirmed that there had been 25 visits in total in respect of high hedges for the relevant time period.

Scope of the case

9. The complainant originally contacted the Commissioner on 14 July 2023 to complain about the way their request for information had been handled. However, as the Council had not yet had the opportunity to conduct an internal review, the Commissioner did not accept the complaint as valid until after the internal review on 15 August 2023.
10. The complainant expressed various concerns regarding the Council's handling of their request. These included dissatisfaction with the Council's response to item 8 of their request, on the basis that it had failed to break the figure down as requested. The complainant also referred to their request for an internal review which contained more details of the nature of their complaint.
11. During the course of the Commissioner's investigation, the Council sent the complainant an amended response to items 4, 5 and 8 of their request. The complainant subsequently confirmed that they remained dissatisfied with its response to these specific items of their request.
12. The scope of the Commissioner's investigation is to consider whether the Council has complied with its obligations under regulations 5(1), 5(2) and 12(4)(a) of the EIR.

Reasons for decision

Would the requested information be environmental?

13. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - (c) 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 (a)...as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
14. The Commissioner has previously ruled that maps are environmental information as they are information "on" the state of the elements of the environment and planning enforcement of high hedges constitutes a "measure" affecting the elements of the environment. A more detailed explanation regarding maps and the GIS system can be found in decision notice FER0800428.¹ For procedural reasons, he has therefore assessed this case under the EIR.

Reasons for decision

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2018/2614049/fer0800428.pdf>

Regulation 5 – Information not held

15. 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.
16. In scenarios where there is some dispute between whether the public authority holds relevant information, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
17. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

18. The Commissioner has considered each item of the request separately:

Item 4 – please confirm the resolution and the accuracy of the GIS system (in all three dimensions)

19. The Commissioner notes that after initially providing a 'not applicable' answer in its original response, the Council informed the complainant in its internal review that the GIS system uses Ordnance Survey maps and stated that it does not hold details of their resolution and accuracy.
20. Following the Commissioner's investigation, the Council further informed the complainant that the 2020 Aerial Photography was captured at a resolution of 25cm. It also provided links to the complainant regarding the accuracy of the OS Mastermap base and the raster maps.
21. The complainant has since confirmed that they remained dissatisfied with the Council's response to item 4 of their request as it had not confirmed the accuracy of the Council's 'in-house' GIS system.
22. Having considered the various responses from the Council, the Commissioner contacted the Council regarding the accuracy of its GIS system.
23. The Council confirmed that GIS stands for Geographic Information System and Geodiscoverer is the GIS system in question. The Council further informed the Commissioner that at the time of the request, it did not hold information regarding its accuracy. The Council added that it could have run a diagnostic report, but this report would have been created after the request.
24. The Council further explained that it does not test the system for accuracy as it relies on the external systems that feed into it to be

accurate. The Council confirmed to the Commissioner, that it remained satisfied that at the time of the request, it did not hold relevant information in respect of the accuracy of its internal GIS system.

25. Having considered the explanation from the Council, the Commissioner would refer to his guidance "Determining whether we hold information"² and would point out there are circumstances that whilst the public authority may not physically hold a particular document, it may have the 'building blocks' necessary to produce a particular type of information, as it could compile it or extract it from raw data that it possesses.
26. In these circumstances, unless it requires particular skills or expertise to put the building blocks together, the public authority will hold the information.
27. In this particular case, as the Council has confirmed that it could run a diagnostic test to determine the accuracy of its GIS system, the Commissioner is satisfied that the Council does hold the information and has not therefore complied with its obligations under regulation 5(1) of the EIR.

Item 8 – how many site visits per the Council's protocol, have been conducted by the Planning Enforcement team in the last three years? For clarity, where a visit has been made, please identify if each of these visits happened prior to the Council making a decision (per the protocol) or during a subsequent appeal/request for rectification

28. The Council originally provided the total figure in respect of all visits by its Planning Enforcement team in its original response, whilst its internal review confirmed that there were a total of 25 visits specifically in relation to high hedges, although did not break this number down further, as per the complainant's request.
29. However, the Council's amended response to the complainant confirmed the following:
 - 16 inspections were made prior to a decision
 - 1 was made following an appeal/request for rectification

² <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/determining-whether-we-hold-information/>

- 8 were site visits to check for compliance, following the issuing of a notice (where there was no appeal or request for rectification).
30. The complainant remained dissatisfied with this response as it did not appear consistent with their personal experience.
 31. The Commissioner sought clarification from the Council in respect of the 8 site visits. The Council explained that its planning department can issue both Enforcement Notices and Decision Notices. There are different circumstances where an officer will visit a property and there could be a number of visits to a particular property during this process. The Council added that the 8 site visits could include checking if the landowner had complied with a notice/decision to cut back a hedge to a compliant height.
 32. As with item 4 of the request, the Commissioner has considered all responses to this item of the request and notes that although the Council had provided total figures in respect of high hedges in its internal review correspondence, it had not broken it down as requested by the complainant.
 33. However, the Commissioner is satisfied that the Council's subsequent response of 2 October 2023 provided the necessary breakdown and that based on the balance of probabilities, it has provided all the information it holds in respect of this item of the request. The fact that it appears to the complainant to be inconsistent with their experience of the Council's protocols is beyond the remit of Commissioner.

Regulation 12(4)(a) –Information not held at the time of the request

34. Regulation 12(4)(a) of the EIR says 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.
35. It is similar to regulation 5(1) and involves an almost identical consideration as outlined in paragraphs 16 and 17 of this notice.

Item 5 – please provide the date(s) the GIS system received updates, and the source(s) of those updates, within the last three years.

36. As with item 4, the Council initially responded to this item of the request with a 'not applicable' response. It maintained its position at internal review stating that the maps used by its GIS system are provided by Ordnance Survey, therefore this information is not held, but informed the complainant, that details are available from Ordnance Survey.
37. In the Council's amended response to the complainant dated 2 October 2023, it informed the complainant of the following:

"The Ordnance Survey maps within Geodiscoverer are managed by external consultants Get Mapping according to the OS update schedules below:

OS Map Topography
1:25, 000 Scale Raster
1:50, 000 Scale Raster
OS Vectormap Local

38. The Commissioner contacted the Council as the information it provided was solely in respect of updates to the external maps. The Council informed the Commissioner that its GIS system is not updated internally so it does not hold this information in respect of the GIS system itself.
39. The Commissioner has considered the complainant's concerns, the Council's responses and its explanation to him regarding this item of the request. He considers that the Council would not reasonably be expected to hold relevant information in relation to this item of the request if it does not update its internal GIS system.
40. Based on the above, the Commissioner is satisfied that the Council did not hold relevant information in respect of any updates, and that the Council has complied with its obligations under regulation 12(4)(a) of the EIR.

Regulation 12(1)(b) – the public interest test

41. Regulation 12(1)(b) of the EIR requires a public interest test to be carried out if a request is refused under any of the exceptions set out under regulation 12 of the EIR.
42. However, as no information has been found to be held in respect of item 5 of the request, the Commissioner can only find that the public interest in maintaining the exemption at 12(4)(a) of the EIR outweighs any public interest in disclosure, simply because there is no further information to disclose.

Procedural matters

Regulation 5(2) – Duty to make available environmental information on request

43. Regulation 5(1) of the EIR provides a general right of access to environmental information held by public authorities. Whilst regulation 5(2) concerns the timescales for response and states:

“Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.”

44. In this case, although the complainant’s request was received on 19 June 2023, the Council did not provide the breakdown requested in relation to item 8 of the request until 2 October 2023. This is clearly in excess of the required timescale specified above. The Commissioner has no option therefore but to record a breach of regulation 5(2) of the EIR.

Right of appeal

45. 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

46. 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.
47. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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