

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

**Date:** 13 December 2024

**Public Authority:** Cardiff Council  
**Address:** County Hall  
Atlantic Wharf  
Cardiff  
CF10 4UW

**Decision (including any steps ordered)**

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1. The complainant requested information from Cardiff Council (“the Council”) relating to a proposed land exchange. The Council withheld the requested information under section 36(2)(c) of FOIA (prejudice to the effective conduct of public affairs).
2. The Commissioner’s decision is that the requested information is environmental information within the definition at regulation 2(1)(c) of the EIR. The request should, therefore, have been handled by the Council under the EIR rather than the FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Reconsider the request under the provisions of the EIR and issue a fresh response to the complainant.
4. The Council must take these steps within 30 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

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5. On 1 March 2024, the complainant wrote to the Council and requested information in the following terms:

“At full council on the 25/1/24 the written question response from councillor Dan DE'ath , ref W1 stated the councils external solicitors acting for the trust sent a partial reply to the Charity Commission on the 27/11/23 following a request from them for further information in respect of the Maindy Park land swap application.

Please can you provide a copy of the partial reply sent by the external solicitors acting for the trust.”

6. The Council responded on 17 May 2024. It refused to provide the requested information citing section 36(2)(c) of FOIA (prejudice to the effective conduct of public affairs) as its basis for doing so.
7. The complainant requested an internal review, the Council acknowledged receipt of the request for internal review on 23 May 2024. However, no internal review was provided.

## Scope of the case

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8. The Commissioner initially asked the Council informally to reconsider this request under the EIR. However, the Council did not do so by the deadline set by the Commissioner despite an extension being granted. The Commissioner is therefore issuing this notice to formalise the requirement to reconsider this request under the correct access regime.
9. This notice sets out how the requested information meets the definition of environmental information.

## Reasons for decision

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### Regulation 2(1) – definition of environmental information

10. Regulation 2(1) of the EIR provides the following definition of environmental information:

“...any information in written, visual, aural, electronic or any other material form 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) and (b) as well as measures or activities designed to protect those elements...”

11. It is important to ensure that requests for information are handled under the correct access regime. This is particularly important when refusing to provide information, since the reasons why information can be withheld under FOIA (the exemptions) are different from the reasons why information can be withheld under the EIR (the exceptions). In addition, there are some procedural differences affecting how requests should be handled.
12. During the course of his investigation the Commissioner asked the Council to consider whether the request should have been considered under the EIR, as it appeared from the wording of the request that this may be the case. He also asked the Council to provide a copy of the withheld information for his consideration.
13. In its submissions to the Commissioner the Council explained that its initial view had been that the requested information did not fall within the definition of environmental information set out above. However, it had reviewed this point in light of the ICO's guidance and now acknowledged that some specific parts of the information constituted information on the state of the land (or measures affecting the state of the land), pursuant to regulations 2(1)(a) and (c) of the EIR.
14. Regarding the remainder of the information it stated, “the whole letter may be seen more broadly as constituting information ‘on’ the proposed land exchange, which may be regarded as a measure likely to affect the state of the land, although in our view, the information is more contextual rather than being directly ‘on’ or about the proposed land exchange”.

15. Having considered the content of the withheld information, the Commissioner advised the Council of his position that the whole letter is environmental information. This is because it would be considered to be information 'on' the proposed land exchange, which, in this case, is a measure likely to affect the state of the land and landscape, as the purpose of the land swap is to allow development on what is currently parkland. Specifically, the land exchange is question, if it goes ahead, will facilitate the expansion of a high school and will also lead to the demolition of a velodrome.
16. The Commissioner acknowledges the comment made by the Council about some of the information being more contextual rather than directly 'on' the land exchange. However, the Commissioner's guidance on identifying environmental information<sup>1</sup> is clear that the term "any information on" should be interpreted broadly. The Commissioner's view is that all of the withheld information falls within the broad interpretation of "any information on" the land exchange.
17. The information requested would therefore fall within the definition at regulation 2(1)(c) of the EIR and the request should have been considered under the EIR.
18. The Commissioner had initially asked the Council informally to reconsider this request under the EIR. However, the Council did not do so by the deadline set by the Commissioner despite an extension being granted.
19. It is not the Commissioner's understanding that this delay is due to the Council disagreeing with the Commissioner's view, it has not provided any arguments to this effect.
20. The Commissioner orders the Council to make a fresh response to the request under the provisions of that legislation.

## **Other matters**

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21. The Council should ensure that it deals with requests for information and any related complaints to the Commissioner in a timely manner at every stage.
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<sup>1</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-2-1-what-is-environmental-information/#eir4>

22. The Commissioner notes that the initial response to this request was not issued within the statutory timescale for compliance and was only issued following the intervention of the Commissioner.
23. Subsequently, this complaint was accepted without an internal review having been carried out as more than 40 working days had elapsed since the internal review was requested.
24. Finally, it has been necessary to issue this decision notice because the Council was unable to meet the deadline set by the Commissioner when requesting the Council reconsider the request under the EIR, despite an extension having been granted.
25. Taken together, this sequence of events raises concerns about the Council's ability to deal with requests in a timely manner.

## **Right of appeal**

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26. 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)

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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