

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 11 November 2014

**Public Authority:** Cornwall Council  
**Address:** County Hall  
Truro  
TR1 3AY

### **Decision (including any steps ordered)**

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1. The complainant has requested information about the criteria used by Cornwall Council with regard to its responsibilities as a Lead Local Flood Authority ("LLFA") to investigate flooding of a property under the Flood and Water Management Act 2010 and Land Drainage Act 1991.
2. The Commissioner's decision is that Cornwall Council has contravened the requirements of Regulation 5(2) by failing to provide the complainant with the relevant information within the twenty day compliance period provided by the EIR.
3. The Commissioner does not require the Council to take any further action in this matter.

### **Request and response**

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4. On 29 December 2013, the complainant wrote to Cornwall Council and requested information in the following terms:  
  
"Would you please send me the document that lays out the criteria for investigation as is state [sic] by Cornwall Council with regard their responsibilities as a LLFA to investigate flooding of a property under the Flood and Water Management Act 2010 and Land Drainage Act 1991."
5. The complainant contacted the Commissioner to complain about the failure of the Council to respond to her request. Consequently the Commissioner wrote to the Council on 27 August and asked it to make its response within 20 working days of his letter.

6. On 26 September the complainant confirmed to the Commissioner that the Council had still not replied to her request for information. The Commissioner therefore wrote to the Council again about this matter.
7. Having received the Commissioner's letter, the Council asked the Commissioner to clarify the position whereby a person has made previous requests under the EIR, which have been deemed to be manifestly unreasonable and where the same person makes a subsequent request.
8. On 10 October the Council made its formal response to the complainant's request. The Council provided the complainant with a document entitled 'The Cornwall Local Flood Management Strategy: Part 1 – Strategic Vision 2014'. The Council advised the complainant that this document lays out the criteria for investigation with regard the Council's responsibilities as a LLFA to investigate flooding of property under the Flood Water Management Act 2010 and the Land Drainage Act 1991.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 28 July 2014 to complain about the way her request for information had been handled.
10. The Commissioner's decision relates solely to the late provision of the information sought by the complainant.

### **Reasons for decision**

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#### **Is the information 'Environmental Information'?**

11. Information is 'environmental information' if it meets the definition set out in regulation 2 of the EIR. If the information satisfies the definition in regulation 2 it must be considered for disclosure under the terms of the EIR rather than the FOIA.
12. Under regulation 2(1)(c) of the EIR, any information on activities affecting or likely to affect the elements or factors of the environment listed in regulation 2 will be environmental information. One of the elements listed is land.

The Commissioner has considered the nature of the information sought by the complainant. He has determined that the information is environmental information that the Council is correct to have considered the complainant's request under the EIR.

**Regulation 5 – the duty to make environmental information available on request**

13. Under Regulation 5(1) of the EIR, a public authority holding environmental information is obliged to make that information available on request.
14. Under Regulation 5(2) the Council is required to provide the information as soon as possible and no later than twenty working days from the receipt of the request.
15. In this case the Council provided the information sought by the complainant on 10 October 2014; some ten months after the complainant had made her request for information.
16. On the facts of the case, the Commissioner can only find that the Council has breached Regulation 5(2) of the EIR.
17. The Commissioner acknowledges that the Council misdirected itself in this case. Here, the Council mistakenly sought to rely on the provisions of section 17(6) of the Freedom of Information Act ("the FOIA"). Under section 17(6) a public authority is not required to respond to a request for information where it has already issued a refusal notice to the applicant in reliance of either section 12 or 14 of the FOIA.
18. Where the information requested by an applicant is environmental information, the public authority must apply the provisions of the EIR. The EIR does not have any provision which is analogous to section 17(6) of the FOIA.

## Right of appeal

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19. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

20. 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.
21. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**