

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

### **Decision notice**

**Date:** 6 January 2016

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

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

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1. The complainant has made a request to Cornwall Council ("the council") for information about a planning application. The council treated the request as being an appeal for an internal review on a prior request by the complainant, and as such did not action it as a new request.
2. The Commissioner's decision is that the council failed to provide a valid response to the complainant's new request, and has breached the requirement of regulation 5(1) of the Environmental Information Regulations ("the EIR").
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a response to the complainant's new request of 21 April 2015.
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**

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5. On 5 March 2015 the complainant wrote to the council and submitted his first request:
  1. *Where was [redacted name] on the 5/2/15?*

- 2. I wish to have all the case notes on this planning application, including Environmental Health, Ecologists reports, highways etc.*
- 3. I wish to have all the correspondence between [redacted name] and third parties (both internal and external) with regards to this planning application. Can you please ensure that your ICT network manager also provides any documentation that may have been deleted. Additionally I would like to have all the emails unredacted. If any emails do need to be redacted for legal reasons I would like you to state on the email the reason for the redaction.*
- 4. I wish to have Cornwall Council's guidelines for Planning Officers.*
- 5. Where, when and how many signs of notification were placed up about this development.*
- 6. All emails and correspondence from all the Cornwall County Councillors with regards to this matter.*
6. The council requested clarification on 16 March 2015 about which councillors' information was sought.
7. The complainant provided clarification on 18 March 2015. He confirmed that only information about councillors on a specific committee was sought.
8. The council responded on 17 April 2015. It refused part 1 under regulation 12(3), and refused parts 2, 3 and 6 under regulation 12(4)(b). For parts 4 and 5 it disclosed held information. In respect of those parts refused under regulation 12(4)(b), the council invited the complainant to submit a narrowed request.
9. The complainant responded to the council on 21 April 2015, stating:
  - 1. I made a request for information as to the location of [redacted name] on 5/2/15. This is an important issue as it brings into question the honesty of a publicly employed person. I therefore wish to have this information.*
  - 2. All reports e.g. ecologist reports, highways etc are matters of public interest with regards to this case and should therefore be placed on the Council's Planning websites. Why are these not already on there? I would be happy for them to be placed online as this is where they should be. If not I would like copies of these and any other documentation.*
  - 3. I wish to have all the correspondence between [redacted name] and third parties (both internal and external) with regards to this case as*

*well as any deleted documents. Clearly all information will be placed within an electronic folder and should be easily accessible.*

The council interpreted this response as seeking an internal review for its decision to refuse parts 2, 3 and 6 of the prior request under regulation 12(4)(b), and subsequently provided an internal review on 19 May 2015. However the Commissioner considers that this response should be treated as a new request.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 19 May 2015 to contest the council's position. Whilst it was not clear upon receipt of this complaint, it has now emerged that the complaint was based upon the new request that was submitted on 21 April 2015, rather than that submitted on 5 March 2015.
11. The Commissioner's investigation initially proceeded on the basis of the council's refusal of parts 2, 3 and 6 of the prior request, and the council was asked to provide submissions on the application of regulation 12(4)(b). It has subsequently become apparent from referring to the full copies of correspondence (and the council's internal review documentation) now available to the Commissioner, that the council did not recognise the complainant's correspondence of 21 April 2015 as being a new request, and instead treated it as being an appeal for an internal review for the prior request.
12. Whilst the Commissioner accepts that the initial wording used by the complainant in his correspondence of 21 April 2015 did not make it particularly clear that it was to be treated as a new request, it has become apparent that in the context it was received in (following the council's invitation to submit a narrowed request), it should have been recognised and treated as such. Its status as a new request was confirmed in the complainant's later correspondence with the council on 19 May 2015 in which he confirmed he had submitted a new 'narrowed' request and not an appeal for an internal review.

## **Reasons for decision**

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### **Is the information environmental?**

13. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR. Under regulation 2(1)(c), any

measures that will affect, or be likely to affect, the state of the elements and factors referred to in 2(1)(a) and 2(1)(b), will be environmental information. The requested information relates to discussion about a planning application. The Commissioner therefore considers that the request should be dealt with under the terms of the EIR.

**Regulation 5(2) – time for compliance**

14. Regulation 5(2) requires that environment information, unless subject to any exceptions or exclusions that may apply, should be disclosed as soon as possible following receipt of a request and, in any event, within twenty working days following the date of receipt.
15. In the circumstances of this case, the complainant submitted a new information request following the council's response to a prior request. It has emerged that this new request was not recognised as such, and the council has not provided a response under the terms of the EIR. As no response to the new request been provided, the Commissioner must conclude that the council has breached the requirement of regulation 5(2).

## Right of appeal

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16. 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)

17. 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.
18. 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**