

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

**Decision notice**

**Date:** 31 March 2016

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

**Decision (including any steps ordered)**

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1. The complainant requested information relating to conditions associated with a particular planning application. Carmarthenshire County Council ('the Council') stated that it did not hold information relevant to the request. In failing to issue a proper refusal notice within the required timescales the Council breached regulation 14 of the EIR. The Commissioner does not require any steps to be taken.

**Request and response**

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2. On 1 October 2015 the complainant wrote to the and requested information in the following terms:  
  
"In relation to the planning decision notice issued on 2014-03-10 for planning application number E/28634 [ERECTION OF 1NO. 20KW WIND TURBINE WITH A TIP HEIGHT OF 27.1M (RESUBMISSION OF E/27329 WITHDRAWN ON 14/01/13)], please provide all recorded information that the Council holds in relation to Conditions 7 & 8 of the notice".
3. The complainant wrote to the Council again on 30 October 2015 to query why he had not received a response to his request.
4. The Council responded on 2 November 2015 and confirmed that it did not hold the information requested.

## Scope of the case

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5. The complainant contacted the Commissioner on 30 October 2015 to complain that the Council had failed to respond to his request.
6. The Commissioner wrote to the complainant on 18 November 2015 to confirm that the Council had responded to the request on 2 November 2015.
7. The complainant contacted the Commissioner on 29 January 2016 to request that he issue a decision notice in respect of the length of time taken to respond.

The Commissioner has first considered whether the request is for environmental information that should be handled under the EIR, rather than the FOIA. He has then considered whether the Council has handled the request in accordance with the appropriate access regime.

## Reasons for decision

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### Correct access regime

8. The Commissioner has first considered whether the information requested by the complainant is environmental information as defined by the EIR.
9. The Commissioner considers that the information requested falls within the definition of environmental information as provided by regulation 2(1)(c): “measures (including administrative measure), 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 these elements”.
10. The information requested in this case relates to planning conditions associated with a particular planning application. The Commissioner is satisfied that the withheld information falls within regulation 2(1)(c) because it is information on, or relating to, a measure (planning and development of land) which is designed to protect the elements referred to in regulation 2(1)(a); namely land, landscape and natural sites.

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

**Regulation 14 – refusal of request**

11. Under regulation 5(1) of the EIR public authorities have a general duty to make environmental information available when it is requested. When the information is not held, public authorities should issue a refusal notice, in accordance with regulation 14 that cites the exception under regulation 12(4)(a) of the EIR. This exception applies when information is not held.
12. In this case, the request was made on 1 October 2015 and the Council responded on 2 November 2015 stating that the requested information was not held. It did not, however, refer to regulation 12(4)(a) in its response to the request.
13. In failing to state that the information was not held within 20 working days the Council breached regulation 14(2). In failing to state that it was relying on regulation 12(4)(a) the Council breached regulation 14(3).

## Right of appeal

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14. 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)

15. 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.
16. 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 .....**

**Anne Jones**  
**Assistant Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**