

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

Decision notice

Date: 26 March 2019

Public Authority: Causeway Coast and Glens Borough Council
Address: Cloonavin
66 Portstewart Road
Coleraine
BT52 1EY

Decision (including any steps ordered)

1. The complainant has submitted a 9-part request to Causeway Coast and Glen Borough Council for information relating to planning application reference LA01/2016/0335/F.
2. The Commissioner's decision is that the Council has correctly applied the provision of Regulation 6(1)(b) of the EIR to parts A, B, C , H & I of the complainant's request and that the Council has complied with its duty under regulation 5(1) of the EIR by informing the complainant that it does not hold recorded information in respect of D, E, F and G of his request
3. No further steps are required.

Request and response

4. On 2 May 2018 the complainant wrote to the Council and requested the following information:

"[A] Copies of all correspondence between the Causeway Coast and Glens Council, the Causeway Coast and Glens Council's Planning Department and the Department for Infrastructure (Roads) in relation to Planning Application LA01/2016/0335/ and all subsequent designations of the said Planning Application, to include written notes, letters, emails, memos, minutes of any meetings held between the parties, transcripts of any conversations, telephone conversions, the contents of any emails that have been deleted, and any other correspondence howsoever

generated.

[B] Full disclosure in respect of all public safety considerations in respect of Planning Application LA01/2016/0335/ and all subsequent designations? to include the impact on existing residents in the Swilly Close, Swilly Mews, Swilly Park and Swilly Drive areas of Portstewart.

[C] Full disclosure of all documentation and details of how all objections and petitions of objection to Planning Application LA01/2016/0335/ and all subsequent designations were considered during the Planning Process and the reasons why each objection was dismissed.

[D] Full disclosure of all documentation regarding all aspects of vehicular parking in Swilly Park Portstewart. To include details of how and at what stage vehicles lawfully parked are deemed to be 'inconsiderately parked' as stated by a Senior Planner, and where vehicles park in Swilly Park to prevent inconsiderate parking.

[E] Full details and copies of all documents detailing how the emergency services gain vehicular access to Swilly Drive, Swilly Park, Swilly Green, Swilly Close and Swilly Mews, when the one and only access road is obstructed. To include copies of all contingency plans and evacuation plans for private residents and Social Housing tenants in such an eventuality.

[F] Full details and copies of all documents detailing how the Planning Department expects motorists to negotiate a traffic calming measure on a blind right angle bend on Swilly Park, when driving around it means driving on the wrong side of the road, and when driving over the traffic calming measure leaves motorists driving on the wrong side of the road a short distance away.

[G] Full details and copies of all documents detailing how the Planning Department expects motorists on out bound trips from the direction of Swilly Green to negotiate the give way road markings at the junction of Swilly Park and Swilly Road, Portstewart without committing the offence of Breach of Traffic Signs and without mounting the nearside kerb at Swilly Road. To include vehicles towing trailers and caravans, lorries, buses, and heavy goods vehicles. To also include how motorists with right of way travelling from the direction of Swilly Drive are expected to negotiate the Swilly Park, Swilly Road junction without ending up on the wrong side of the carriageway on Swilly Road.

[H] Full details and copies of all documents detailing how the Planning Department considered the impact of site traffic with regard to construction work at Swilly Green.

[I] Full details and copies of all documents detailing how the Planning Department considered the impact of mud on the road emanating from the construction site at Swilly Green on all road users in the immediate area. To include how this would be monitored, details of all inspections, the frequency of inspections and how the Informative direction was decided, and how and by whom it is to be policed.”

5. The Council responded to the complainant's request on 27 June 2018, advising him that his request fell to be considered under the EIR. With respect of the information he has requested in items A, B, C, H and I, the Council advised the complainant that it the information was subject to an application of Regulation 6(1)(b), being information already publically available. The Council told the complainant that he could visit its office and view the information on the working file under reference LAO1/2016/0335/F.
6. In respect of items D, E, F and G, the Council advised the complainant that it had searched its records and had failed to locate any relevant records. Therefore the Council confirmed that it does not hold the information the complainant has asked for.
7. On 2 July 2018, the complainant wrote to the Council to ask for a list of dates and times when it would be suitable for him to view the documents held in respect of items A, B, C, H, and I of his request.
8. In view of its application of Regulation 6(1)(b), the complainant asked the Council to explain the definition of 'easily accessible', and whether this takes into account time, expense, and inconvenience? He asked the Council to confirm if Regulation 6(1)(b) includes any reference to say that the requested information cannot be supplied even if it is already publicly available, or if the Council is prevented from making the information available in a particular form or format if it is already publicly available and easily accessible in another form or format. The complainant ended his email by asking the Council how not supplying the requested information impacts on the public image of the Causeway Coast and Glens Council?
9. On 10 July 2018, the complainant wrote to the Council and asked it to undertake an internal review of its handling of his request. The complainant stated:

“If any of the issues raised in Paragraphs D, E, F, and G, of the FOI request were not considered during the Planning Application Process then this should be stated clearly and in unambiguous terms, and the name of the Department who did consider the matters raised should be named, and an explanation provided as to how information from such a

third party was considered as part of the Planning Application Process.

If records in relation to Paragraphs A, B, C, D, H and I, of the FOI request were not perfected in accordance with best practice or if the information requested was not considered during the Planning Application process then this should also be stated clearly and in unambiguous terms.

The failure to provide the information requested together with the failure to provide access by way of an appointment to view the so-called easily accessible and publicly available information clearly proves that the information is neither publicly available nor easily accessible.”

10. Having completed its internal review, the Council wrote to the complainant on 15 August 2018 to advise him of its final decision. The Council determined that it is content, based on the records it holds, the Council has met its obligations and has fully and accurately answered the complainant’s request. The Council stated that,

“...where Council did not hold the information requested as it was not the competent authority, you were provided with reasonable advice and assistance and while records show on previous occasions you were informed of the name of the competent authority, on this occasion, you were directed to NIDirect – government’s one-stop portal. Where the information was held, you were advised in accordance with open file procedures to telephone 028 70 347 100 to make arrangements to inspect the information at a mutually acceptable time.”

Scope of the case

11. The complainant contacted the Commissioner on 21 August 2018 to complain about the way his request for information had been handled.
12. The Commissioner advised the complainant that her investigation would be focussed on whether the Council is entitled to rely on Regulation 6(1)(b) of the EIR in respect of items A, B, C, H and I of his request, and also to determine whether the Council holds any information in respect of items D, E, F and G of his request.

Reasons for decision

Regulation 6(1)(b) – Form and format of information

Items A, B, C , H & I

13. The Council has advised the Commissioner that it has not withheld any information from the complainant. The Council said:

"The information requested is either available by other means through the Open File Procedures or is not held by the Council. The information requested in sections A, B, C, H & I are also available to view on the Northern Ireland Planning Portal (NIPP)."

14. The Council informed the Commissioner that it provided the complainant with a link to the NIPP on 27 April 2018 as part of its previous correspondence with him. To substantiate this, the Council provided the Commissioner with a copy of its email of 27 April 2018 which directs the complainant to <http://epicpublic.planningni.gov.uk/publicaccess/> where he can search under LA01/2016/0335 for all of the representations made to the Council in respect of that application. The Council also advised the complainant that he could find a copy of the Planning Committee Protocol at the following web address, which it says "is strictly adhered to":

<https://www.causewaycoastandglens.gov.uk/live/planning/planning-live>

15. The Council has advised the Commissioner that the information requested by the complainant is available to him by availing of the Council Open File Procedures. These procedures allow any member of the public to view the complete application file at its offices.
16. All correspondence relating to the application is placed onto the file and additionally the information is available to view on the NIPP. All documentation regarding the Planning Application LA01/2016/0335/F is available to view online at the Northern Ireland Planning Portal by accessing the link referred to in paragraph 15.
17. Information was continually uploaded onto the NIPP as and when it became available from 19 March 2016 until 9 March 2017 when a decision was made on the application. The minutes of the Planning Committee Meeting where the application was discussed were uploaded to the following web address on 15 March 2017.

<https://www.causewaycoastandglens.gov.uk/council/minutes/22nd-february-2017-planning>

18. To determine whether the information requested by the complainant was reasonably accessible to him, the Council advised the Commissioner that it considered how close the complainant lives in relation to its office. This was determined to be a distance of approximately 4 miles.

19. The Council informed the Commissioner that the route to its office from the complainant's home is serviced by bus and a stop is located outside the Council's offices. The applicant has previously attended the offices of the Planning Department at their old premises. Following relocation of the Planning Department in August 2017, the office is now located closer to the complainant's home address and are more accessible by bus.
20. The Council points out that the complainant has been corresponding with the Council by email and therefore it believes it is reasonable to assume that he is computer literate and would be able to navigate the NIPP with ease.
21. Regulation 6(1)(b) states:

6(1) Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless—

(a) it is reasonable for it to make the information available in another form or format; or

(b) the information is already publicly available and easily accessible to the applicant in another form or format.
22. The Commissioner has reviewed the information available at the web addresses which the Council provided to the complainant. She accepts that the information is publicly available and, on the basis of what the Council has considered in respect of the complainant's visits to its office and his use of information technology, it is easily accessible. The Commissioner has therefore decided that the Council is entitled to rely on Regulation 6(1)(b) of the EIR.
23. The Commissioner makes the point that the word 'or' after subsection (a) of Regulation 6 should be taken to mean 'alternatively'. Therefore the question does not arise where, as in this case, the requested information is easily accessible to the requester, albeit not in the form or format he requires. Put simply, the Council is not required to consider whether it would be reasonable for it to provide the complainant with the same information in a different form or format to that which is already easily publicly available, a subject that is referenced in the Commissioner's guidance¹ on the topic.

¹ <https://ico.org.uk/media/1639/form-and-format-of-information-eir-guidance.pdf>

Regulation 5(1) – duty to make environmental information available on request

Items D, E, F and G

24. Regulation 5(1) of the EIR states requires a public authority that holds environmental information to make it available on request.
25. The Commissioner has sought to determine whether the Council holds information which the complainant seeks at items D, E, F and G of his request.
26. In making this determination, the Commissioner applies the civil test of the balance of probabilities. This test is in line with the approach taken by the First Tier Tribunal (Information Rights) when it has considered whether information is held in cases which it has considered in the past.
27. The Commissioner has investigated this complaint by asking the Council a number of questions about the searches it has made to locate the information which the complainant seeks. The Commissioner's investigation also included questions about the possible deletion/destruction of information which might be relevant to the complainant's request.

The Council's representations

28. The Council has advised the Commissioner that it carried out searches of all emails received and sent by staff who were involved with the planning application. These searches included the emails of the Council's Head of Planning, Principal Planning Officer, Senior Planning Officer and the Case Officer.
 29. The Council's search also included generic planning emails, although the Council said, "These searches would have been unlikely to retrieve any relevant information as during the planning process all information has to be placed on the planning file" and "All Planning Officers are aware that all relevant information regarding planning applications have to be placed on the file."
 30. Additionally. The Council informed the Commissioner that the information requested by the complainant is also not within the remit of Local Government in Northern Ireland. The complainant was previously informed of this in the Council's email of 19 July 2017, which advised
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him that the competent authorities for dealing with his specific queries are the Police Service for Northern Ireland (PSNI) and Transport NI. To assist the complainant, the Council provided him with the contact details for both these authorities.

31. The Council assure the Commissioner that its officers do not hold information individually, or on their own laptops as to do so would not be compliant with the planning process or the legal requirement that the Council must routinely make all information available. It said, "Any information that is received electronically is printed and placed on the planning file which is publicly available by our Open File Procedures and also electronically on the Northern Ireland Planning Portal".
32. The search terms used by the Council for information falling within the terms of the complainant's request were '0335' and 'Swilly'. These terms refer to the application file number and to the site address of the planning application.
33. The Council also assured the Commissioner that it has not deleted or destroyed any recorded information relevant to the scope of the complainant's request on the grounds that to do so would be in contravention of its Retention and Disposal Schedule. This schedule states that all planning application files are to be retained for a period of 6 years after closure. As the decision on the application referred to by the complainant was issued on 24 February 2017, the file cannot be disposed of until after 24 February 2023.
34. To verify this, the Council provided the Commissioner with a link to its Retention and Disposal Schedule².
35. On the grounds that Local Government Authorities in Northern Ireland do not have responsibility for the issues the complainant is concerned with, the Council assures the Commissioner that it does not hold the information he has requested.
36. The Council says, "[it] does not hold any information similar to that requested as Council have on numerous occasions advised the applicant that it does not have responsibility for the issues he has raised and has,

in line with Regulation 9 of the EIR, provided names and contact details of the authorities who have responsibility for these issues”.

37. The Commissioner has considered the representations made to her by the Council in respect of this complaint. She has decided that, in the absence of any evidence to the contrary, and on the balance of probability, the Council does not hold the information which the complainant has asked for at items D, E, F and G of his request.
38. The Commissioner's decision is that the Council has complied by Regulation 5(1) of the EIR by informing the complainant that it does not hold the information specified in items D, E, F and G of his request.

Regulation 9 – Advice and assistance

39. In its initial response to the complainant's request, the Council erroneously referred to section 16 of the FOIA. The Council acknowledges that it cited the wrong legislation. The correct legislative provision is Regulation 9 of the EIR.
40. The provision of Regulation 9 of the EIR requires the Council to provide advice and assistance to an applicant, so far as it would be reasonable to expect the authority to do so.
41. In this case, the Commissioner is satisfied that the Council has not withheld any information from the complainant. She accepts that all of the information it holds within the scope of the request is available to view at its offices or electronically via the NIPP. Where the Council does not hold information within the scope of the complainant's request, the Commissioner is satisfied that the Council made the complainant aware of that fact, and where matters fell outside of the Council's remit, the Council provided the complainant with the contact details for the relevant authorities.
42. In view of the actions taken by the Council referred to above, the Commissioner is satisfied that the Council has fulfilled the requirement of Regulation 9 of the EIR and has provided the complainant with appropriate advice and assistance.

Right of appeal

43. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

44. 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.
45. 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**