

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

**Date:** 26 March 2019

**Public Authority:** Vale of Glamorgan Council

**Address:** [FoiUnit@valeofglamorgan.gov.uk](mailto:FoiUnit@valeofglamorgan.gov.uk)

**Decision (including any steps ordered)**

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1. The complainant requested information in respect of the change of Councillors on the Welsh Church Act Estate Committee. The Vale of Glamorgan Council provided some information in respect of the request however the complainant considers it holds additional information. The Commissioner's decision is that the Vale of Glamorgan Council has complied with its obligations under section 1(1) of the FOIA. The Commissioner does not require the public authority to any steps.

**Request and response**

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2. On 21 March 2018, the complainant requested the following information from the Vale of Glamorgan Council:  
  
*"...who replaced [named Councillor A] on the welsh church committee and why was [named Councillor B] reassigned back to the original group. What was the reason for the change and is this recorded then as not happening anywhere?"*
3. The Council responded on 27 April 2018. It provided the name of the replacement for named Councillor A and informed the complainant that named Councillor B went to the Standards Committee.
4. The complainant contacted the Council the same day stating it did not respond to her query as a change was recorded that did not take place.
5. Following an internal review the Council wrote to the complainant on 17 January 2019. It stated that the information provided in its original response was correct at the time. It added that named Councillor B has

subsequently left the committee. Finally, it stated that although a question can be a valid request for information, a public authority is not required to create new information or give an opinion or judgement.

## Scope of the case

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6. The complainant contacted the Commissioner on 27 April 2018 to complain about the way her request for information had been handled and again on 17 January 2019 following the Council's internal review. She does not accept that changes to committee roles would not be recorded, nor consider it her role to identify whether her request is to be considered under the Environmental Information Regulations 2004 ('the EIR') or the FOIA. She also stated that she does not accept the Council's apology for the delay in providing its internal review, as it did not provide an explanation.
7. The Commissioner considers that the scope of her investigation is to determine whether the Council has complied with its duties under section 1 FOIA and to consider its procedural handling of the request.

## Reasons for decision

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### The appropriate legislation

8. The Commissioner notes that the Council considered the request under the EIR. However, she considers that the information is unlikely to be environmental as defined by regulation 2 of the EIR.
9. Regulation 2(1) of the EIR defines 'environmental information' and the relevant parts of the definition are found in 2(1)(a) to (c) which state that it is any information in any 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...'*

10. The information requested asked for the name of the replacement of a Committee member and why a different named Councillor was reassigned to a different committee.
11. During the course of her investigation, the Commissioner informed the Council that she thought it unlikely that this type of information would fall within the definition of environmental information as described above.
12. Whilst the Council noted the Commissioner's comments, it stated that as it had not applied an exemption/exception it made little material difference to its response under either section 1(1) FOIA or regulation 5 EIR, adding that the whole basis of the complainant's requests relate to land and the effect of the Council's actions. It added that the Welsh Church Act Estate Committee principally administers land and their work would be an administrative measure or programme likely to affect the land.
13. The Commissioner acknowledges that the main thrust of a number of the complainant's requests are in relation to the land, and in these cases, should be considered under the EIR. However, she would also point out that a public authority must take each request on its merit and consider it under the appropriate legislation as not only are there differences between the exemptions/exceptions, but the procedural requirements also vary; not least that an internal review is a formal requirement under regulation 11 of the EIR whilst there is no such *formal* requirement under the FOIA.
14. The Commissioner remains of the view that the appropriate legislation in this case is the FOIA.

## **Section 1 – General right of access to information held**

15. Under section 1(1) of the FOIA, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.
16. In her consideration of this case, the Commissioner is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley) that there can seldom be absolute certainty that additional information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold any additional information therefore, the normal

standard of proof to apply is the civil standard of the balance of probabilities.

17. The Commissioner's judgement in such cases is based on the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner expects the public authority to conduct a reasonable and proportionate search in all cases.
18. In this particular case, the Council has provided the name of Councillor A's replacement to the Welsh Church Act Estate committee, therefore the Commissioner does not consider that this aspect of the request falls within the scope of her investigation. However, whether the Council has complied with its obligations in respect of why named Councillor A was replaced and why Councillor B was reassigned back to the original group does form part of this investigation.
19. In respect of its search, the Council informed the Commissioner that on receipt of the request, the matter was delegated to its former Operations Manager, Democratic Services who provided the response. The response confirmed that the move was reported to the Council on 28 February 2018 and its website reflects this.
20. The Council informed the Commissioner that consulting with this member of staff was the most appropriate, relevant and reasonable course of action in respect of this request. The Council added that it acts as the Corporate Trustees for the Wales Church Estate Act Committee and all the information it holds relevant to the request is held by its Democratic Services Department. As such, the Operations Manager, Democratic Services, has responsibility for Council Committees, including agendas, reports and minutes.
21. During the course of the Commissioner's investigation, the Council has examined the WCAE minutes and confirmed that they do not contain anything stating the reason for the moves of the respective Councillors, adding that the minutes are the only information it holds relevant to the request.
22. The Council further informed the Commissioner that this is consistent with its usual procedures as it would not normally record the reason why a Councillor left the committee, unless reflected on the website and no doubt, it would have been advised of this by the relevant head of service.

23. Having considered the details of the Council's search and its explanation, the Commissioner considers that the Council has conducted a reasonable and proportionate search of its records and concluded that it is unlikely to hold any additional relevant information. Accordingly therefore, the Commissioner considers that the Council has complied with its obligations under regulation section 1(1) of the FOIA.
24. However, the Commissioner would wish to highlight, that at no point in its original response or the internal review, did the Council specifically address this aspect of the request, opting to inform the complainant that although questions can be valid requests for information, it is not required to create new information to answer them. Whilst this is correct, the Commissioner considers that had a more comprehensive response been provided to the complainant either initially, or at the internal review stage, this may have prevented a complaint to the Commissioner.
25. Additionally, even though the Council has fully engaged with the Commissioner, she would also point out that it took more than one attempt to obtain these details herself from the Council.

## **Other matters**

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### **Internal review**

26. The Commissioner acknowledges that it is not a formal requirement for a public authority to conduct an internal review under the FOIA. However, the Section 45 Code of Practice recommends that public authorities do undertake an internal review and that it should be done promptly. The Commissioner has also produced guidance in relation to this matter which recommends that it takes no longer than 20 working days in most cases, and in exceptional circumstances, no longer than 40 working days.
27. The Commissioner notes that the complainant requested an internal review on 27 April 2018. However, the Council did not send the complainant details of its internal review until 17 January 2019.
28. The Council has confirmed to the Commissioner that the delay was partly due to resource constraints, and also a simple oversight given the high volume of different requests and correspondence from the individual.
29. Whilst the Commissioner acknowledges that the Council has received a high volume of requests from the complainant, she would hope that it

has now put in place measures to prevent this from happening in the future.

## Right of appeal

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30. 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)

31. 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.
32. 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 .....**

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