

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

**Date:** 4 April 2023

**Public Authority:** Swansea Council  
**Address:** Civic Centre  
Oystermouth Road  
Swansea SA1 3SN

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

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1. The complainant has requested information relating to a talk given to councillors and staff and an e-learning training module.
2. The Commissioner's decision is that Swansea Council ("the Council") is not entitled to rely on regulation 12(4)(e) to withhold the requested information.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Disclose the Toolbox talk material;
  - Provide advice and assistance to the complainant to determine what, if any, could be provided within scope of the request relating to the e-learning module.
4. The Council 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 FOIA and may be dealt with as a contempt of court.

### **Request and response**

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5. On 16 January 2023, the complainant wrote to the Council and requested information in the following terms:

"Please supply electronically

3.1.6. Toolbox talk

An online toolbox talk has been produced for all staff and councillors to give examples of simple actions they can undertake at home to contribute to Nature Recovery and Climate emergencies.

### 3.1.7. Climate Change and Nature Recovery Training Modules

At the end of 2022, the council released the first in a series of non-mandatory Climate Change and Nature Recovery introductory modules through the staff net electronic Learning Pool web site. More modules will follow, including a more detailed Nature Recovery specific module. These are designed for all officers and councillors."

6. The Council responded on 15 February 2023 and refused to provide the information citing regulation 12(4)(e) of the EIR as its basis for doing so. It maintained its position at internal review.

## Reasons for decision

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7. This reasoning covers whether the Council is entitled to rely on regulation 12(4)(e) of the EIR to withhold the requested information.
8. Regulation 12(4)(e) provides an exception for information which constitutes an 'internal communication'. In order for the exception to be engaged it needs to be shown that the information in question constitutes a communication within one public authority, specifically, the authority to which the request is made. The two training modules referred to in the request are a toolbox talk and an e-learning course.
9. The Council provided the Commissioner with a copy of the toolbox talk and a sample of the e-learning material, by way of 'screen grabs'.
10. It explained that the toolbox talk notes are designed to be delivered by Council officers to colleagues without a log-in on the Council's computer network. A toolbox talk is typically aimed at manual workers and the content is designed to be practical and short, something delivered at the start or end of a workshift.
11. The e-learning course, is aimed at office-based staff with access to the staff intranet. However it is an interactive file (pluginfile.php) and cannot be downloaded. The Council was not able to download it for the Commissioner, hence the screen grab examples, nor could it determine how it could be provided to the complainant.
12. The Council also explained the training course took 40 minutes, requiring a participant to click on images to find buried text, and to watch embedded videos. None of these interactive elements could be saved into a file for transfer to the complainant.

13. The Council maintained its view that internal training material constitutes internal communications as defined by this exception.
14. The Commissioner is prepared to accept the exception is engaged.

**The public interest test**

15. Regulation 12(1)(b) requires that where the exception under Regulation 12(4)(e) is engaged, a public interest test should be carried out to ascertain whether the public interest in maintaining the exception outweighs the public interest in disclosing the information. The Commissioner is mindful of the provisions of Regulation 12(2) which state that a public authority shall apply a presumption in favour of disclosure.
16. The complainant considers that the public interest test has not been applied correctly.
17. The Council has acknowledged that there will always be some public interest in disclosure to promote transparency and accountability of public authorities, greater public awareness and understanding of environmental matters, all of which ultimately contribute to a better environment.
18. The Commissioner notes that in its initial response the Council considered that the information requested should be withheld "due to the need for this internal information to remain confidential."
19. Having had sight of some of the information, the Commissioner can see no reason why this should be the case.
20. However, he does acknowledge that none of the content is new to any layperson who watches the news and who is reasonably abreast of the subject of climate change and biodiversity loss. The training appears to be aimed at an audience with little or no grasp of the subject and, while it no doubt has some limited value in raising staff awareness, is not in itself equipping staff to deal with these major issues beyond the small changes that all citizens are able to make.
21. After considering all the circumstances of this case, the Commissioner can see no public interest arguments in favour of withholding the requested information. It does not contain anything sensitive or confidential and there will be no detriment to the public authority.
22. The Commissioner notes the Council's difficulties with regard to the e-learning module. However, he is not persuaded that adequate investigations have been carried out to determine if this can be provided to the complainant.

23. The Council should now disclose the Toolbox talk information to the complainant.

**Regulation 9 – Advice and assistance**

24. Regulation 9 states: "A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants".
25. In this case the Council considered that the information was exempt. However, as the Commissioner has decided it should be disclosed, the Council should provide advice and assistance to the complainant to determine what information could be disclosed within the scope of the request.

## **Right of appeal**

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26. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

27. 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.
28. 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**

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