



Neutral citation number: [2024] UKFTT 1083 (GRC)

Case Reference: FT/EA/2023/0414

**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Heard Remotely**

**Heard on: 22 November 2024**

**Decision given on: 03 December 2024**

**Before**

**DISTRICT JUDGE WATKIN  
MEMBER DE WAAL  
MEMBER EDWARDS**

**Between**

**JOHN MITCHELL**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

Respondents

**Representation:**

For the Appellant: In person

For the Respondent: No attendance

**Decision:** The Appeal is dismissed

## REASONS

### BACKGROUND

1. This Appeal made by email dated 25 September 2023 by Mr John Mitchell (the “**Appellant**”) arises following a request for information (the “**Request**”) made by the Appellant to the Plymouth City Council (“the **Public Authority**”) on 4 March, 2023 in the following terms:

*“Please supply pdf copies or access to the current site accreditation certificates to ISO 9001, 14001e, 45001, 50001 for MVV Environment Devonport Ltd as they do not appear to be available online.*

*Please also provide the associated audits to each standard in English (pdf copies or site access)*

*Please provide the APR for 2022 in a PDF format.”*

2. The Public Authority responded on April 2023, providing some information within the scope of the request and advising that some of the information was not held in English (and fell outside the scope of the Request) and some information was not held at all.
3. An internal review was subsequently carried out and the Public Authority responded on 17 May 2023, stating that it was upholding its original position.
4. The matter was referred to the Information Commissioner's Office on 18 May 2023 and, in a decision notice (the “Decision Notice”) dated 19 September 2023, the Information Commissioner (“IC”) held that:

*“On the balance of probabilities, the Council has provided all the information it holds within the scope of the request.*

*The Council breached Regulation 5(2) by failing to respond to the request within 20 working days.”*

5. It is agreed that the information sought by the Request is Environmental Information as the information requested relates to site accreditation certificates, audits and an Annual Performance Review of a waste management site. Therefore, the Environmental Information Regulations 2004 ("the EIR") apply.

## **DOCUMENTS**

6. The Tribunal was provided with a 1431-page bundle.

## **THE ISSUES**

7. The issue to be determined is whether the requested information was held by the Public Authority at the time of the Request (Section 1(4) FOIA and regulation 12(4)(a) EIR) and, if it was, whether the Public Authority disclosed it or should be ordered to disclose it.

## **THE RELEVANT LAW**

### **Jurisdiction**

8. The Tribunal's jurisdiction is set out at section 58(1) of FOIA which provides that if the Tribunal considers that the notice against which an appeal is brought is not in accordance with the law, or to the extent that the notice involved an exercise of discretion by the IC that he ought to have exercised his discretion differently, then the Tribunal shall allow the appeal or substitute such other notice as could have been served by the IC; and in any other case the Tribunal shall dismiss the appeal.
9. Section 58(2) gives the Tribunal power to review any finding of fact on which the notice was based.
10. Section 39 of FOIA provides that information is exempt information if the public authority holding it is obliged by the EIR to make the information available to the public or would be so obliged but for any exemption within the EIR.

## **Environmental Information Regulations 2004**

11. A public authority that holds environmental information is required to make it available on request (reg. 5(1) EIR).
12. Environmental Information is defined at Regulation 2(1) as information 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;*
  - (d) reports on the implementation of environmental legislation;*
  - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
  - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);”*
13. Exceptions to the duty to disclose are set out at regulation 12.
14. Pursuant to regulation 12(1)(b) a public authority can only refuse to disclose information based on an exception under paragraph 12(4) or (5) if:

*“in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information”*

15. Pursuant to regulation 12(2) a presumption in favour of disclosure applies.
16. The exceptions at regulation 12(4) apply provided that the information is of the nature described. Where the exceptions at regulation 12(5) apply, disclosure may be refused to the extent that the disclosure would have an adverse effect on the matters set out.
17. Regulation 12(4)(a) states that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant’s request is received.

## **THE HEARING**

18. The hearing was held by CVP and attend by the Appellant. Unfortunately, he was only able to attend by telephone due to IT issues.
19. The Tribunal explained that the focus would be specifically on the Request and whether the Public Authority held any information within the scope of the Request which it had not already been provided.
20. The Tribunal heard submissions and evidence from the Appellant who informed the Tribunal in detail of the nature of his concerns and the background to the Request. In relation to the Request itself, he confirmed as follows:
  - a) He has received the certificates but he does not accept that they were correct as they do not contain an audit reference number.
  - b) He has received the audit dated 12 November 2021 but he does not consider that it is compliant with UK standards.
  - c) The APR has been received by him.

21. On being asked whether he had any evidence that the Public Authority held any other accreditation certificates or audits that were within the scope of his request, the Appellant confirmed that he did not.
22. It was apparent to the Tribunal that the Appellant was extremely concerned that the Public Authority were not complying with their obligations in relation to a waste management site.

## **DECISION**

23. Under the EIR, a public authority is only required to make available environmental information which it holds. It is not for the Tribunal to determine whether any type of information *should be* held by a public authority or that it should be held in any particular form. The only question for the Tribunal to consider in this appeal is whether environmental information within the scope of the Appellant's Request is held by the Public Authority and, if it is, whether the Public Authority has made it available or should be ordered to make it available.
24. Having heard the Appellant's evidence and submissions and having read the IC's Response to the Appeal, the Tribunal determines, on the balance of probabilities, that in the absence of any evidence to suggest that other accreditation certificates or audits were in the possession of the Public Authority at the time of the Request, it did not hold any further information which would be disclosable in response to the Request.
25. The Appeal is, therefore, dismissed.

## **APPEAL**

If either party is dissatisfied with this decision, an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Administrative Appeals Chamber, against decisions of the First-tier Tribunal in Information Rights Cases (General Regulatory Chamber). Any such application must be received within 28 days after these

reasons have been sent to the parties under Rule 42 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

Judge R Watkin