

Freedom of Information Act 2000 (Section 50) Environmental Information Regulations 2004

Decision Notice

Date: 25 August 2011

Public Authority: Cwm Taf Local Health Board
Address: Ynysmeurig House
Navigation Park
Abercynon
Mid Glamorgan
CF45 4SN

Summary

The complainant requested copies of reports issued by the District Valuer in connection with the development of two medical centres. The Board refused the request by virtue of sections 41 and 43 of the Act. The Commissioner has investigated and determined that the information requested constitutes environmental information and the correct access regime is the EIR. The Commissioner requires the Board to reconsider the request under the EIR and either disclose the information requested or issue a valid refusal notice in accordance with regulation 14 of the EIR.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.
2. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

Background

3. A new General Medical Services ('GMS') contract was implemented in Wales in April 2004. Since the new GMS contract came into force the Welsh Assembly Government has held funding for new, refurbished, replacement and improvement grants for GMS premises centrally. Bids are submitted to the Assembly Government by Local Health Boards based on priorities in their integrated primary care estate strategies
4. The request in this case is for valuation reports relating to the development of two medical centres. The reports were submitted to the Welsh Assembly Government by Cwm Taf Local Health Board ('the Board') as part of the bidding process for funding for the development of two new medical centres.

The Request

5. On 5 January 2011, the complainant wrote to the Board regarding Gilfach Goch and Treharris Medical Centres and requested:

"....copies of the reports issued by the District Valuer in connection with the applications submitted for funding to Welsh Assembly Government of the two new developments above. These new medical centres have been occupied and the leases completed and registered at HM Land Registry".
6. The Board issued a refusal notice on 14 February 2011 confirming that it held the requested information but had concluded that the information "could be exempt" under sections 41 and 43 of the Act. It did not provide any information concerning the public interest considerations associated with section 43 of the Act.
7. On 24 February 2011 the complainant wrote to the Board requesting a review of its decision to withhold the requested information. He pointed out that the leases for both premises had been completed, and as there was no possibility of renegotiating any agreement reached with the landlord/developer, disclosure of the requested information would be unlikely to cause any commercial detriment to either party. He also stated that the information provided by the District Valuer to the Board was included within the leases for the premises in question, copies of which were now lodged at HM Land Registry.
8. The Board provided the outcome of its internal review on 19 April 2011 and upheld its decision that the requested information was exempt by virtue of sections 41 and 43 of the Act. The only reference within this

letter to the public interest test was a statement that "There is no public interest in disclosing this information".

The Investigation

Scope of the case

9. On 20 April 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the information he had requested should be disclosed.
10. Upon allocation of this case to an official within the Commissioner's office, it became apparent that the information requested by the complainant may be environmental according to the definition given in regulation 2 of the EIR. Consideration was therefore given as to whether it would have been appropriate for the public authority to have handled the request under the EIR. The result of this consideration is recorded in the "*Analysis*" part of this Notice.

Chronology

11. The Commissioner contacted the Board in connection with this case on 20 May 2011 and asked that it supply a copy of the withheld information. The Board provided a copy of the withheld information on 28 June 2011.

Analysis

Correct Access Regime

12. The Board originally processed the complainant's request for information under the Act and considered the information to be exempt under sections 41 and 43. However, the Commissioner considers that the information requested constitutes environmental information and that the correct access regime is, therefore, the EIR.
13. The Commissioner has determined that the requested information would fall within the definition of environmental information set out at regulation 2(1)(c) of the EIR. This provides that:

"'environmental information' has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material on—

(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.”

The full text of regulation 2(1) is included in the legal annex to this notice.

14. The Commissioner considers that the phrase “any information ...on” should be interpreted widely and that this is in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which is implemented into UK Law through the EIR. The Commissioner does not consider it necessary for the requested information itself to have a direct effect on the environment in order for it to be environmental information. It will usually include information concerning, about, or relating to measures, activities and factors likely to affect the state of the elements of the environment.
15. In reaching a view as to whether the withheld information constitutes environmental information, the Commissioner notes that the information comprises of reports issued by a District Valuer on the assessment of the rental value of each of the proposed developments. The District Valuer appears to have been provided with copies of the site and layout plans for each proposed development and the reports issued following discussions between the District Valuer and the developer for each of the sites. The District Valuer reports were submitted to the Welsh Assembly Government by the Board, as part of its application for funding for the development of two medical centres.
16. The Commissioner has concluded that the withheld information constitutes environmental information as defined by regulation 2(1)(c). This is because the construction and development of two medical centres is clearly a measure, as defined by regulation 2(1)(c) of the EIR, which is likely to have an impact on the elements of the environment referred to in regulation 2(1)(a), and in particular land, landscape. Therefore the Commissioner considers the requested information in this case to be environmental as it relates to information on a measure (the development) which would be likely to affect the elements of the environment.

Regulation 5 and Regulation 14

17. Regulation 5(1) provides that a public authority that holds environmental information shall make it available on request. Regulation 14 states that if a request for environmental information is refused, this refusal should be made in writing and no later than 20 working days

after the date of the request. The refusal must specify any exception being relied upon under regulations 12(4), 12(5) or 13; and the matters considered in reaching a decision with respect to the public interest under regulation 12(1)(b). The refusal should also inform the applicant of how to make representations against the public authority's handling of the request and of the applicable enforcement and appeal provisions.

The Decision

18. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the EIR in that it did not apply the correct legislation when handling the request

Steps Required

19. As the Commissioner has determined that the correct access regime for the request is the EIR he requires the Council to either provide the information requested in compliance with regulation 5(1) or issue a valid refusal notice that complies with regulation 14 of the EIR.
20. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

21. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

22. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

23. 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.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 25th day of August 2011

Signed

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

Legal Annex

Environmental Information Regulations 2004

Regulation 2 - Interpretation

Regulation 2(1)

In these Regulations –

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other 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;
- (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 elements of the environment referred to in (b) and (c);

Regulation 5 - Duty to make available environmental information on request

Regulation 5(1)

Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 5(2)

Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 14 - Refusal to disclose information

Regulation 14(1)

If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

Regulation 14(2)

The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 14(3)

The refusal shall specify the reasons not to disclose the information requested, including –

- (a) any exception relied on under regulations 12(4), 12(5) or 13; and
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).

Freedom of Information Act 2000

Information provided in confidence.

Section 41(1) provides that –

“Information is exempt information if-

- (c) it was obtained by the public authority from any other person (including another public authority), and
- (d) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."

Section 41(2) provides that –

"The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence."

Commercial interests.

Section 43(1) provides that –

"Information is exempt information if it constitutes a trade secret."

Section 43(2) provides that –

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)."

Section 43(3) provides that –

"The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2)."