

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

Decision notice

Date: 3 December 2012

Public Authority: Snowdonia National Park Authority
Address: National Park Office
Penrhyndeudraeth
Gwynedd
LL48 6LF

Decision (including any steps ordered)

1. The complainant requested copies of all documentation relating to a particular planning application. Following payment of a fees notice issued by Snowdonia National Park Authority ('the Authority'), the information was provided. The complainant alleged that further information was held by the Authority relating to the request. During the course of the Commissioner's investigation, the Authority disclosed additional information relevant to the request. The Commissioner's decision is that the Authority breached regulation 5 of the EIR in that it did not provide the complainant with access to all relevant information within 20 working days of receipt of the request. However, the Commissioner is satisfied that, on the balance of probabilities, the Authority does not hold any additional information relevant to the request that it has not already disclosed. He does not require any steps to be taken.

Request and response

2. On 22 December 2011, solicitors acting on behalf of the complainants wrote to the Authority and requested information about a specific planning application (submitted by the complainant) in the following terms:

"Can you please provide us with copies of all documentation included [*sic*] internal notes and minutes and telephone conversations in relation to the above application."

3. The Authority responded on 23 December 2011 stating that the information was contained on a publicly available planning file which could be viewed at its offices. It also stated that if copies of the file were required, it would require a payment of £7.40.
4. Following payment of the relevant fee, copies of the planning file were provided on 24 January 2012.
5. Following a planning appeal about the planning application in question, the complainants became aware that there was "missing" information on the planning file, which had not been provided in response to their request. They wrote to the Authority on 15 March 2012 and asked it to review the request to identify any missing information.
6. The Authority responded on 23 March 2012 stating that, as far as it was aware, no information had been excluded.

Scope of the case

7. The complainant contacted the Commissioner on 26 March 2012 to complain about the way their request for information had been handled. The complainants asked the Commissioner to consider the accuracy of statements made by the Authority in relation to their planning application and appeal. They also asked the Commissioner to determine whether any additional information was held by the Authority relating to their request.
8. The Commissioner advised the complainant that the way that the Authority handled the planning application and appeal was outside his remit.
9. As the planning application in question was one submitted by the complainants, some of the information falling within the scope of the complainant's request was considered to be their own personal data. A separate investigation of the information identified as the complainant's own personal data has been undertaken by the Commissioner under case reference RFA0441886. The scope of this notice is therefore solely concerned with the freedom of information elements of the request.
10. During the course of the Commissioner's investigation, the Authority disclosed some additional information, namely photographs of the site,

and a screen print of information held on its Geographic Information System ('GIS') system relating to the planning application.

11. The scope of the Commissioner's investigation in this case is therefore to determine whether any further information was held by the Authority at the time of the request (other than that disclosed prior to and during his investigation), and if so, whether this information should be disclosed.

Reasons for decision

Regulation 5(1) – What recorded information was held?

12. Regulation 5(1) provides a general right of access to environmental information held by public authorities. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to ascertain information falling within the scope of the request and he will consider if the authority is able to explain why further information was not held. For clarity, the Commissioner is not expected to prove categorically whether additional information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities"¹. Therefore, the Commissioner will consider both:
 - the scope, quality, thoroughness and results of the searches and
 - other explanations offered as to why further information is not held.
13. Whilst the complainants were unable to identify exactly what additional information (if any) is held by the Authority, they submitted a number of representations to support the view that additional information is held, which are summarised below:
 - a. Internal notes/emails from the Head of Planning giving instructions to officers that the application was to be considered by the planning committee. Internal notes advising the Head of Planning about the application in question in order for him to instruct officers that it

¹ This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

needed to be considered by the planning committee. There was no information of this nature within the file.

- b. The complainants understand that a Planning Technician at the Authority telephoned the Planning Inspectorate on 9 December 2011 asking it not to register the planning appeal because the application was due to be considered at the planning committee meeting on 14 December 2011 with a recommendation that it be approved. This call resulted in the "appeal lodged" date being changed on the Planning Inspectorate website. The complainants believe that this call represents one where "significant information is received or given during a call" and in line with the Authority's own criteria as to when file notes of conversations are made.
 - c. There was a change of approach (referred to at the appeal as 'confusion') about the land status but there appears to be no note of this on the file of information which was disclosed. There appears to be no document to show how and on whose authority this change came about.
 - d. A telephone call took place between the complainants and the Authority on 8 December 2011 which preceded the change of presentation of their application, but again there appears to be no notes of this on the planning file.
 - e. Photographs of the site were referred to in the planning appeal hearing but had not been provided by the Authority.
 - f. An electronic record of the Authority's GIS which shows the outline of the planning application, which was referred to in the planning appeal but not contained on the file provided.
14. The Authority advised the Commissioner that the planning application in question was a relatively straightforward application and the size of the file reflects this. In respect of the information which was disclosed during the Commissioner's investigation and outlined at (e) and (f) above, the Authority explained that:
- Photographs relating to planning applications are generally shown electronically to attendees at planning committee meetings and hard copies are not distributed. However, it is normal practice for hard copies of photographs to be placed on the planning file. It appears there was an omission in this case and the photographs were not placed on the planning file and this is the reason they were not disclosed in the original bundle of information provided.
 - In relation to information held within the GIS system, the Authority advised that this is a back office system and information

contained on it does not form part of the planning file, does not influence or have any effect on the outcome of the application and is not used in the processing of an application. It is a system used to note that a planning application exists to enable future official searches to be carried out. As such, the information held on the GIS system was not originally considered to fall within the scope of the request

15. The Authority confirmed that when it received the initial request for information, searches were carried out on the paper file held relating to the application in question. Searches were also conducted on a previous planning application for the site in question to ensure that information had not been misfiled. Searches were also carried out on the Authority's electronic planning database (SWIFT). These searches were conducted based on the relevant planning application reference number, and the site address. The search criteria used ensured that all applications in respect of the site were identified and searched to locate all information relevant to the request. The Authority also advised that all staff within its Development Control and Compliance Service carried out searches of their own email accounts and local hard drives to identify any information held relevant to the request. The Authority confirmed that it would only be staff within this department who could have had any dealings with the planning application in question and no additional information was retained outside the department. It also confirmed that no information relating to the application had been destroyed or deleted.
16. The Authority advised the Commissioner that not all planning applications are referred to the planning committee, and provided the Commissioner with a copy of its Delegation Scheme which explains the criteria for referring applications. In this particular case, there were relevant policies within the Authority's Local Development Plan which were both in support of and against the application. As a result, the Planning Officer in question referred the application to the planning committee for consideration. The Authority confirmed that the Planning Officer has the delegated authority to make a decision to refer an application to the committee without prior consultation within any other member of staff. As such, no internal memos or notes exist about the decision to refer the application to the planning committee.
17. The Authority confirmed that no file notes exist relating to telephone calls made or received relating to the planning application. It does not have the technology to record telephone calls and file notes of calls are only made when significant information is received or provided during the call. In relation to the telephone call made by one of its officers to the Planning Inspectorate on 9 December 2011, the Authority advised that this call was made to establish what the correct procedure was where a planning application was due to be heard by the planning

committee within 3 working days of a planning appeal being made. The call was made to establish whether the Authority could proceed to determine the application. The Authority confirmed that no request was made to the Planning Inspectorate not to lodge the planning appeal, as suggested by the complainants.

18. In this case the Commissioner is satisfied that the Council has carried out adequate searches of all locations and records where the information might be held. It has checked all planning files relating to the address and made enquiries to all members of the planning and development department. There is no evidence of any inadequate search or grounds for believing there is a motive to withhold information. The Commissioner is therefore satisfied in this case that, on the balance of probabilities, the Council does not hold any further recorded information relating to the request.

Procedural matters

19. Regulation 5(1) of the EIR states:

"...a public authority that holds environmental information shall make it available on request."

20. Regulation 5(2) of the EIR states:

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

21. The request for information was made on 22 December 2011 and following payment of a fee requested by the Authority, information relevant to the request was disclosed on 24 January 2012. Additional information relevant to the request was disclosed during the course of the Commissioner's investigation. In respect of this additional information, the Commissioner finds that the Authority breached regulation 5(2) of the EIR because the information was not provided within 20 working days of receipt of the request.

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,
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.

Signed

Anne Jones
Assistant Commissioner
Information Commissioner's Office
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