

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 16 July 2014

Public Authority: Cornwall Council
Address: County Hall
Treyew Road
Truro
TR1 3AY

Decision (including any steps ordered)

1. The complainant has requested information relating to water discharge at a mineshaft. Cornwall Council disclosed relevant information to the complainant.
2. The Commissioner's decision is Cornwall Council has disclosed all the relevant information it holds and complied with regulation 5(1) of the EIR. In providing the information late Cornwall Council breached regulation 5(2) of the EIR.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 16 July 2012, the complainant wrote to Cornwall Council (the "council") and requested information in the following terms:

(in relation to Title No CL201667 – land at Poldice Gewnnap Cornwall TR16 5JG)

"1. Evidence on the basis of which the council claims a right to discharge waste water in to the mine shaft.

2. Copies of the correspondence between the council and the Environment Agency in relation the (sic) unlawful discharge.

3. Details of the alternative means of disposal of waste water from the houses which have been considered by the council, and the anticipated costs in relation to those matters."

5. The council responded on 13 February 2014. It disclosed information to the complainant.
6. Following an internal review the council wrote to the complainant on 17 April 2014. It disclosed further information to the complainant.

Scope of the case

7. On 2 June 2014 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner confirmed with the complainant that his investigation would determine whether, on the balance of probabilities, the council holds further information or whether it has provided all the relevant recorded information it holds.

Reasons for decision

9. Regulation 5 of the EIR requires public authorities to provide environmental information, usually within 20 working days of receipt of a request.
10. The complainant considers that the council has failed to provide all the information identified in parts 2 and 3 of their request for information. Their specific concern is that relevant correspondence pre-dating that which has been disclosed might be held by the council
11. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

13. To assist with this determination the Commissioner approached the council with a number of standard questions which, along with the council's responses, are summarised below.

What searches were carried out for information falling within the scope of this request and why would these searches have been likely to retrieve any relevant information?

14. The council explained that it conducted manual searching of hard copy files and electronic searches. It confirmed that the physical file relating to this matter was interrogated and there is no additional correspondence between Cornwall Council and the Environment Agency prior to the date of correspondence disclosed to the complainant.

If searches included electronic data, please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.

15. The council confirmed that a search was undertaken by its computer audit department and also by relevant officers on their own computers.

If searches included electronic data, which search terms were used?

16. The council confirmed that it used the terms "Trenbal", as this was the term used in all correspondence between the council and the Environment Agency in relation to this matter and, subsequently, a revised search using the term "Poldice".

If the information were held would it be held as manual or electronic records?

17. The council confirmed that it would potentially be held in both formats but, in this case, mainly electronic.

Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?

18. The council confirmed that no relevant information had been deleted or destroyed.

What does the council's formal records management policy say about the retention and deletion of records of this type? If there is no relevant policy, can the council describe the way in which it has handled comparable records of a similar age?

19. The council confirmed that the correspondence was primarily email correspondence and stated that the retention schedule for emails is that they are held for one year plus current, after which they are deleted.

Are there any statutory requirements upon the council to retain the requested information?

20. The council stated "...only as per records management guidelines".
21. The council explicitly stated to the Commissioner that its searches had found no evidence of any additional information being available prior to the correspondence already provided to the requestor.
22. In determining where the balance of probabilities lies the Commissioner has considered the submissions provided by the council and the complainant.
23. The Commissioner notes that the complainant considers that the council should hold earlier relevant information to that which has been disclosed. However, he has not been provided with any evidence which contradicts the council's position. Having considered the searches conducted by the council and its explicit confirmation that no further information is held the Commissioner has concluded that, on the balance of probabilities, it is likely that the council has provided all the information relevant to the request that it holds.
24. The Commissioner has, therefore, concluded that the council has complied with its obligations under regulation 5(1) of the EIR, however, in disclosing the information after 20 working days had passed, the council breached regulation 5(2) of the EIR.

Right of appeal

25. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF