

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

**Date:** 9 November 2022

**Public Authority:** Merthyr Tydfil County Borough Council  
**Address:** Civic Centre  
Castle Street  
Merthyr Tydfil  
CF47 9AN

**Decision (including any steps ordered)**

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1. The complainant requested planning and building control information relating to a neighbouring property. Merthyr Tydfil County Borough Council (the Council) provided the information held and confirmed that no additional information was held. During the course of the Commissioner's investigation the Council located some additional information which it disclosed to the complainant. The Commissioner's decision is that, on the balance of probabilities the Council does not hold any additional information relevant to the request. The Commissioner does not require any steps to be taken.

**Request and response**

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2. On 2 December 2021 the complainant wrote to the Council and requested information about a neighbouring property in the following terms:

"I need full disclosure on the Councils Building Control and Planning Department in relation to work carried out to the rear of a property named [address redacted] I would like to see all correspondence of reports, meetings, emails, letters and telephone notes regarding my recent correspondence".

3. The Council responded on 3 February 2022 and provided the information on building control works at the address in question.
4. On 7 February 2022 the complainant wrote back to the Council and requested an internal review of its handling of the request. They pointed out that third parties had been copied in to emails they had sent relating to their complaint about the property and questioned whether there had been other correspondence concerning the matter between the Council and Dŵr Cymru (Welsh Water). The complainant also pointed out that a site visit had recently been undertaken by Building Control and no information regarding the site visit had been provided
5. The Council provided the outcome of its internal review on 19 April 2022 and upheld its position that no further information was held relevant to the request.

### **Scope of the case**

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6. The complainant initially contacted the Commissioner on 24 January 2022 regarding the delay in the Council responding to the request. They contacted the Commissioner again on 19 April 2022 following receipt of the Council's internal review response to express their continued dissatisfaction with the Council's handling of the request.
7. During the course of the Commissioner's investigation the Council located some additional information, namely a diary note of a site visit undertaken at the property in September 2021, which it disclosed to the complainant.
8. The scope of the Commissioner's investigation is to determine whether any further information is held by the council.

### **Reasons for decision**

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#### **Regulation 12(4)(a) – Information held/not held**

9. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
10. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide the requested information if it does not hold it at the time of the request being received.
11. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead

of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).

12. The Council advised the Commissioner that searches were undertaken of its building control and planning departments as the request was very specific and related to potential planning/building control matters. Any information relevant to the request would be held in electronic format as manual records are no longer created within the departments concerned as they operate within an electronic case management system. The records which were searched included the building control application system, the planning application system and email accounts of the officers involved. The Council confirmed that all IT environments were searched including personal and shared email accounts, shared drives and shared systems. Searches were undertaken using the property address, the property owner's name and the complainant's name.
13. The Council advised that it was notified of a potential building control issue at the property concerned by the complainant. Due to the nature of the complaint an officer was required to undertake an inspection of the garden renovations at the property, in accordance with the relevant Building Control Regulations.
14. The Council confirmed that it is required to retain information relating to building control/planning enforcement. However, in this case the site visit confirmed that no building control or planning application was required. As such, beyond holding a record of the site visit confirming that no action was required, the Council does not hold any recorded information relevant to the request. The Council confirmed that formal reports of inspections are only created in cases where there is an issue to report for enforcement purposes.
15. The complaint about the property included concerns that the garden renovations carried out by their neighbour had an impact on the stability of the water pipework which runs adjacent to both properties. The complainant believes that further information is held in respect of communications between the Council and Dŵr Cymru, who are responsible for the water system in the area. The complainant has copied some of his communications to both the Council and Dŵr Cymru.
16. The Council advised that it is not responsible for the water system, including pipework, as this falls within the remit of Dŵr Cymru. The Council does have a responsibility to consult with Dŵr Cymru in respect of planning/building control applications which may have an impact on the water and sewer system. However, any issues arising out of these applications are not dealt with by the Council and Welsh Water will correspond with the developer directly.

### **The Commissioner's conclusion**

17. The Commissioner recognises that the complainant believes that further information should be held by the Council. However, the Council has confirmed to the complainant that no further information is held, and has explained why that is the case.
18. The Commissioner is satisfied that the Council has carried out adequate and appropriate searches of its records in order to locate any information falling within the scope of the request for information. The Commissioner also notes the Council's explanations concerning its liaison arrangements with Dŵr Cymru. There is no contradictory evidence available to the Commissioner that indicates the Council's position is wrong
19. Based on the searches undertaken and the other explanations provided. the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any further recorded information relating to the request, other than that which it has disclosed.

## Right of appeal

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20. 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: 0203 936 8963

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)

21. 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.
22. 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 .....**

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