

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

Decision notice

Date: 19 April 2012

Public Authority: Neath Port Talbot County Borough Council
Address: Civic Centre
Port Talbot
SA13 1PJ

Decision (including any steps ordered)

1. The complainant submitted two requests to Neath Port Talbot County Borough Council ('the Council') both of which sought information about a particular development in the area. In response to these requests the Council provided the complainant with some information and relied on section 12 of the FOIA to refuse to provide any further information. The Commissioner's decision is that the information requested constitutes environmental information and the correct access regime is the EIR. The Commissioner requires the Council to reconsider both requests under the EIR and either disclose the information requested or issue a valid refusal notice in accordance with regulation 14 of the EIR.
2. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

3. On 2 November 2010, the complainant wrote to the Council relating to a particular commercial development in the area and requested information in the following terms:
 1. "On 6 February 2007, the Council entered into a Grant Agreement with Ginex Limited. Clause 5.21 of that agreement refers to tendering practices required by the Head of Property

and Regeneration and requirements for independent scrutiny of the tendering process. Please provide us with copies of: (1) all material relevant to the Grant Agreement, including the relevant application and all correspondence and minutes of meetings between the Council and Ginex Ltd (including its representatives); and (2) the tendering process and scrutiny requirements referred to in that clause.

2. Copies of all correspondence and minutes of meetings between the Council on the one hand and Business Connect and/or [named individual] on the other in relation to (1) the aforementioned grant application; and (2) the development of the Site.
3. Tender invitations for demolition and construction work at the Site were issued in October 2006, December 2006 and May 2007 respectively. Sealed returns were submitted to the Council and opened at the Council's offices. Ginex Construction Limited won these tenders. Please provide copies of all tender returns (including those of the unsuccessful tenderers) and all material held by the Council, including but not limited to correspondence, concerning the construction and demolition tender processes.
4. Mildred Howell & Co ("Mildred Howell"), quantity surveyors, arranged tender reports on the construction and demolition works for Ginex Limited. Please provide copies of all correspondence between the Council and (1) Mildred Howell and (2) Ginex Limited/Ginex Construction Limited / [named individual] concerning the tender process".
4. The Council responded to the request on 26 November 2010 stating that to comply with the request would exceed the appropriate limit as provided by section 12 of the FOIA, and as such it would be unable to comply with the request.
5. On 2 December 2010 the complainant wrote to the Council disputing its application of section 12 of the FOIA. The complainant stated that, without prejudice to an appeal relating to the application of the cost limit, they wished to submit a narrower request for:
 1. "Correspondence between the Council and Mildred Howells regarding the demolition and construction tender process for the Development.
 2. A copy of the Council's tendering practices and scrutiny requirements referred to in the Grant Agreement the Council entered with Ginex.

3. Copies of the construction and demolition tender returns (including those of the unsuccessful tenderers).
4. Copies of Mildred Howells' report on the tender returns and the advice which it gave to the council and Ginex upon the appointment of Ginex Construction Limited".
6. The Council provided information relating to the narrower request on 15 December 2010.
7. On 15 March 2011 the complainant submitted an internal review request to the Council in relation to the original and refined requests.
8. Further exchanges took place between the complainant and the Council between March and August 2011.
9. The Council provided the outcome of its internal review on 11 August 2011. It confirmed that, in relation to the original request of 2 November 2010 it upheld its position that section 12 applied. In respect of the refined request of 2 December 2010, the Council confirmed that it had disclosed all information it held relevant to the request.

Scope of the case

10. The complainant contacted the Commissioner on 27 January 2012 to complain about the way their requests for information had been handled.
11. On 12 February 2012, the Commissioner wrote to the complainant to confirm whether their complaint relating to the handling of both requests.
12. On 21 March 2012, the complainant responded to the Commissioner confirming that their complaint related to both requests, and in particular:
 - The Council's application of section 12 of the FOIA to the original request of 2 November 2010.
 - That the Council holds additional information relating to the narrowed request of 2 December 2010.

Reasons for decision

13. Having considered the circumstances of this case the Commissioner believes that all of the requested information constitutes environmental information and that the correct access regime is, therefore, the EIR
14. 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.”
15. The Commissioner considers that the phrase “any information ...on” should be interpreted widely and that this 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.
16. The request in this case is for information on the tender process in relation to a specific commercial development. The Commissioner understands the development involved the demolition of existing premises and construction of a new office block development. As such, the Commissioner considers it would constitute information on (concerning, relating to, or about) a measure (the commercial development) which is likely to affect the elements of the environment as set out in regulation 2(1)(a); in particular land and landscape.

Other matters

17. The Commissioner wishes to confirm that, should the Council conclude that any of the requested information is exempt from disclosure on the basis of any of the exceptions contained in the EIR, he expects the complainant to exhaust the Council’s internal review procedure before

he will accept a further complaint about its potential refusal to provide information under the EIR.

Right of appeal

18. 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

19. 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.
20. 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
Wycliffe House
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Wilmslow
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SK9 5AF