

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 30 November 2022

**Public Authority:** Kent County Council

**Address:** Sessions House  
County Hall  
Maidstone  
Kent  
ME14 1XQ

#### **Decision (including any steps ordered)**

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1. The complainant requested from Kent County Council ("the Council") historic maps that are stored at the local records office. The Council refused to provide the requested information under regulation 6(1)(b) of the EIR, as it considered the information requested to be publicly available and easily accessible to the complainant.
2. The Commissioner's decision is that the information is publicly available and easily accessible to the complainant, and therefore regulation 6(1)(b) of the EIR is engaged.
3. The Commissioner does not require any steps to be taken.

#### **Request and response**

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4. On 8 August 2021, the complainant wrote to the Council and requested information in the following terms:

**"I request under the Environmental Information Regulations 2004 or the INSPIRE Regulations 2009 (as amended), as may apply, a copy of all digitised tithe maps for the County of Kent, to be supplied in electronic form on a portable hard disk, or**

**alternatively to be made available for download on a file transfer facility.**

**I will on request supply a portable hard disk for this purpose. I am content to receive the data for each tithe map as a number of individual components in image files."**

5. The Council responded on 3 September 2021. It stated that the requested information was already publicly available and easily accessible to the complainant under the terms of regulation 6(1).
6. Following an internal review, the Council wrote to the complainant on 29 September 2021. It maintained the application of regulation 6(1), but also indicated that copies of the requested information could be provided for a charge under the terms of regulation 8.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 15 December 2021 to complain about the way his request for information had been handled, and specifically that the Council had failed to comply with regulation 6(1) and regulation 8 of the EIR. The complainant also complained that the Council had failed to comply with the INSPIRE Regulations 2009 ("INSPIRE").
8. In respect of INSPIRE, the Commissioner only has jurisdiction to investigate complaints where information has been withheld under regulation 9 of INSPIRE. In this case, the Council is not withholding information under regulation 9 of INSPIRE, and as such there is no matter that the Commissioner can consider under INSPIRE. Should the complainant hold wider concerns about the Council's compliance with INSPIRE, and which would fall outside the Commissioner's jurisdiction, these should be referred to the Department for Environment, Food and Rural Affairs (DEFRA). The Commissioner has published guidance on the complaints process for INSPIRE, which can be accessed at: <https://ico.org.uk/for-organisations/inspire-regulations/>
9. The scope of this case and of the following analysis is whether the Council is entitled to rely upon regulation 6(1)(b) of the EIR. The Commissioner has not considered the matters raised under regulation 8, for the reasons given in this notice.

## Reasons for decision

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### The requested information

10. The requested information comprises over 400 tithe maps dating to the mid-19<sup>th</sup> century, which are stored at the Kent History and Library Centre.

### Regulation 6 – Form and format of the information

11. Regulation 6(1) states that:

**“Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless–**

**(a) it is reasonable for it to make the information available in another form or format; or**

**(b) the information is already publicly available and easily accessible to the applicant in another form or format”.**

12. The Commissioner considers that the use of the phrase “particular form or format” means that a requester may specify not only the physical form but also how the information is configured or arranged within that form, i.e., the format. For example, in relation to electronic information the term ‘format’ is generally used to refer to a file type, such as PDF or Microsoft Excel or CSV, and so a requester may express a preference for one of these formats. In this instance, the complainant has requested the information by electronic form.
13. The Commissioner’s guidance on regulation 6<sup>1</sup> states that the EIR Code of Practice<sup>2</sup> explains why a preference for a particular form or format must be considered:

**“A public authority should be flexible, as far as is reasonable, with respect to form and format, taking into account the fact, for example, that some IT users may not be able to read**

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<sup>1</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/form-and-format-of-information-regulation-6/>

<sup>2</sup> Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (SI 2004 no 3391) issued by DEFRA

**attachments in certain formats, and that some members of the public may prefer paper to electronic copies".** (Paragraph 22)

14. However, the duty to make the requested information available in the preferred form or format is not an absolute one. It is qualified by regulations 6(1)(a) and 6(1)(b) in that a public authority does not have to meet the requester's preference if either it is reasonable for it to make the information available in another form or format, or the information is already publicly available and easily accessible to the applicant.
15. Although the Council hasn't specifically cited which subsection of regulation 6(1) it is relying upon, it has clearly stated that it considers the requested information to be publicly available and easily accessible to the complainant. Therefore the Commissioner considers that it is relying upon regulation 6(1)(b).

The Council's position

16. The Council argues that the information is publicly available, in both original hardcopy and as electronic images (on an orderable hard drive) for inspection at the Kent History and Library Centre ("the Centre"), which is open Tuesday-Saturday (between 9:00am and 5:00pm) with no restrictions in place. The Council has further elaborated that the electronic images are not available online or on the Council's networked storage due to their file size.
17. The Council further argues that the information is easily accessible to the complainant by their attending the Centre.

The complainant's position

18. The complainant argues that the information cannot be deemed as easily accessible to them, as travel to the Centre takes over two hours by train, at a cost of £38.20, and that this cost would be multiplied depending on how many visits were required. The complainant also argues that there are practical limitations of viewing the information due to the facilities available the Centre.

The Commissioner's analysis

19. The Commissioner's guidance on regulation 6 explains there is no geographical limit, or distance, beyond which information is not easily accessible for inspection. Any decision about whether information is easily accessible depends on the circumstances.
20. In the circumstances of this case, the Commissioner recognises that the complainant would need to travel to the Centre, incurring both time and

cost, which would multiply depending on the amount of separate visits needed.

21. However, the Commissioner also recognises that the information is made available for inspection at the Centre, which is a local records office. The Commissioner notes that the purpose of a local records office is to maintain historic records and allow their public inspection.
22. The Commissioner's guidance on regulation 6 (and specifically the section on 'Inspection') explains that it is an expectation of the EIR that the public may inspect information at facilities "which the public authority makes available for that examination" (regulation 8(2)(b)).
23. The same guidance explains that the "establishment and maintenance" of such facilities is a specific requirement of Article 3(5)(c) of the European Council Directive 2003/4/EC, which the EIR implements in UK law.
24. Whilst the Commissioner recognises that the complainant will need to bear the cost of visiting the Centre, he is satisfied that the information is publicly available and easily accessible to the complainant by virtue of it being available for inspection at a facility established and maintained for the purpose (i.e. the local records office).
25. As the Commissioner is satisfied that the information is both publicly available and easily accessible to the complainant, he finds that regulation 6(1)(b) is engaged.

### **Regulation 8**

26. The Commissioner has found that the information is publicly available and easily accessible for the purposes of the EIR, and that regulation 6(1)(b) is engaged.
27. As such, the Commissioner has not considered the Council's application of regulation 8, which appears to have been based on a misunderstanding of the EIR. The Commissioner notes that if information is publicly available and easily accessible for the purposes of the EIR, the Council is not required to make the information available in another form or format.
28. Whilst the Council may chose to commercially provide the information in another form and format (and apply a commercial charge for doing so), this falls outside the terms of the EIR.

## Right of appeal

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29. 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)

30. 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.
31. 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 .....**

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