

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 22 November 2022

Public Authority: Denbighshire County Council
Address: Council Offices
County Hall
Wynnstay Road
Ruthin
Denbighshire
LL15 1YN

Decision (including any steps ordered)

1. The complainant requested various information in respect of a particular planning application within the boundaries Denbighshire County Council ('the Council'). The Council provided a some information, however the complainant considers it has not identified all information falling within the scope of their request. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any additional information falling within the scope of the request. The Commissioner does not require any steps to be taken.

Request and response

2. On 16 September 2021, the complainant wrote to the Council and requested the following information:

"Hoffwn ddefnyddio hawl deddf rhyddid gwybodaeth a chael copi o'r holl gyfathrebu sydd wedi digwydd yn fewnol ac yn allanol, ar lafar neu yn ysgrifenedig, gennych chi a swyddogion Cyngor Sir Ddinbych, Cynghorwyr Sir, Asiant y cais cynllunio, ac unrhyw berson allan yn gysylltiedig a chais cynllunio **"02/2021/0327. Pendorlan, Ffordd Llanfair, Rhuthun, SIR DDINBYCH LL15 1BY - Codi estyniadau ac addasiadau i annedd gan gynnwys adeiladu waliau cynnal, wal bloc blaen a gwaith cloddio i ffurfio man parcio blaen gwastad**

gan gynnwys cael gwared ar y gwrych blaen (yn rhannol ol-weithredol."

("I would like to use the freedom of information act and have a copy of all communications that have taken place internally and externally, orally or in writing, from you and Denbighshire County Council officers, County Councillors, the planning application agent, and any person out there involved and a planning application **"02/2021/0327. Pendorlan [full address redacted] – Erection of extensions and alterations to a dwelling including construction of retaining walls, front block wall and excavation to form a flat front parking area including the removal of the front hedge (partly retrospectively."**")

3. The Council responded on 2 November 2021. It provided information via a secure messaging system.
4. Following an internal review the Council wrote to the complainant on 9 December 2021. It added some information on the secure messaging system it had previously used.

Scope of the case

5. The complainant contacted the Commissioner on 19 December 2021 to complain about the way their request for information had been handled. The complainant does not consider that they have received all relevant information and is not satisfied with the Council's procedural handling of their request.
6. The Commissioner's investigation will consider whether, on the balance of probabilities, the Council has provided all relevant information it holds falling within the scope of the request. He will also consider the Council's procedural handling of the request in terms of timeliness.

Reasons for decision

Regulation 12(4)(a) – Information not held

7. Regulation 5 of the EIR requires that a public authority that holds environmental information shall make it available on request. This is subject to any exclusions or exceptions that may apply.

8. Regulation 12(4)(a) of the EIR says that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
9. In scenarios where there is some dispute between whether the public authority holds additional relevant information, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
10. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any additional information which falls within the scope of the request (or was held at the time of the request).
11. The Commissioner would point out that he does not expect a public authority to search all of its records, but that it should be reasonable and proportionate. A search should therefore be targeted at the areas or departments and/or with individuals most likely to hold relevant information.

The complainant's position

12. The complainant considers that the Council holds more information than they have received, and made reference to the lack of records of telephone calls in respect of the planning application, internal documentation and the planning application itself. The complainant also expressed the view that from going through the correspondence they have received, they wonder if there were major gaps in the information. The complainant explained to the Council that they felt there were gaps between some emails where decisions were communicated, but no documentation has been provided to confirm how those decisions have been made, or what things had been considered in order to be able to make those decisions. They further stated that they understand a record of telephone calls is kept under all planning applications.

The Council's position

13. The Commissioner contacted the Council for details of its search.

General search

14. The Council confirmed to the Commissioner that all relevant Officers (Planning Service) were contacted. The Officers searched network drives and emails and confirmed that no records are held in hard copy format.

15. The Council also confirmed that no information will have been deleted as it is required for the processing of planning applications. It further confirmed that the Planning Service has indicated that it holds no further information.
16. As the complainant has specifically referred to the lack of telephone records and gaps in emails, the Commissioner has considered these separately.

Telephone records

17. The Council informed the Commissioner that there are no copies of any telephone calls either between Council employees or with, or between external stakeholders. It added that it does not routinely record telephone calls and confirmed that the results of telephone calls would be channelled into the official planning documents.
18. It added that the Planning Service do not use a database to record communications, and confirmed that the Planning Officers do not routinely take notes, or make transcripts of their conversations, other than those notes which appear in any emails they send.

Gaps in the information

19. In relation to the complainant's concerns regarding gaps in chains and batches of emails, the Council informed the Commissioner that the key decision was the vote made at the Planning Committee based on the recommendations of the Planning Officers. The Planning Officers state that key decisions are not made before this stage.
20. The Council also conducted an exercise to identify any potential gaps in emails chains. It informed the Commissioner, that whilst several emails were queried, it was found that the gaps were due to the fact that things were discussed on the telephone, often with screenshares, as evidenced by emails, and site visits were also made. It added that email chains show the revised plans that resulted from the emails.
21. The Council further informed the Commissioner that this approach is standard practice across the Council, enabled by its telephone system. They are effectively informal meetings which are not documented as officers normally update documents on screen while talking to colleagues.

The Commissioner's conclusion

22. As stated previously, it is not necessary or even desirable for the Council to search all of its records in response to a request for information. The

Commissioner does however expect the Council to have undertaken a reasonable and proportionate search for information falling within the scope of the request. He notes that whilst the Council did not specify which departments and individuals it approached for relevant information, that it is clear from its correspondence that its search was focused on its Planning Service.

23. The Commissioner considers that focusing its search in this service area is what you would reasonably expect for information in respect of a planning application.
24. In terms of the absence of telephone records, the Commissioner has no reason to question the Council's explanation that it does not record notes of telephone conversations. Similarly, the Commissioner has no reason to doubt the Council's explanation in terms of its exercise to identify potential gaps in email chains.
25. Whilst the Commissioner would have expected the Council to include the Planning Application, or at least the link to it within its response, it is clear that this is readily available on its website. In the Commissioner's view therefore, the Council has conducted a reasonable and proportionate search and he believes that on the balance of probabilities that no additional information relevant to the request is held.
26. Based on the evidence available to him, the Commissioner is satisfied that the Council has carried out adequate searches, which would have been likely to locate information falling within the scope of the request. The Commissioner is therefore satisfied that, on the balance of probabilities, the Council does not hold any additional information falling within the scope of the request other than that which is has already disclosed.

Regulation 5(2) of the EIR - Time for compliance

27. Regulation 5(2) of the EIR states that "information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."
28. In this case, the complainant made their request on 16 September 2021 and the Council did not provide the information it held until 2 November 2021.
29. This is outside the required 20 working days and therefore the Commissioner finds that the Council breached regulation 5(2) of the EIR.

Reference: IC-165439-C0R7

30. As the Council has provided the information it does hold, the Commissioner does not require it to take any steps.

Right of appeal

31. 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

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

32. 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.
33. 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

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

Rheoliadau Gwybodaeth Amgylcheddol 2004 (y Rheoliadau)

Hysbysiad penderfynu

Dyddiad: 22 Tachwedd 2022

Awdurdod Cyhoeddus: Cyngor Sir Ddinbych
Cyfeiriad: Swyddfeydd y Cyngor
Neuadd y Sir
Wynnstay Road
Rhuthun
Sir Ddinbych
LL15 1YN

Y penderfyniad (gan gynnwys unrhyw gamau y gorchmynnir eu cymryd)

34. Gofynnodd yr achwynydd am wybodaeth amrywiol mewn perthynas â chais cynllunio penodol o fewn ffiniau Cyngor Sir Ddinbych ('y Cyngor'). Fe roddodd y Cyngor rywfaint o wybodaeth, ond mae'r achwynydd o'r farn nad yw'r Cyngor wedi adnabod yr holl wybodaeth sy'n dod o fewn rychwant y cais. Penderfyniad y Comisiynydd, yn ôl pwysau tebygolrwydd, yw nad yw'r Cyngor yn cadw unrhyw wybodaeth ychwanegol sy'n dod o fewn rychwant y cais. Nid yw'r Comisiynydd yn ei gwneud yn ofynnol i unrhyw gamau gael eu cymryd.

Y cais a'r ymateb

35. Ar 16 Medi 2021, ysgrifennodd yr achwynydd at y Cyngor a gofyn am yr wybodaeth a ganlyn:

"Hoffwn ddefnyddio hawl deddf rhyddid gwybodaeth a chael copi o'r holl gyfathrebu sydd wedi digwydd yn fewnol ac yn allanol, ar lafar neu yn ysgrifenedig, gennych chi a swyddogion Cyngor Sir Ddinbych, Cynghorwyr Sir, Asiant y cais cynllunio, ac unrhyw berson allan yn gysylltiedig a chais cynllunio **"02/2021/0327. Pendorlan, [y cyfeiriad llawn wedi'i olygu] - Codi estyniadau ac addasiadau i annedd gan gynnwys adeiladu waliau cynnal, wal bloc blaen a**

gwaith cloddio i ffurfio man parcio blaen gwastad gan gynnwys cael gwared ar y gwrych blaen (yn rhannol ol-weithredol."

("I would like to use the freedom of information act and have a copy of all communications that have taken place internally and externally, orally or in writing, from you and Denbighshire County Council officers, County Councillors, the planning application Agent, and any other person involved in planning application **"02/2021/0327. Pendorlan [full address redacted] – Erection of extensions and alterations to a dwelling including construction of retaining walls, front block wall and excavation to form a flat front parking area including the removal of the front hedge (partly retrospectively."**)

36. Ymatebodd y Cyngor ar 2 Tachwedd 2021. Rhoddodd wybodaeth trwy system negeseua ddiogel.
37. Yn dilyn adolygiad mewnol ysgrifennodd y Cyngor at yr achwynydd ar 9 Rhagfyr 2021. Ychwanegodd rywfaint o wybodaeth am y system negeseua ddiogel yr oedd wedi'i defnyddio o'r blaen.

Rhychwant yr achos

38. Cysylltodd yr achwynydd â'r Comisiynydd ar 19 Rhagfyr 2021 i gwyno am y ffordd yr oedd ei gais am wybodaeth wedi'i drin. Nid yw'r achwynydd o'r farn ei fod wedi cael yr holl wybodaeth berthnasol ac nid yw'n fodlon â'r ffordd y mae'r Cyngor wedi delio â'i gais o ran y gweithdrefnau.
39. Bydd ymchwiliad y Comisiynydd yn ystyried a yw'r Cyngor, yn ôl pwysau tebygolrwydd, wedi darparu'r holl wybodaeth berthnasol sydd ganddo ac sy'n dod o fewn rhychwant y cais. Bydd hefyd yn ystyried y ffordd y mae'r Cyngor wedi ymdrin â'r cais o ran prydlondeb y gweithdrefnau.

Y rhesymau dros y penderfyniad

Rheoliad 12(4)(a) – Nid yw'r wybodaeth yn cael ei chadw

40. Mae Rheoliad 5 o'r Rheoliadau yn ei gwneud yn ofynnol i awdurdod cyhoeddus sy'n dal gwybodaeth amgylcheddol sicrhau bod honno ar gael pan wneir cais amdani. Mae hyn yn ddarostyngedig i unrhyw waharddiadau neu eithriadau a all fod yn gymwys.

41. Mae Rheoliad 12(4)(a) o'r Rheoliadau yn dweud y caiff awdurdod cyhoeddus wrthod datgelu gwybodaeth i'r graddau nad yw'n cadw'r wybodaeth honno pan ddaw cais ceisydd i law.
42. Mewn senarios lle bo rhywfaint o anghydfod a yw'r awdurdod cyhoeddus yn cadw gwybodaeth berthnasol ychwanegol ai peidio, mae'r Comisiynydd, gan ddilyn arweiniad nifer o benderfyniadau gan y Tribiwnlys Haen Gyntaf (Hawliau Gwybodaeth), yn defnyddio safon sifil pwysau tebygolrwydd.
43. Mewn geiriau eraill, er mwyn penderfynu ar gwynion o'r fath, rhaid i'r Comisiynydd benderfynu a yw awdurdod cyhoeddus, yn ôl pwysau tebygolrwydd, yn cadw unrhyw wybodaeth ychwanegol sy'n dod o fewn rhychwant y cais (neu a oedd yr awdurdod yn ei chadw adeg y cais).
44. Hoffai'r Comisiynydd nodi nad yw'n disgwyl i awdurdod cyhoeddus chwilio ei holl gofnodion, ond y dylai fod yn rhesymol ac yn gymesur. Gan hynny, dylid targedu chwiliad ar y manau neu'r adrannau a/neu gyda'r unigolion sydd debycaf o gadw gwybodaeth berthnasol.

Safbwynt yr achwynydd

45. Mae'r achwynydd o'r farn bod y Cyngor yn cadw mwy o wybodaeth nag y mae'r achwynydd wedi'i chael, a chyfeiriodd at ddiffyg cofnodion o alwadau ffôn mewn perthynas â'r cais cynllunio, dogfennau mewnol a'r cais cynllunio ei hun. Mynegodd yr achwynydd y farn hefyd, o fynd drwy'r ohebiaeth a gawsai, ei fod yn meddwl tybed a oedd yna fylchau mawr yn yr wybodaeth. Esboniodd yr achwynydd wrth y Cyngor ei fod yn teimlo bod bylchau rhwng rhai negeseuon ebost lle cafodd penderfyniadau eu mynegi, ond does dim dogfennau wedi'u darparu i gadarnhau sut mae'r penderfyniadau hynny wedi'u gwneud, na pha bethau oedd wedi'u hystyried er mwyn gallu gwneud y penderfyniadau hynny. Dywedodd yr achwynydd hefyd ei fod yn deall bod cofnod o alwadau ffôn yn cael ei gadw o dan bob cais cynllunio.

Safbwynt y Cyngor

46. Cysylltodd y Comisiynydd â'r Cyngor i gael manylion ei chwiliad.

Chwiliad cyffredinol

47. Cadarnhaodd y Cyngor i'r Comisiynydd ei fod wedi cysylltu â'r holl Swyddogion perthnasol (Gwasanaeth Cynllunio). Chwiliodd y Swyddogion yriannau rhwydwaith a negeseuon ebost gan gadarnhau nad oes cofnodion yn cael eu cadw ar ffurf copi caled.
48. Cadarnhaodd y Cyngor hefyd na fydd unrhyw wybodaeth wedi cael ei dileu gan ei bod yn angenrheidiol er mwyn prosesu ceisiadau cynllunio.

Cadarnhaodd ymhellach fod y Gwasanaeth Cynllunio wedi nodi nad yw'n cadw dim gwybodaeth bellach.

49. Gan fod yr achwynydd wedi cyfeirio'n benodol at ddiffyg cofnodion ffôn a bylchau mewn negeseuon ebost, mae'r Comisiynydd wedi ystyried y rhain ar wahân.

Cofnodion ffôn

50. Dywedodd y Cyngor wrth y Comisiynydd nad oes copïau o unrhyw alwadau ffôn naill ai rhwng gweithwyr y Cyngor neu gyda rhanddeiliaid allanol neu rhyngddyn nhw. Ychwanegodd nad yw'n cofnodi galwadau ffôn fel rhan o'r drefn a chadarnhaodd y byddai canlyniadau galwadau ffôn yn cael eu sianelu i mewn i'r dogfennau cynllunio swyddogol.
51. Ychwanegodd y Cyngor nad yw'r Gwasanaeth Cynllunio yn defnyddio cronfa ddata i gofnodi cyfathrebiadau, a chadarnhaodd nad yw'r Swyddogion Cynllunio yn cymryd nodiadau fel rhan o'r drefn, nac yn gwneud trawsgrifiadau o'u sgysiau, ar wahân i'r nodiadau hynny sy'n ymddangos mewn unrhyw negeseuon ebost y maen nhw'n eu hanfon.

Bylchau yn yr wybodaeth

52. O ran pryderon yr achwynydd ynghylch bylchau mewn cadwyni a sypiau o negeseuon ebost, dywedodd y Cyngor wrth y Comisiynydd mai'r penderfyniad allweddol oedd y bleidlais a wnaed yn y Pwyllgor Cynllunio yn seiliedig ar argymhellion y Swyddogion Cynllunio. Mae'r Swyddogion Cynllunio yn dweud nad yw penderfyniadau allweddol yn cael eu gwneud cyn y cyfnod hwn.
53. Cynhaliodd y Cyngor ymarfer hefyd i ddod o hyd i unrhyw fylchau posibl mewn cadwyni ebost. Er bod sawl neges ebost wedi'i chwestiynau, dywedodd y Cyngor wrth y Comisiynydd y gwelwyd bod y bylchau yn deillio o'r ffaith bod pethau'n cael eu trafod ar y ffôn, yn aml gan rannu sgriniau, fel y tystia negeseuon ebost, a bod ymweliadau â'r safle wedi'u cynnal hefyd. Ychwanegodd y Cyngor fod cadwyni ebost yn dangos y cynlluniau diwygiedig a ddeilliodd o'r negeseuon ebost.
54. Dywedodd y Cyngor wrth y Comisiynydd hefyd mai'r dull hwn oedd yr arfer safonol ar draws y Cyngor, a hwnnw'n cael ei alluogi drwy ei system ffonau. Maent i bob pwrpas yn gyfarfodydd anffurfiol nad ydynt yn cael eu cofnodi gan fod swyddogion fel arfer yn diweddarau dogfennau ar y sgrin wrth siarad â chydweithwyr.

Casgliad y Comisiynydd

55. Fel y dywedwyd eisoes, nid yw'n angenrheidiol na hyd yn oed yn ddymunol i'r Cyngor chwilio'i holl gofnodion mewn ymateb i gais am wybodaeth. Er hynny, mae'r Comisiynydd yn disgwyl i'r Cyngor fod wedi

cynnal chwiliad rhesymol a chymesur am wybodaeth sy'n dod o fewn rhychwant y cais. Er na phennodd y Cyngor ba adrannau ac unigolion y cysylltodd â nhw i gael gwybodaeth berthnasol, mae'r Comisiynydd yn nodi ei bod yn glir o ohebiaeth y Cyngor fod ei waith chwilio wedi canolbwyntio ar ei Wasanaeth Cynllunio.

56. Mae'r Comisiynydd o'r farn mai canolbwyntio ei chwiliad yn y maes gwasanaeth hwn yw'r hyn y byddai'n rhesymol ichi ddisgwyl o ran gwybodaeth mewn perthynas â chais cynllunio.
57. O ran y diffyg cofnodion ffôn, does gan y Comisiynydd ddim rheswm i gwestiynu esboniad y Cyngor nad yw'n cofnodi nodiadau o sgysiau ffôn. Yn yr un modd, does gan y Comisiynydd ddim rheswm i amau esboniad y Cyngor o ran ei arferion i ddod o hyd i fylchau posibl mewn cadwyni ebost.
58. Er y byddai'r Comisiynydd wedi disgwyl i'r Cyngor gynnwys y Cais Cynllunio, neu o leiaf y ddolen iddo, yn ei ymateb, mae'n glir bod hwn ar gael yn rhwydd ar ei wefan. Ym marn y Comisiynydd felly, mae'r Cyngor wedi cynnal chwiliad rhesymol a chymesur ac mae'r Comisiynydd yn credu, yn ôl pwysau tebygolrwydd, nad oes gwybodaeth ychwanegol sy'n berthnasol i'r cais yn cael ei dal gan y Cyngor.
59. Ar sail y dystiolaeth sydd ar gael iddo, mae'r Comisiynydd yn fodlon bod y Cyngor wedi cynnal chwiliadau digonol, a fyddai wedi bod yn debygol o ddod o hyd i wybodaeth sy'n dod o fewn rhychwant y cais. Yn ôl pwysau tebygolrwydd, mae'r Comisiynydd yn fodlon nad oes gan y Cyngor unrhyw wybodaeth ychwanegol sy'n dod o fewn rhychwant y cais heblaw'r hyn sydd eisoes wedi'i ddatgelu.

Rheoliad 5(2) o'r Rheoliadau – Amser ar gyfer cydymffurfio

60. Mae rheoliad 5(2) o'r Rheoliadau yn dweud: "information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."
61. Yn yr achos hwn, gwnaeth yr achwynydd ei gais ar 16 Medi 2021 ac ni ddarparodd y Cyngor yr wybodaeth a oedd ganddo tan 2 Tachwedd 2021.
62. Mae hyn y tu allan i'r 20 diwrnod gwaith angenrheidiol ac felly mae'r Comisiynydd yn dyfarnu bod y Cyngor wedi torri rheoliad 5(2) o'r Rheoliadau.
63. Gan fod y Cyngor wedi darparu'r wybodaeth sydd ganddo, nid yw'r Comisiynydd yn ei gwneud yn ofynnol iddo gymryd unrhyw gamau.

Yr hawl i apelio

64. Mae gan y naill barti a'r llall hawl i apelio yn erbyn yr hysbysiad penderfynu hwn i Dribiwnlys yr Haen Gyntaf (Hawliau Gwybodaeth). Mae gwybodaeth am y broses apelio ar gael oddi wrth:

Tribiwnlys yr Haen Gyntaf (Hawliau Gwybodaeth)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Ffôn: 0300 1234504

Ffacs: 0870 739 5836

Ebost: grc@justice.gov.uk

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

65. Os hoffech apelio yn erbyn hysbysiad penderfynu, gallwch gael gwybodaeth am sut i apelio ynghyd â'r ffurflenni perthnasol ar wefan y Tribiwnlys Gwybodaeth.
66. Dylai unrhyw Hysbysiad Apelio gael ei gyflwyno i'r Tribiwnlys o fewn 28 diwrnod (calendr) ar ôl dyddiad anfon yr hysbysiad penderfynu hwn.

Llofnod

Catherine Dickenson
Uwch-swyddog Achosion
Swyddfa'r Comisiynydd Gwybodaeth
Wycliffe House
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