

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

Date: 29 April 2022

Public Authority: Plymouth City Council
Address: Windsor House
Plymouth
PL6 5UF

Decision (including any steps ordered)

1. The complainant requested details of deaths linked to air pollution. Plymouth City Council ("the Council") stated that the information it held was "zero."
2. The Commissioner's decision is that the Council has provided all the information that it holds. It has therefore complied with its obligation under Regulation 5(1) of the EIR.
3. The Commissioner does not require further steps.

Request and response

4. On 18 March 2021 the complainant emailed the Plymouth Coroner's office and requested information of the following description:

"Can you please provide:

"[1] The full annual statistics – neighbourhood specific for Deaths linked to air pollution in Plymouth from Jan 2014 to March 2021.

"[2] The number of medical autopsies for the same period of time conducted for deaths linked to air pollution."

5. On 23 March 2021, the Council emailed to say that it had received the request and that it was dealing with it under FOIA.
6. On 24 March 2021, the Council issued its formal response. It provided some information but denied holding the remainder.
7. The complainant then exchanged various emails with the Council, querying the status of the coroner and the process by which the request had been transferred, to the Council, by the coroner. The Council carried out an internal review of its response and provided the complainant with the outcome of that review on 27 April 2021. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 6 May 2021 to complain about the way his request for information had been handled.
9. On 9 March 2022, the Commissioner wrote to the complainant. He noted that the original request had been made to the coroner's office, but pointed out that coroners (with the exception of the chief coroner and their office) are not subject to either FOIA or the EIR and they do not hold information on behalf of the council to which they are attached. As the Council had explained the information it did hold and why it only held this information, and as a request to a coroner would not be one which was valid, the Commissioner considered that there was little merit in pursuing a complaint.
10. The complainant rejected both this conclusion and the Commissioner's efforts to encourage him (the complainant) to explain the scope of what he wished the Commissioner to investigate.
11. As the Council informed the complainant that it would be dealing with his request under FOIA and because it both issued a response and carried out an internal review, the Commissioner considers that the Council accepted the request as a valid one to itself. The Commissioner will comment further on this process under "Other Matters."
12. Given that any complaint about the way the coroner's office responded to the request would be invalid (as the complainant could not have made a valid request to that office) and in the absence of any willingness from the complainant to define the scope of the complaint, the Commissioner considers that the responsible course of action, as the regulator, is to issue a decision notice looking at the issue of whether the Council did or did not hold further information within the scope of

the request. The complainant will then have the option to appeal the decision to the Tribunal if he believes it involves an error of law.

13. The Commissioner considers that the scope of his investigation is to determine whether the Council held further information within the scope of the request.

Reasons for decision

Would the requested information be environmental?

14. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - (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)...as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
15. As it is information relating to deaths linked to air pollution, the Commissioner believes that the requested information is likely to be

information on the state of human health and safety in as much as it may be affected by either the elements of the environment (namely, air and atmosphere) or through the air by factors affecting those elements (such as emissions). For procedural reasons, he has therefore assessed this case under the EIR.

16. During the course of the investigation, the Council accepted that the request should technically have been dealt with under the EIR but noted that this would not have made any difference to the information it held.

Does the Council hold further information?

17. Regulation 5(1) of the EIR states that: "a public authority that holds environmental information shall make it available on request."

18. Regulation 12 of the EIR states that:

- (1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if—

- (a) an exception to disclosure applies under paragraphs (4) or (5); and

- (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

- (2) A public authority shall apply a presumption in favour of disclosure.

- (4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—

- (a) it does not hold that information when an applicant's request is received;

19. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.

20. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a

judgement on whether the information is held on the civil standard of the balance of probabilities.

21. The Commissioner notes that a coroner is a statutory legal person with their own functions. Whilst the relevant local council is required to appoint a coroner and usually provides them with administrative support, each coroner is a separate legal entity in their own right.
22. Coroners are not covered by the EIR and any information that they hold in accordance with their functions, they hold in their own right, not on behalf of the council.

The Council's position

23. In respect of the first element of the complainant's request, the Council explained that:

"the Registration Service in Plymouth collates the underlying causes of death and attributable causes of death noted on the death certificates completed by the attending medical professional. This information is then reported to the Office of National Statistics (ONS) and shared with the Council's Public Health Team. The ONS subsequently return the data to the local authority after validating the information and applying codes using the International Statistical Classification of Diseases standard. These are the definitive and only sources of data made available to the Council in relation to actual causes of mortality."

24. The Council also noted that it had previously informed the complainant that the data it held showed zero deaths linked to air pollution during the time period of the request.

25. In respect of the second element of the request, the Council explained that:

"Where a cause of death is determined by a Coroner following an autopsy, this is confirmed to the Registrar who records the Coroner's finding on the death certificate. This information is collated into the same data set as the causes of death determined by attending medical professionals, before being forwarded to the ONS for coding.

"As the data returned to, and reviewed by, the Council contains no registered deaths with a cause, either primary or contributory, of air pollution, there can have been no autopsies carried out which determined this as a cause of death. It was, therefore, clear from this data that the Council did not hold the information requested in [the complainant]'s second question, and so it was not deemed necessary to carry out searches for it.

"Following receipt of this complaint, senior staff within the Council's Public Health Team and the Registration Service have been consulted in order to provide responses to the questions posed.

"We can confirm that there would be no business reason for the Council to hold statistical information relating to autopsy outcomes and the Council has no statutory obligation to do so. The Council has already confirmed to [the complainant] that it is not legally required to report on these matters nor does the Council have responsibility for validating such statistics.

"Both the Council's Consultant in Public Health and the Council's Senior Public Health Analyst have confirmed that the Council is only entitled to receive mortality data derived from death certificates received by the Registration Service and coded by the ONS. Where causes of mortality data is used for Public Health analysis, the Council relies upon the ONS coded data.

"Further, the Service Manager for Registration and the Coroner's Office who oversees the administration of the Coroner's Office has confirmed that the Coroner does not routinely supply the Council with autopsy outcomes or with associated statistics and has not, to date, supplied the Council with data relating to autopsies where the cause of death was linked to air pollution."

26. The Council also noted that it was aware of only one instance in the entire country of a person who had had air pollution listed as a contributory factor on their death certificate – and this person had lived in London.

The Commissioner's view

27. The Commissioner considers that, on the balance of probabilities, the Council does not hold any further information than has been provided.
28. The complainant's reasons for believing that the Council does hold further information appear to be based on an assumption that the coroner holds information on behalf of the Council, that the data the Council holds is not fit for purpose and that if the Council does not hold the data, it should acquire it.
29. The first and third reasons can be rejected out of hand. Coroners are not covered by the EIR (or FOIA) and hold their information on their own behalf. Equally, a public authority is not required to create or acquire information in order to comply with a request. It is only required to identify the information it already holds in recorded form.

30. As to the complainant's second reason, the Commissioner recognises that the data from death certificates may have its limitations – as there is a strict evidential standard for this to be included. Although, to date, only one person in the UK appears to have had air pollution listed as an official contributory factor on their death certificate, studies have suggested that tens of thousands of deaths each year may be attributable to poor air quality.¹ This is clearly a significant public health concern and there may well be value in reviewing whether current methods of data collection on this topic are adequate.
31. However, whilst there may be a case for improving data collection in the future because of current limitations, that only reinforces the view that the Council does not hold any further information at the present time beyond that which it has provided. The Council has provided the data from death certificates – because that is the only data that it holds.
32. It is not the Commissioner's role to determine whether the Council ought to hold further information – only whether it does, as a matter of fact, do so.
33. In the circumstances of this case, the Commissioner is satisfied that, on the balance of probabilities, the only information the Council holds is that which has been provided to the complainant.

¹ <https://www.gov.uk/government/news/public-health-england-publishes-air-pollution-evidence-review>

Other matters

34. The manner in which the original request was responded to was somewhat unusual and this clearly caused the complainant some concerns. Whilst this does not affect the Commissioner's decision, in the interests of attempting to deal with the complaint holistically, the Commissioner asked the Council to explain the process by which the complainant's request had been handled.

35. The Council explained that:

"To facilitate the Single Point of Contact process, all emails, sent to a 'plymouth.gov.uk' email address, by an individual subject to this process, are re-routed to a single mailbox. This would include emails sent to the Coroner's Office.

"[The complainant]'s email to HM Coroner asked for confirmation that he had directed his request to the correct address. As the local authority provide administrative support to the Coroner's Office, [the complainant]'s email was forwarded to a member of staff within the department that provides this support. They formally confirmed to him that the Coroner's Office is not subject to the Freedom of Information Act.

"Around the same time, [the complainant]'s email was also forwarded to the Department within the Council considered most likely to hold the requested information, that of the Office of the Director of Public Health."

36. From a FOIA or EIR perspective, it is not for the Commissioner to dictate to the Council how it should or should not operate its email server – so long as this does not prevent the Council from discharging its obligations under the legislation. Single Point of Contact (SPoC) restrictions, when used effectively, can assist both the public authority and the person subject to the restriction in providing a better and more amicable level of service.

37. However, in this case, the process appears to have resulted in the Council treating as valid a request which should not have been valid. Whilst the Commissioner recognises that this was probably done with the best of intentions and in compliance with the spirit of access to information, it has clearly confused the complainant and created (or added to) a certain degree of mistrust between the parties.

38. What should have happened is that the correspondence should have been referred to the coroner's office only. The coroner should then have

informed the complainant that they weren't covered by the legislation and that consequently they were not obliged to respond to the request. It may well also have been good practice to explain to the complainant how he might make a request to the Council or where he might find other information that might be of interest.

39. As a general rule, the Commissioner would not encourage an entity which is not a public authority to automatically transfer a request to an entity that is. Not only are there data protection implications if this is done without consent, but the requestor may not be interested in the information that that public authority holds and it may create unreasonable expectations about the information to which the requestor is entitled.
40. The complainant appears to have underlying concerns about both the Council and the coroner's office. He also has concerns about the data protection implications of transferring his request in this way. However all such matters fall outside the scope of an EIR decision notice.
41. There is no indication in this case that the Council was acting otherwise than in good faith and in a genuine attempt to comply with the spirit of the legislation. However, it may wish to review its procedures to avoid similar occurrences.

Right of appeal

42. 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

43. 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.
44. 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

Roger Cawthorne
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