

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

Date: 11 April 2022

Public Authority: Swansea Council

Address: Data.protection@swansea.gov.uk

Decision (including any steps ordered)

1. The complainant requested information in respect of the creation of a plan relating to land at their property. Swansea Council provided an explanation regarding the reason for the creation of the plan and confirmed it was created from its Geographical Information System (GIS). It also cited section 21 FOIA (information accessible to the applicant by other means) in respect of information available from the Land Registry. The complainant is not satisfied that the Council has provided all relevant information it holds in respect of their request, or with its reliance on section 21 FOIA. The Commissioner's decision is that the appropriate legislation under which to consider the request in its entirety is the Environmental Information Regulations 2004 ('the EIR') and that the Council has complied with its obligations under regulation 5(1) of the EIR. In respect of the information refused on the basis of section 21 FOIA, whilst the Council should have cited regulation 6(1)(b), which is the direct equivalent within the EIR of section 21 FOIA, the Commissioner finds that this information was available to the complainant. The Commissioner does not require the Council to take any steps.

Request and response

2. On 22 January 2021, the complainant wrote to Swansea Council requesting the following information:

"1. In response to FOI requestI received a plan (the plan) entitled 'Land [at complainant's address] and dated 03.03.2020...' Please provide information that identifies why the plan was produced, what purpose the plan has fulfilled, details of

the Council activity that the plan forms a part of, all information related to the plan including reports, notes, correspondence, plans and photographs. I am the owner of [named property] and wish to establish if the plan was produced to support an investigation of the ownership of the land at the southern end of the garden at [named property]...

2. Provide information on the data sources used to prepare the plan ...Examples could be: HM Land Registry Title number, Adverse possession plan...and Commons Plan reference. Provide the plan scale."

3. The Council responded on 18 February 2021. It confirmed why the plan was created and informed the complainant that it was produced from its Geographic Information System (GIS) and stated that the plan was not produced to scale.
4. Following an internal review the Council wrote to the complainant on 22 March 2021. It informed the complainant that it should have considered the land ownership aspect of the request under the EIR, but as it had not applied any exemptions or exceptions, that it made no material difference to the outcome. It further informed the complainant that the request for information held on Council systems had been correctly considered under FOIA.
5. In respect of item one, it informed the complainant that no further information was held and informed them that although some verbal conversations had taken place in relation to the issue, these were not documented. The Council further stated that it had considered whether all information relevant to the request had been provided, and taking into account the information provided with its response to this request and previous FOIAs, concluded that the complainant had been provided with the full records it holds on this matter.
6. In relation to item two of the request, the Council informed the complainant that no manually entered data was used. It further informed the complainant that the plan does identify land ownership showing adverse possession (formerly council land), highlights Council freehold land, highlights the common land boundary and land registered at the Land Registry. It provided the link to the Land Registry and cited section 21 FOIA in respect of land registered at the Land Registry on the basis that the information was accessible to the applicant by other means.

Scope of the case

7. The complainant contacted the Commissioner on 23 March 2021 to complain about the way their request for information had been handled. The complainant believes that the Council holds more information in respect of item one of their request. In relation to item two, the complainant is not satisfied with the Council's response and explained that they were looking for the specific information on the data used to create the plan on its GIS. The complainant is also not satisfied with the Council's reliance on section 21 FOIA as he considers that it is not clear exactly what information is accessible by other means.
8. The scope of the Commissioner's investigation is to consider the appropriate legislation for the request, whether the Council has complied with regulation 5(1) of the EIR to provide all information it holds, and the Council's reliance on section 21 FOIA.

Reasons for decision

The appropriate legislation

9. The Commissioner notes that in its internal review, the Council concluded that some of the information relevant to the request was captured by the EIR. He has however, considered the appropriate legislation for the request in its entirety.
10. Regulation 2(1) of the EIR specifies the definition of environmental information and states:

"any information in written, visual, aural, electronic or any other material form 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) and (b) as well as measures or activities designed to protect those elements..."

11. The Commissioner notes that the information in question relates to the creation of a plan of ownership of an area of land which falls within the definition of (a) and (c) above. The Commissioner is therefore satisfied that the information falls within the definition of environmental information as referred to in (a) and (c) above. The appropriate legislation under which to consider this request is therefore the EIR.

Regulation 5 – duty to make available environmental information on request

12. Under regulation 5(1) of the EIR, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.
13. In scenarios where there is some dispute between the amount of information held by a public authority and the information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
14. The Commissioner's judgement in such cases is based on the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner expects the public authority to conduct a reasonable and proportionate search in all cases.
15. In this particular case, the complainant is not satisfied that they have received all information falling within the scope of both items of the request. The Commissioner has therefore considered each item separately to form a view.

Item one

16. Item one of the request asked why the plan was created, what purpose it has fulfilled, for details of the Council's activity that the plan forms part of, and for all information relating to the plan including reports, notes, correspondence, plans and photographs.
17. In its original response the Council informed the complainant that the plan was produced for its records to capture what was discussed during a meeting with the complainant and a council officer in 2019 and was produced for viewing and discussion purposes. They were further informed that it was also produced to assist with any subsequent FOIA requests submitted by the complainant.

18. The complainant felt that the response described why the plan was created and believes that the plan is part of a record of a meeting and as such, the meeting should be fully identified and the full record provided, together with other related information. The complainant further stated that the Plan was not used during their discussion with a named council officer on 1 October 2019 although elements may be the same. They also informed the Commissioner that there has been significant correspondence between the Council and the complainant regarding a meeting of 1 October 2019 and there should be records.
19. The Council's position following its internal review remained that it did not hold any additional information. The Commissioner therefore asked the Council to confirm the following:
 - What information it had provided to the complainant in responses and internal reviews to the complainant's previous FOIA requests.
 - The date and purpose of the meeting the plan was created for, and whether there is any other information relating to the meeting.
 - What searches were carried out for the information and why they would have been likely to retrieve relevant information if held.
20. The Council confirmed that there have been five inter-related requests, four of which have been subject to an internal review and provided copies of its responses. The Commissioner has considered these requests and responses and notes that two requests pre-dated this request, both of which related to the erection of the shed on the complainant's neighbouring property (an issue closely related to the subject matter of this request).
21. The Council also confirmed that the meeting which led to the creation of the Plan took place on 1 October 2019 between a member of the Council's staff and the complainant. The Council officer has confirmed that no additional data was created other than the plan.
22. The Commissioner has considered the complainant's arguments and the Council's submissions, and whilst he accepts that it is reasonable for the complainant to expect additional information, he notes that the Council has confirmed to the complainant why the plan was produced, the complainant is aware of the meeting the plan was produced in response too, and would point out that any subsequent correspondence about the meeting between the complainant and the Council does not equate to a record of the meeting itself. The Commissioner also accepts that no other record of the meeting was created.

23. The Commissioner has also considered the Council's responses to the complainant's previous requests to ascertain what information had already been provided to the complainant.
24. The response and internal review to the first request provided two photographs, referred to a letter already in the complainant's possession dated 8 November 2019, provided a letter addressed to the owner of the complainant's neighbouring property and referred to a meeting where the complainant was shown the Council's Terrier system which is an electronic system recording the Council's landholdings uploaded onto its live GIS. The complainant was further informed that since the title is registered, this information is replicated in the records of the Land Registry. A link was provided in the internal review with the complainant informed to search using the registered reference to his property.
25. The second request was for a copy of the letter the Council sent on a specified date to the neighbouring property about the erection of the shed. The Council forwarded a copy of that letter with its response.
26. The Commissioner has concluded based on the balance of probabilities, that the Council holds no further relevant information than that provided in response to this request combined with that from previous related requests. He has therefore determined that it has complied with its obligations under regulation 5(1) of the EIR in response to item one of the request.

Item two

27. Item two requested the data sources used to prepare the plan and suggested possible examples might be HM Land Registry Title Number, Adverse Possession Plan reference and Commons Plan reference. It also asked for the plan scale.
28. Based on the above, the Commissioner considers that an objective reading of this part of the request would include the layers which sit behind the Council's GIS. However, even if this was not clear from the original request, the complainant's clarification in their request for an internal review confirmed that their request was for the identification of the source data used by the GIS to create the plan. The complainant added that such data would have a unique identifier and version, and stated that for it to be of value in discussion a scale would be needed and that this would be available from the GIS.
29. As stated in paragraph 3 of this notice, the Council confirmed in its original response that the plan was produced from its GIS which it stated holds all of the Council's land ownership details. The Council also confirmed that the plan was not produced to scale but that there is a

Key or Legend attached to the plan which highlights the area that was subject to adverse possession (formerly Council land), highlights Council Freehold land, land registered at the Land Registry and the Common land boundary.

30. As noted in paragraph 6 of this notice, the Council reiterated the explanation from its original response in its internal review. It also informed the complainant that the Land Registry provides detailed property, house and land information including ownership details and provided a link to its search facility.
31. With no knowledge of the Council's GIS, the Commissioner needed additional information to determine whether the Council had complied with regulation 5(1) of the EIR in respect of this part of the complainant's request. He therefore asked the Council for a brief explanation of the GIS itself and whether it was possible for it to manipulate the source data and if so, whether it was done in this instance. The Commissioner also asked the Council to comment on the complainant's view that there should be a unique identifier and version.
32. The Council provided an explanation of its GIS and a description of its various layers but pointed out that this description is not recorded information, but based on the combined knowledge of its GIS manager and archivist.
33. The Commissioner was informed that the GIS overlays information on top of other information and is a set of live data which can be viewed as a map but is constantly changing. To put it more clearly, it is a series of digital maps which by virtue of being digitised with co-ordinates can be accurately laid on top of each other to show how one set of spatial information corresponds to another. It is widely used in applications by public authorities and datasets from different sources can be imported to add to home-grown datasets, (at a basic level this is up-to-date Ordnance Survey data, which is the bedrock of any British GIS).
34. It further informed the Commissioner that it is made up of the following three layers:
 - Council Terrier - a document which maps all the land the Council owns which, before it was digitised was on Ordnance Survey (OS) maps and index cards. Once digitised, it was put into the base of the GIS. It is usually outlined in various colours depending on the function for which the land was purchased This layer is not publicly available and it is believed that the original maps were destroyed after the information was digitised.

- Register of Common Land – again created from OS maps, but in this case, the original maps still exist in a paper register. This layer of data was exchanged with the Welsh Government in order for it to collaborate with Natural Resources Wales to produce a single map of common land in Wales which is publicly available. However, the Council confirmed that it is the data before it was exchanged with the Welsh Government which makes the second layer of the Council's GIS. It further confirmed that the paper annotated OS maps held by the Council are available for inspection by appointment.
 - Land Registry of Wales data which is external to the Council. This information is publicly available from the Land Registry for a small fee.
35. The Council also confirmed that it is not possible for the GIS to be manipulated prior to printing as the Council's land ownership is dependent on the Land Registry layer, following the registration of its title with the Land Registry who holds the master record.
36. In respect of the complainant's comments regarding the source code for each layer, the Council informed the Commissioner that it had queried this with its GIS manager who did not know what the complainant was referring to.
37. The Commissioner has considered the complainant's comments and the Council's explanation and notes that it has provided a much fuller explanation of the various layers which make up its GIS system than that provided to the complainant. However, he is mindful that this is not from recorded information but an explanation based on the knowledge of two of the Council's officers.
38. The Commissioner also notes that the Council referred to the three data sources used by its GIS system in its original response and also informed the complainant that a Key or Legend attached to the plan highlighted the area that was subject to the adverse possession order, and confirmed that the plan was not produced to scale. Additionally, as stated in paragraph 24 the complainant had previously viewed the Council Terrier system via its GIS at a meeting which pre-dated this request which, combined with the explanation provided in the Council's response and internal review indicates that they had at least a basic knowledge of the various layers of the Council's GIS. Further, if the manager of the GIS is unaware of what the complainant means by a unique identifier and version, the Commissioner accepts that on the balance of probabilities, that this information is not held.

39. In the Commissioner's view, the Council has provided all information it holds in respect of item two of the complainant's request and has therefore complied with its obligations under regulation 5(1) of the EIR.

Section 21

40. The Commissioner notes that after informing the complainant that its GIS contains land registered at the Land Registry and providing a link to its website, it cited section 21 FOIA to refuse to provide that information.
41. In his consideration of whether the Council was entitled to rely on this exemption, he is mindful that the whole of the request should have been considered under the EIR. The Council was not therefore entitled to rely on this exemption in respect of this information, however, regulation 6(1)(b) of the EIR provides a direct equivalent.
42. The Commissioner acknowledges that the Council informed the complainant that its GIS includes land registered at the Land Registry and provided the relevant link. The Commissioner would also highlight that the Council had previously informed the complainant that he would need to use the registered reference to his property to access the information he required. The Commissioner has therefore concluded that the Council was entitled to refuse this part of the request by virtue of section 6(1)(b) of the EIR.

Right of appeal

43. 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

44. 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.
45. 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
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