

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

Date: 25 May 2023

Public Authority: Pembrokeshire County Council
Address: County Hall
Haverfordwest
Pembrokeshire
SA61 1TP

Decision (including any steps ordered)

1. The complainant requested, from Pembrokeshire County Council ("the Council"), a copy of an audit report produced in relation to processes relating to a redevelopment project at South Quay.
2. The Commissioner's decision is that the requested information is environmental information within the definition at regulation 2(1)(c) of the EIR. The request should, therefore, have been handled by the Council under the EIR rather than the FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
 - Reconsider the request under the provisions of the EIR and issue a fresh response to the complainant.
4. The Council 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 16 December 2022, the complainant wrote to the Council and requested information in the following terms:

“Request for information regarding – South Quay Development Disclosure of the review of the South Quay Development.”

6. The Council responded on 12 January 2023, and stated, “the review of the South Quay Development has not yet been finalised therefore the requested information is not available.”
7. The Council provided an internal review on 10 February 2023, in which it revised its position. It refused to provide the requested information, citing section 36 of FOIA (prejudice to effective conduct of public affairs).

Scope of the case

8. This decision notice covers whether the request for information has been correctly handled by the Council, including whether or not the information is environmental.

Reasons for decision

Regulation 2(1) – definition of environmental information

9. Regulation 2(1) of the EIR provides the following definition of environmental information:

“...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...”

10. It is important to ensure that requests for information are handled under the correct access regime. This is particularly important when refusing to provide information, since the reasons why information can be withheld under FOIA (the exemptions) are different from the reasons why information can be withheld under the EIR (the exceptions). In addition, there are some procedural differences affecting how requests should be handled.
11. During the course of his investigation the Commissioner asked the Council to consider whether the request should have been considered under the EIR. The Council's stated that its position is as follows, "even though the request related to a development, the information requested was regarding the management and finance of the development which we deemed to be information which falls under the Freedom of Information Act".
12. The Council has provided the Commissioner with a copy of the withheld audit report; he has considered its contents when deciding whether the council has considered the complainant's request under the correct access regime .
13. The Commissioner has produced guidance to assist public authorities and applicants in identifying environmental information.¹ The Commissioner's well-established view is that public authorities should adopt a broad interpretation of environmental information, in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.
14. In relation to the interpretation of regulation 2(1)(c) of the EIR, the Commissioner's guidance states, "the regulation gives "such as" examples of measures or administrative measures: policies, legislation, plans, programmes and environmental agreements. This covers a broad range,

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/regulation-2-1-what-is-environmental-information/>

and includes the steps you take to ensure something happens and the methods, processes or instruments you use to implement the measure".²

15. The Commissioner's view is therefore that, although the information in the requested report primarily relates to the management and finance of the redevelopment project, as stated by the Council, the whole report is nevertheless information on measures and/or activities which are likely to affect the elements and factors of the environment.
16. The information requested would therefore fall within the definition at regulation 2(1)(c) of the EIR and the request should have been considered under the EIR.
17. The Commissioner orders the Council to make a fresh response to the request under the provisions of that legislation.

² <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/regulation-2-1-what-is-environmental-information/#eir8>

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: 0870 739 5836

Email: grc@justice.gov.uk

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

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

Victoria James
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF