



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2019/0207

Before
Judge Stephen Cragg Q.C.

Tribunal Members
Ms Melanie Howard
and
Mr Michael Jones

Between

Ashley Rumbold

Appellant

-and-

**The Information Commissioner
Essex County Council**

Respondents

Sitting at Field House on 5 December 2019

Representation: The Appellant represented himself by telephone

The Commissioner and Essex County Council were not represented

DECISION AND REASONS

THE REQUEST AND THE DECISION NOTICE

1. On 3 September 2018, the Appellant spoke to an officer at Essex County Council (the Council) on the telephone and the following request for information was recorded:-

"QUESTION 1 - 2577061 (CONFIRM REF) THE RESIDENTS OF [address redacted] HAVE EFFECTIVELY ADOPTED THE HIGHWAY AND PUT UP "NO PARKING" SIGNS. CAN YOU PLEASE PROVIDE DETAILS OF THE DECISION MAKING PROCESS REGARDING THIS ENQUIRY AND I WOULD LIKE COPIES OF THE LETTERS SENT TO THE RESIDENT OF THE GRANGE WITHOUT THEIR PERSONAL DETAILS, I JUST WANT TO SEE THE CONTENT AND THE COUNCILS STATEMENT REGARDING THE MATTER."

2. The reference number 2577061 corresponds to an entry on the Council's site history report for a village in Essex which is included in the bundle for this appeal. The entry states that an enquiry was logged at 12.25 on 26 June 2018. The subject was said to be 'obstruction of highway land', and the location is 'In front of The Grange on Church Road'. It is recorded that 'Caller States - Driveway work being done here is incorporating and changing highways owned layby in front of properties. Resident has previously attempted to build on this land but ECC stopped them as it is our land'.
3. We can also see in our bundle another mention of the reference number 2577061 and the enquiry set out above in a screen shot from

the Council, where there is an entry which states 'no further action needed', and there are further notes which state:-

Call from resident who is concerned that the owner of the Grange has encroached on the highway and put up no parking signs. Discussed with senior CS who advised this would be low...

4. Our understanding is that there would be more text which is not visible as this is a screenshot, and we assume the next word would be 'priority' (given the conclusion that there would be no further action). We think that CS stands for 'Council Surveyor'. There is a date which is 30 August 2018, a few days before the request was made.
5. This encapsulates the nature of the issue about which the Appellant is concerned: a local landowner is said to be appropriating a layby and a footpath in the village and incorporating it into their property.
6. The Council responded on 30 September 2018. It provided some information within the scope of the request. This included the Highway Enforcement Policy, a standard template of the letter that would have been sent to the residents complained about. It was also explained that there was no formal process to remove the highway rights in place, and that the area remained part of the publicly maintainable highway.
7. It appears the Council interpreted the request for the 'decision making process' as a reference to its enforcement policy, rather than what it had actually done with the enquiry.
8. The Appellant asked for a review of the decision in relation to disclosure. This was done by telephone on 16 October 2018. The Council recorded the request for the review in its response of 1

November 2018 (see below). It is said that the Appellant was of the view that there was more information on the system regarding Church Road including complaints from the public, case file and an inspector's report.

9. Prior to a response on the review, the Council's Customer Services Advisor sent an email to the Appellant on 26 October 2018. This said that there were further enquiries to complete, but 'we have been advised that the Enforcement Team will be taking this on as an enforcement case and once they have collated the information and evidence they require they will begin liaising with the landowner'.
10. As stated above, the Council wrote to the Appellant on 1 November 2018, stating that within the Appellant's request for an internal review, further information was asked for, and the Council would need to treat that as a separate request. We assume this is a reference to other complaints from the public, case file and the inspector's report as mentioned in the letter. The Council also stated that it did not hold any further information that fell within the scope of the Appellant's initial request.
11. Following this, the Appellant then made a further request to which the Council responded on 11 December 2018, providing further information, which included the specific entries in relation to enquiry 2577061, which we have described above.
12. The Appellant contacted the Commissioner on 9 November 2018 to complain about the way his request for information had been handled. There is a decision notice dated 18 June 2019. As the Commissioner records, the Appellant is of the opinion that the information asked for in the second request, should be covered by the scope of what was asked for in the initial request.

13. The Commissioner also notes that one of the points made by the Appellant is that the Council did not record all of his original request which he made on the telephone. The Commissioner comments that it is not now possible to determine whether that is right as no recording of the call exists (the Council confirmed that any recordings of telephone conversations were only kept for 30 days).
14. The Commissioner states that she asked the Council to describe the searches it had completed in an effort to find any information within the scope of the request. The Council responded to explain the following:

The initial request for information only related to 'details of the decision-making process regarding his enquiry and copies of letters sent to resident of [address redacted] without personal details'. The council provided a standard template letter that was sent to all residents, this was the same letter that was sent to all residents. We also provided a link our Highway Authority Enforcement Policy which describes our decision-making process.

15. The Commissioner did not appear entirely satisfied with this response and stated that she:-

22.....recognises that "details of the decision making process" could be viewed as more than one particular document in general. As it relates to a specific complaint, it would be reasonable to see this request to be for more details about the decision-making process relating to the specific enforcement action for the reference number quoted.

16. The Commissioner notes that the Council accepted this point, but that in response to what looked like a request for further information when the Appellant asked for a review, and in relation to a further request thereafter, the Council had provided the

Appellant with further information on 11 December 2018.

17. The Commissioner asked to see the information that had been sent to the Appellant as a result of the second request. The Council provided this and advised that it has provided everything it holds that falls within the scope of the requests, apart from the personal information which it had redacted. The Commissioner states that the information includes:-

26some historical photographs of the site, some current photographs of the site, redacted records on its case management system showing concerns about the site made by complainants, a map that shows the area of encroachment, the template of the letter sent to the resident and the policy used to make decisions on the Council's enforcement activity.

27 From viewing the screenshots of the records on the Council's case management system, the Commissioner sees that there is a record of some enforcement activity, in the status field and the field where notes can be added. The Commissioner sees that this is the case for each screenshot of the concerns made to the Council relating to the highway encroachment.

18. The Commissioner then asked the Council 'whether it held any further recorded information, which it used to make a decision on the specific enquiry the Appellant quoted'. We take this to be a reference to enquiry 2577061, and shows that the Commissioner was concentrating on deciding whether the information limited to the decision-making process for that enquiry had been disclosed. The Council's response was that it had:-

"...investigated further with the service area that provided the initial response regarding the 'decision making process'. No further information is used other than 'The Highway Authority Enforcement Policy' that was provided in the complainant's first request, this

explains how the authority will consider matters for enforcement."

19. On that basis the Commissioner concluded at paragraph 29 that she 'finds that the Council does not hold the information requested by the complainant, or at least from the evidence provided, what was recorded to have been requested by the complainant'. In context, we take the Commissioner to mean that no *further* information is held within the scope of the Appellant's request.

THE APPEAL

20. The Appellant's appeal is dated 18 June 2019. He states that there are other complaints on the issue from other residents which have not been disclosed to him, and that he has not been provided with any information about the activities of the Enforcement Team who have had 'ownership of the complaint for enforcement purposes for approximately one year'.
21. He says that the policy document provided by the Council states that the Council will conduct its enforcement functions with transparency and accountability. He also complains that the Council will not provide him with the name of the relevant legal officer who has replaced the person named in the policy document.
22. The Commissioner's Response upholds the decision notice. We have cited part of the Response below in our discussion. The Council has been joined as a party to the Appeal. The Council's grounds of opposition state that 'We maintain that we have provided [the] appellant with the information which he requested' in the response to the initial request.
23. Neither the Council nor the Commissioner attended at the hearing.

The Appellant attended on the telephone. He explained to us his frustration that, in his view, the Council had not dealt with the issue he had raised, even though the Council had stated that it would take on the case as an enforcement issue as long ago as 25 October 2018. He repeated the point made in his appeal that there must be more information from the enforcement team that had not been disclosed.

24. The Tribunal had sympathy for the Appellant and the enforcement issue he has been pursuing. We explained to him that the Tribunal had to consider what information was held by the Council at the time he made his request on 3 September 2018, and we were not considering whether the Council had generated further information by the time of the Commissioner's decision notice in June 2019 or by the time of the appeal hearing in December 2019.

DISCUSSION

25. Regulation 5(1) EIR states that 'a public authority that holds environmental information shall make it available on request'. This is the provision that we have to apply in this case, and to decide whether it has been complied with. Regulation 5(1) EIR is subject to any exceptions that may apply.
26. The Commissioner and now the Tribunal must decide whether, on the balance of probabilities, the Council held any further information which fell within the scope of the request, at the time the request was made, which it did not disclose.
27. We note that there is a dispute as to what was requested as the Appellant says that the Council did not record the entirety of the request. In our view, the Commissioner and now the Tribunal

should deal with the case on the basis of the only record of the request that is now in existence (see above).

28. We also note that the Appellant specifically did not ask for personal details of the residents he complained about, and so the provision of personal information is not an issue in this appeal.
29. It is not entirely clear from the decision notice how the Commissioner has approached this case. On the one hand at paragraph 22 of the decision notice, the Commissioner appears to criticise the Council for taking a too narrow view of the request when she says that it 'would be reasonable to see this request to be for more details about the decision making process relating to the specific enforcement action for the reference number quoted', rather than simply disclosing a general enforcement policy document.
30. However, when the Council re-iterated that 'No further information is used other than [the enforcement policy] that was provided in the complainant's first request', the Commissioner appears to accept, at paragraph 29 of the decision notice, that disclosure of the enforcement document fulfils the requirement to provide information about the decision making process in relation to the first request.
31. The Commissioner's Response to the appeal attempts to explain this by stating that :-

It is clear that at the time of the request the Council's response to provide details of the Enforcement Policy was correct given that, at the time, the matter had only been referred to the Enforcement Manager for consideration, and therefore it appears that no decision had been made.

32. However, in our view this is not a complete answer to the Appellant's appeal. As set out above, at the time of the request the records held by the Council show that the enquiry had been recorded on the site history database. The records also show, as of 30 August 2018 (four days before the request), the case had been referred to a 'senior CS' who decided that the case was low priority, and that therefore no action was needed.
33. In our view these entries constituted 'details of the decision-making process' in relation to this enquiry which were requested by the Appellant on 3 September 2018. It seems obvious to us that the Appellant was asking for information as to what had happened to his enquiry, and was not simply seeking the Council's general enforcement policy that would be applied to his enquiry.
34. Thus, in our view the Commissioner was wrong to conclude that, on 3 September 2019, the Council held no further information within the scope of the request. We have now seen the information which was not disclosed (and the dates when it was created) and so we can be sure that it was held at the time of the request.
35. **On that basis the Appellant's appeal is allowed.** However, it also seems to us that the additional information held by the Council has now been disclosed as a result of the response to the second request. It seems to us unlikely that the Council held anything else relevant to the enquiry at the time of the request on 3 September 2018, given that the records show that, as of 30 August 2018, no further action was needed.

36. On that basis no further directions are necessary. We understand that that might be a pyrrhic victory for the Appellant and he may need to make further requests for more recent information that has been generated by the Council in relation to this matter, if that is what he seeks.

Stephen Cragg QC

Judge of the First-tier Tribunal

Date: 9 December 2019

Promulgated: 9 December 2019