

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 8 February 2012

Public Authority: Flintshire County Council
Address: County Hall
Mold
Flintshire
CH7 6NB

Decision (including any steps ordered)

1. The complainant requested streetwork and highway information for the Flintshire County Council ('the Council') area. The Council initially refused the request under regulation 12(4)(b) of the Environmental Information Regulations 2004 ('the EIR') as it considered the request to be manifestly unreasonable. The Council later stated that it considered the request to be "too general" under regulation 9 of the EIR, and the complainant provided further clarification of the information sought. In its internal review the Council stated it was relying on regulations 12(4)(b) and 12(4)(c). During the Commissioner's investigation the Council changed its stance and stated it was relying on regulation 6(1)(b) in relation to some parts of the request and regulation 12(4)(d) in relation to other parts of the request.
2. The Commissioner's decision is that the information held relating to parts 2, 3 and 4 of the request is publicly available, and therefore regulation 6(1)(b) is engaged. The Commissioner has also determined that regulation 12(4)(d) is not engaged in relation to part 5 of the request.
3. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation.
 - Disclose information held relevant to part 5 of the request to the complainant.
4. The public authority must take this step 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 (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 28 February 2011, the complainant wrote to the Council and requested information in the following terms:

"... a spreadsheet of the location and nature of the following 'Street Work and Highway Information' entries in your area:

1. Status: Are the Highways maintained Privately or have they been Adopted by the Authority? If the Highway is partly private/adopted, the extent of each section
2. Land to be Acquired: Which of these road works (if any) will necessitate the acquisition of land
3. Road Schemes: As defined in question 3.4 in the Con29.
4. Traffic Schemes: As defined in question 3.6 of the Con29. Details of Approval and whether or not they have been implemented, or when they are likely to be implemented.
5. Footpaths & Bridleway: Designation, status and location".

The complainant stated that, the information requested could be extracted from the street works register, which the Council is required to maintain under section 53 of the New Roads and Street Works Act 1991 ('the NRWSA'). He also asked for the information to be provided in "electronic form, preferably a spreadsheet or CSV file with name of Highway, location details (including eastings/northings), nature of works, and date in a discreet column or columns including postcode".

6. The Council issued a refusal notice on 9 March 2011, stating that the information was accessible via other means and "due to the request being Vague and Unreasonable" (sic), it was minded to refuse the request under regulation 12(4)(b).
7. On 9 March 2011 the complainant requested an internal review of the Council's handling of his request.
8. The Council responded on 14 March 2011, stating that it considered the request to be "too general". In accordance with regulation 9 of the EIR the Council asked the complainant to refine his request.
9. On 22 March 2011 the complainant provided further clarification of the information he was seeking.

10. The Council provided the outcome of its internal review on 11 April 2011. It stated that it considered regulation 12(4)(b) and 12(4)(c) of the EIR to apply. The Council stated that it had complied with its obligations to provide advice and assistance under regulation 9 of the EIR. The Council also stated that, whilst it was in the public interest for the information requested to be disclosed, as the information was available via its standard Con29 procedure, it would not be in the public interest to deviate from this procedure. The Council also stated that the information could only be guaranteed as accurate at the time of its original release.

Scope of the case

11. On 3 May 2011, the complainant contacted the Commissioner to complain about the way his request for information had been handled.
12. Following a discussion between the Commissioner and the complainant on 23 August 2011, the latter confirmed that he had received some information from an alternative source in relation to part 1 of his request. The Commissioner therefore considers that this complaint relates to the Council's refusal to provide information relevant to parts 2 to 5 of the request.
13. During the Commissioner's investigation, the Council confirmed that it was relying on regulation 6(1)(b) in relation to parts 2, 3 and 4 of the request and regulation 12(4)(d) in relation to part 5 of the request. The Commissioner has therefore considered whether the Council was correct to apply regulations 6(1)(b) and 12(4)(d) to the request.

Reasons for decision

Regulation 6 – Form and format of information

14. Regulation 6(1) of the EIR states that:

“Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless –

(a) it is reasonable for it to make the information available in another form or format; or

- (b) the information is already publicly and easily accessible to the applicant in another form or format.
15. In interpreting regulation 6 the Commissioner has considered Article 3(4) of Directive 2003/4/EC from which the Regulations are transposed. Article 3(4) contains the following wording: *'where an applicant requests a public authority to make environmental information available in a specific form or format (**including in the form of copies**)'* (emphasis added) and goes on to say that a public authority shall make the information available unless it is already publicly available in another form or format or it is reasonable to make it available in another form or format.
 16. The complainant indicated that he wished to receive copies of the requested information in an electronic format. In relation to parts 2 to 4 of the request, the Council argues that the requested information is publicly available and easily accessible to the complainant as it is available to view at its offices in County Hall, Mold. Specifically the Council confirmed that all of the information held relevant to parts 2 to 4 of the request is available for inspection in the form of:
 - Part 2 of the request – land to be acquired – information available via lists and maps. The lists details proposed road schemes by title and address and the maps produced by the Council show the line of a proposed road scheme and land 200 metres either side of the route which details the extent of land which may be required for the scheme.
 - Part 3 of the request – road schemes – maps showing the route and extent of proposed road schemes on Ordnance Survey maps.
 - Part 4 of the request – traffic schemes – a folder detailing traffic schemes, the address of the scheme, particulars of any traffic restrictions eg speed limits and plans showing the route and extent of the schemes.
 17. In its initial refusal notice although the Council did not specify that it was relying on regulation 6 of the EIR it advised the complainant that he could view the requested information at its offices and provided relevant contact details.
 18. The complainant argued that it was impractical for him to view the information at the Council's offices because he lived a considerable distance from its offices and the volume of information involved was too large to "make manual capture feasible".

19. The complainant has put forward detailed arguments to support his view that the information he requested could be easily extracted by the Council. In particular, he referred to the NRSWA which changed how highways authorities manage data. He pointed out that each regional highway authority must send a copy of its information to Geoplace Ltd, which acts as a central repository for all local and national highway information. The complainant understands that, under statute, all highways authorities must feed in specific information to Geoplace in a specific format, which is updated on a monthly basis. As such, Mr Lamb believes the information which is prescribed under the NRSWA includes the information he requested and could be easily extracted by means of a simply query being made of the relevant database(s).
20. Whilst the Commissioner notes the complainant's position that the information requested could be easily extracted and provided to him in an electronic format, this is not a consideration that can be taken into account in determining whether or not regulation 6(1)(b) is applicable.
21. The Commissioner notes the complainant's position in relation to the distance he lives away from the Council's offices and the volume of information involved, which might make inspecting the information requested more difficult for the complainant. However, the Commissioner considers that whilst this may make the capturing / collating of the information more difficult the key point is that the information requested is publicly available and easily accessible and the Council has explained how he can access it. The Commissioner therefore considers that regulation 6(1)(b) of the EIR applies and the public authority is not required to make the information available in the form and format requested.

Regulation 12(4)(d)

22. Regulation 12(4)(d) states that a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.
23. The Council first introduced its reliance on regulation 12(4)(d) during the Commissioner's investigation. It applied regulation 12(4)(d) to part 5 of the request which relates to information about the designation, location and status of footpaths and bridleways.
24. In support of its position that regulation 12(4)(d) applies to the information the Council stated that:

"...the information is currently being compiled. Part of the information was the subject of a survey carried out by a consultancy company on behalf of Flintshire County Council. Work is ongoing, this week, to extract that data from the software package to allow capture of the information in a database, and to compile information from various sources to provide comprehensive footpath and bridleway information."

The Council believes it is not in the public interest to disclose incomplete information and confirmed that, once compiled, the information will be made publicly available.

25. The Commissioner believes that when considering the application of this exception, the focus should be on the information itself and the "completeness" of the information held. The Commissioner considers the fact that, at the time of the request, the Council was in the process of capturing and gathering data from various sources in order to compile comprehensive footpath and bridleway information is not a relevant consideration for the application of this exception. The Council has not stated that any of the information it holds is in itself incomplete, but rather that the process of compiling it is incomplete.
26. The Council's representations do not suggest to the Commissioner that the information held at the time of the request was unfinished or incomplete, rather that, the analysis and compilation of the information was ongoing. The Commissioner considers that the exception at regulation 12(4)(d) cannot be applied in this way.
27. In light of the lack of detailed arguments put forward by the Council, the Commissioner is not satisfied that the exception is engaged. As the Commissioner finds that the exception at regulation 12(4)(d) is not engaged there is no requirement for the Commissioner to consider the public interest test.

Right of appeal

28. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

29. 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.
30. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF