

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2013

Public Authority: Devon County Council
Address: County Hall
Topsham Road
Exeter
Devon
EX2 4QD

Decision (including any steps ordered)

1. The complainant requested information about surveys on road markings and signs in Sidmouth and details of the faults identified. Devon County Council (the 'Council') responded but the complainant felt its response was incomplete and possibly incorrect. The Council provided further clarification during the Commissioner's investigation.
2. The Information Commissioner (the 'Commissioner') has decided that, on the balance of probabilities, the Council has not provided all the information it holds in relation to the request in breach of sections 1(1)(a) and 1(1)(b) of FOIA. The Council also breached section 10(1) of FOIA because it did not provide its initial response within 20 working days.
3. The Information Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - In relation to the 43 works orders it holds for the period 1 January 2008 to 31 December 2009, either disclose these to the complainant or issue a valid refusal notice in accordance with section 17(1) of FOIA.
4. The public authority 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 19 December 2011 the complainant wrote to the Council and requested information in the following terms:

"In 2008 as part of the process for the introduction of civil parking enforcement, officers of Devon County Council carried out a survey on the road markings and signs in Sidmouth and identified matters that required correction.

Please supply me with the dates that these surveys were carried out, details of the faults identified and the dates it was confirmed that these had been rectified.

Also, please inform me if Devon County Council were previously aware of any of these faults and if so what action had been taken to correct them then."

6. The Council responded on 25 January 2012. It provided the dates of the surveys, confirmed that the works were carried out by its contractor and gave the date the works were completed. It explained that there was a charge for copies of the actual surveys but that they could be viewed at its offices. It confirmed that during the year 2007/2008 no parking sign and line faults were identified as a result of its regular inspections and no works were ordered for maintenance of signs or lines relating to parking restrictions for the area as a result of its general annual inspection of the highway. It attached details of five customer contacts in its customer service system relating to parking restriction signs and lines during 2007/2008.
7. The complainant requested an internal review on 27 January 2012 on the basis that he considered all the requested information had not been provided, and that which had was possibly incorrect. He clarified that his request had been for the survey undertaken by "officers of Devon County Council" as specified in his request, as opposed to that carried out by the contractor.
8. The Council wrote to the complainant on 30 January 2012 asking him to detail the specific components of its response which he was unhappy with. The complainant responded the same day. Despite this, the Council did not provide its internal review result until 25 May 2012, which is commented on under 'Other Matters'.
9. As part of its review, the Council reiterated the dates that surveys had been carried out by its contractor (Parsons Brinckerhoff), confirming that most of the issues identified related to lining; these issues were then passed to the Council's contractor (Southwest Highways) to carry

out remedial lining works. It said that issues regarding signs often require technical input to determine the appropriate solution, and that a member of the local Traffic Team would have visited the site to detail the required works relating to signs, which would then have been sent to the Council's contractor to rectify faults.

10. The Council maintained its position that it had provided the complainant with details of the faults identified. It had previously given details of the issues reported by members of the public, but now provided the outcomes.

Scope of the case

11. The complainant contacted the Commissioner on 6 August 2012 to complain about the way his request for information had been handled.
12. On 26 September 2012 the Commissioner wrote to the complainant seeking clarification on a number of points prior to determining the scope of his investigation. The complainant responded that same day enclosing a number of attachments, explaining that it is the contractor's role to note the location of signing faults, whilst the Council's own traffic team's role is to correct them. The complainant said that this requires a further survey to identify the fault and a works order to be placed for the works to be carried out.
13. The complainant asserted that having visited the locations to survey the necessary works and check works had been carried out, the Council's officers would have needed to compile information in order to place the requisite works orders. It was his view that the Council had not provided him with all the information it holds as it had not disclosed the information compiled during these site visits.
14. The Commissioner has investigated whether, on the balance of probabilities, the Council held any further information than has already been provided to the complainant.

Reasons for decision

15. Section 1 of FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

16. The task for the Commissioner here is to determine whether, on the balance of probabilities, the Council holds any further information relevant to the request which it has not disclosed to the complainant. Applying the civil test of the balance of probabilities is in line with the approach taken by the Tribunal when it has considered the issue of whether information is held in past cases.
17. The complainant has raised various points of concern with the Commissioner during his investigation. The Commissioner has considered all the concerns but has only set out the detail of those which are essential to his decision in this case.
18. The Commissioner advised the Council of the complainant's view that the information it had provided to him was *“insufficient to identify and rectify the errors identified, as noted in other FOI requests it was only the contractor's role to note the location of signing faults and the role of the area traffic teams to correct them. This required a further survey to identify the fault and place works orders.”* The Commissioner asked the Council to confirm whether the complainant's understanding is correct, and if not, to explain the process.
19. In reply, the Council advised that the complainant's contention is not correct and confirmed it did not *“currently hold any copies of works orders for the work that was carried out”*. It stated that the surveys which were undertaken were used directly by Southwest Highways (the Council's contractor) to locate and rectify faults identified in these surveys.
20. The Commissioner queried whether any officers of the Council carried out surveys relevant to this request, and if so, asked it to provide details of the dates. The Council confirmed surveys were carried out by its contractor (Parson Brinckerhoff) on 3 and 8 April 2008, and said that details of these surveys had been previously provided to the complainant. It maintained its position that no previous inspections were carried out by the Council prior to those undertaken by its contractor.
21. It confirmed that works were carried out based on these plans, with completion of works recorded as 26 September 2008.
22. The Commissioner asked the Council to comment on the complainant's statement that the internal review *“although showing that members of staff had visited the locations to survey the necessary works and check works had been carried out refused to provide information that it would have been necessary to compile these surveys in order to place works orders. So to date I have still not received the information on this that I*

requested."

23. In response, the Council reiterated that it does not hold records of surveys being conducted beyond those undertaken by Parsons Brinckerhoff on 3 and 8 April 2008. As previously identified, it said that the results of these surveys were passed on to Southwest Highways (the Council's contractor) to enable them to locate and rectify faults that were identified. The Council told the Commissioner it understands that these surveys were identified by Southwest Highways as sufficient for them to carry out remedial works, with the completion date being 26 September 2008.
24. The Commissioner wrote to the complainant on 21 January 2013 to outline his preliminary view that, on a balance of probabilities, no further information was held by the Council than had already been provided. The Commissioner asked the complainant to consider withdrawing his complaint, or to submit any further evidence in support of his view that a further survey must have been carried out.
25. The complainant declined to withdraw his complaint, stating the Council's response raised "*large concerns*" because the complainant himself had performed similar tasks in placing works orders for corrections such as those he was enquiring about. He said he knew that two officers had spent approximately two days 'visiting' Sidmouth to survey the signs to be able to place the works order.
26. The complainant then submitted some further evidence, which the Commissioner subsequently raised with the Council on 5 February 2013. At this point the Commissioner reminded the Council of the need to address the search-related questions asked for on 10 October 2012, having had no response to his previous reminder of 21 January 2013.
27. The Council responded later that day acknowledging that matters relating to signs were to be dealt with by traffic teams and confirmed that such matters were dealt with by the Council's neighbourhood traffic teams. It stated that it does not hold a central register of the dates that these matters were inspected by those teams and said that it is under no statutory obligation to record the dates that ad hoc inspections (such as those that were conducted by its neighbourhood traffic teams) are carried out.
28. On 25 February 2013 the complainant submitted further evidence in support of his position that the plans prepared by Parsons Brinckerhoff contained insufficient information to allow a works order to be submitted. The complainant included an extract of a plan he had prepared in Exeter, together with details of similar signing orders, to

show what additional information would be required when placing signing orders over that on the Parsons Brinkerhoff plan.

29. Whilst acknowledging that individual officers at the Council may have adopted different practices, the complainant highlighted there was insufficient information on the survey to identify the exact location or the type of fault from the maps supplied by Parsons Brinkerhoff. One of the extracts referenced that the works orders are placed by the traffic teams and the complainant added that these officers would then have had to 'design' the sign and submit this with the works order.
30. The complainant also expressed concern that the 'neighbourhood teams' is a recent concept at the Council and that previously maintenance and traffic were separate.
31. The Commissioner raised these points with the Council on 22 January 2013. The Council did not provide its response until 25 February 2013. The Council agreed the complainant is correct in that the neighbourhood teams are a recent introduction, but confirmed that appropriate searches were undertaken with both the maintenance and traffic teams for the information.
32. Having considered the complainant's submissions that the Council's officers must have carried out site visits, the Council checked and subsequently confirmed that Technicians had undertaken site visits in Sidmouth. Having interrogated the calendars of the officers concerned, the Council confirmed it has a record of site visits to Sidmouth on 8 July 2009, substantiated by photographs taken on site and mileage claims. It said, however, that whilst the site visits did take place, it was *"not able to confirm with any degree of certainty the precise nature of these site visits as this information is not recorded from the time"*.
33. At the outset of his investigation on 10 October 2012, the Commissioner had asked the Council about the searches it had carried out for information falling within the scope of the requests and why these searches would have been likely to retrieve all relevant information. The Council did not respond to this part of the investigation until 25 February 2013.
34. The Council said it had searched the Microsoft Outlook calendars of the relevant officers which revealed that a site visit had taken place on 8 July 2009. It explained that it records details of inspections in its Routine Maintenance System, but, having searched this system, confirmed that no dates of site visits are recorded on it for the period 1 January 2008 to 31 December 2009. It explained that the dates of site visits were not routinely recorded at the time and that there was no business or statutory purpose for it to do so.

35. The Council's response mainly related to searches about site visits, with a brief reference to works orders, but, after the Commissioner's subsequent enquiry, the Council confirmed that it had interrogated its Routine Maintenance System in terms of the wider request.
36. Its search also included the Technicians' email systems, which located two emails referring to site visits in Sidmouth; however it confirmed neither of the emails included a definitive date that such a visit took place.
37. The Council stated that the Technician responsible for ordering signing and lining work had placed 43 works orders onto the system for the Sidmouth area during the period 1 January 2008 to 31 December 2009. Whilst the orders include the dates of specific site visits, the Council said it would be able to supply the supporting documentation and that it had not previously supplied this information to the complainant as it did not consider that this information was specifically requested.
38. The Council told the Commissioner it could not identify which of the 43 works orders located for the period 1 January 2008 to 31 December 2009 were attributable to the dates of specific site visits. The Council explained that it had not previously provided the complainant with these works orders as it did not consider that this information had been specifically requested.
39. Having viewed some sample works orders he requested from the Council, the Commissioner is satisfied that these works orders are within the scope of the request. This is because the complainant made it clear in the exchange of email correspondence leading to the internal review, that he wished to have details of the faults identified, specifically *"Details must have been prepared to issue works instruction, why were these not supplied?"* The Commissioner's view is that details of the faults and their rectification (as per the original request) are included in the sample works orders he has seen.
40. Whilst the Council has identified a site visit to Sidmouth on 8 July 2009 during the Commissioner's investigation, through calendar and photographic evidence, the Commissioner is satisfied, on the balance of probabilities, that the Council does not record dates of site visits and that it is not able to confirm the precise nature of any given site visit as it does not record this information. Although the Commissioner has concluded, on the balance of probabilities, that the Council does not record dates of specific site visits and that its works orders cannot be reconciled to a particular site visit, he considers that the 43 works orders identified should have been disclosed to the complainant at the time of his request because some of the works orders will be applicable

to the complainant's original request, and he now requires the Council to do so.

41. On the balance of probabilities, the Commissioner has also concluded that the Council does not hold any further information relating to surveys conducted by its own officers beyond the original Parsons Brinckerhoff surveys. He considers the Council's explanation that its contractor Southwest Highways was able to carry out remedial works from the original surveys to be reasonable.
42. In its handling of the request the Council breached sections 1(1)(a) and (b) and section 10(1) of FOIA.

Other matters

43. During the Commissioner's investigation the responses provided to his office were frequently late and incomplete. A record of the various issues that have arisen in relation to its delayed handling of the initial request and during this investigation has been made by the ICO. It is essential that the Council ensures that there is no repetition of these issues in relation to both future requests and to the Commissioner's investigations.
44. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 83 working days for an internal review to be completed, despite the publication of his guidance on the matter.

Right of appeal

45. 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

46. 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.
47. 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

Jon Manners
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