

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

**Date:** 6 March 2013

**Public Authority:** Harrow Council  
**Address:** Civic Centre Civic 1  
Station Road  
Harrow  
HA1 2XF

**Decision (including any steps ordered)**

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1. The complainant has requested information about a proposed diversion order in relation to a footpath.
2. The Commissioner's decision is that Harrow Council should have dealt with the request for information under the EIR.
3. The Commissioner requires Harrow Council to take the following steps to ensure compliance with the legislation.
  - Provide a fresh response under the EIR.
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**

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5. On 9 July 2012, the complainant wrote to Harrow Council (the Council) and requested information in the following terms:

*'May I please see a copy of the letters from [the first named person] referred to in the correspondence? If you have a concern, I am happy to make a request under the Freedom of Information Act. It is relevant to*

*the current proposed diversion order as the School has indicated to the Council in legal submissions that no objections were made at the time of the erection of the all weather courts and I should be interested to see what [a second named person] said to [the first named person], as she left me with the clear impression that [the first named person] had indicated the blocked route was only permissive.'*

6. The Council responded on 10 July. It stated that its legal department had explained that any advice it had given would be legally privileged and would not be disclosed to third parties. The Council did not explain which exemption it was relying upon. The Council also stated that it would get back to the complainant about the other correspondence she had requested.
7. Following an internal review the Council wrote to the complainant on 2 August 2012. It stated that it was upholding its original decision, citing section 42.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 17 August to complain about the way her request for information had been handled. She explained that the Council had not provided her with information regarding the blocking by Harrow School (the school) of Footpath Number 57 in 2003. She also explained that she had been informed by the Council in 2003 that this footpath was a permissive footpath.
9. Landowners can allow access over their land without dedicating a right of way. These accesses are called permissive paths. They are different from normal highways in that:
  - a permissive footpath must have some sign or similar indication that it is not intended to be a right of way;
  - a landowner can close off or divert the path if s/he wish to do so without any legal process being involved;
  - a landowner can make restrictions which would not normally apply to highways, for example to allow horse riding but not cycling.
10. The complainant explained that she had looked at her original correspondence and stated that the Council's Footpaths Officer had informed her that the footpath was a permissive one erroneously, based on legal advice from the Council. She also explained that she and her walking colleagues did not pursue the blocking of the footpath because she had told her colleagues what the Footpaths Officer had told her.

11. However, in response to a query from the Rambler's Association in 2009 the Council confirmed that the same footpath was a definitive footpath. Each district council has a Definitive Map and Definitive statement. This is the council's record of those footpaths in its care, and for which it is legally responsible. These footpaths are all public rights of way.
12. The complainant explained that this meant that the footpath had been illegally blocked. The Council has asked the school to reopen the footpath and the school has applied for a diversion order. Under section 119 of the Highways Act 1980, local authorities can divert public footpaths, bridleways or restricted byways.
13. The complainant also stated that in legal submissions the school has claimed that there was no objection at the time when the path was blocked. She also explained that she and her colleagues have tried to refute this in their submissions against the diversion order.
14. The Commissioner considers that the requested information should have been considered under the EIR.

### **Reasons for decision**

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15. Environmental information is defined in regulation 2 of the EIR as :

*"any information in written, visual, aural, electronic or any other material form on ..."*:

- the state of the elements of the environment, such as air, water, soil, land;
  - emissions and discharges, noise, energy, radiation, waste and other such substances; and
  - measures and activities such as policies, plans, and agreements affecting or likely to affect the state of the elements of the environment.
16. The Commissioner considers that the requested information is environmental information in that it falls within the definition of environmental information provided in Regulation 2. He considers that it relates to an element of the environment as defined in regulation 2(1)(a) namely "land and landscape" .
  17. The Commissioner interprets environmental information in a broad way. He notes that diversion orders concern the diversion of an existing footpath, bridleway or restricted byway under the powers in the Highways Act 1980. He considers that information such as diversion

orders in relation to footpaths can be defined as environmental information if they relate to a measure or activity that has an effect on the environment. It can be argued that in this case it would have an effect on the environment.

18. Having considered the nature and context of the request, the Commissioner has concluded that it constitutes environmental information as defined by regulation 2(1)(c) of the EIR. This is because the information in this case relates to information on a measure or activity and the measure or activity in question affects, or is likely to affect, the environment.

## Right of appeal

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19. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

20. 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.
21. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**