

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

Date: 15 July 2014

Public Authority: Cornwall County Council
Address: County Hall
Treyew Road
Cornwall
TR1 3AY

Decision (including any steps ordered)

1. The complainant requested information from the council relating to repair work carried out on a road surface in Cornwall. This followed previous requests surrounding the same issue. The council responded providing information however the complainant believes that the council holds further information. The council says that it has provided all of the information which it holds.
2. The Commissioner's decision is that the council has provided all of the information which it holds which falls within scope of the complainant's request.
3. The Commissioner does not require the authority to take any further steps.

Request and response

4. On 30 September 2013 the complainant wrote to the council and requested information in the following terms:

"Thanks for your recent email with regards to work carried out in [address redacted]. I would be grateful if you could give me further information on the size of the potholes that were noted on your report on the 10th January 2011."

5. On 8 October 2013 the complainant wrote again to the council stating:

"I am emailing you once again (my last email 30 September 2013), to request further information with regards to the repair and reporting of potholes in [address redacted]. I would like to know the sizes of the potholes when the road was inspected and repaired, and who actually carried out the work as this seems unclear."

6. The council responded on 1 November 2013 saying that all information had been provided previously and that no further information was held. The complainant wrote back on 1 December 2013 asking it to review its decision.
7. Following an internal review the council wrote to the complainant on 10 December 2013 stating that all of the information had been provided to her.

Scope of the case

8. The complainant contacted the Commissioner on 22 December 2014 to complain about the way her request for information of 30 September 2013 had been handled. Whilst she did not make a complaint about her follow up request of 8 October 2013 this follows on from this and relates to the same information.
9. The council redacted very small sections of information which identified specific properties or junior officers within the council. The complainant has not however made a complaint about these redactions and so the Commissioner has not considered them further.
10. The Commissioner considers that the complainant's concern is that the council holds more information than it has disclosed.

Who is the relevant public authority?

11. A private company, CORMAC, which is wholly owned by Cornwall council, carries out the work on behalf of the council and it was CORMAC which responded to the Commissioner's questions in this case. CORMAC's website indicates that it is wholly owned by the council. As that is the case then it is also likely to be a separate public authority for the purposes of the Regulations as it will fall within the definition of public authority provided in Regulation 2(2)(b) via section 6(b)(i) of the Freedom of Information Act 2000.
12. For the purposes of this request the complainant made her request to the council, however CORMAC responded. CORMAC also responded to

the Commissioner's letter to the council asking it for a description of the searches it had carried out.

13. If CORMAC is a separate public authority for the purposes of the Regulations then the council could in theory have separated their legal positions and refused the request, transferring legal responsibility for it to CORMAC. It did not however do so.
14. The Commissioner therefore notes that the response was effectively issued by both authorities. Whilst this decision notice is considering the request made to the council, as CORMAC effectively responded on behalf of the council this decision notice could also be effectively be applied to CORMAC.

Reasons for decision

15. The Commissioner wrote to the council and asked it what searches it had carried out to ascertain whether all of the information falling within the scope of the complainant's request had been located.
16. It outlined that the complainant had previously made a complaint about a pothole on her roadway outside of her property. CORMAC had inspected the roadway but as the pothole in question was less than 4 mm deep it did not repair it as an immediate necessity. The complainant had subsequently made a claim against the council for damage to her car, however the council refused to accept this on the basis that the pothole was less than 4mm deep.
17. The council said that following this the complainant had made a number of requests over the same issues prior to the requests considered in this decision notice. It said that it had therefore provided all of the information it holds in response to these requests to the complainant previously and that no further information is held which falls within the scope of these requests. It provided the following description of the previous responses it had provided to the complainant:
 - On 5th July 2013 [the complainant] submitted an EIR request in relation to '*Any work carried out in [redacted address] for the time period (2009-2011)*'. Gully inspections and road safety inspection records were issued to [the complainant] in response to her request with the caveat that the inspection data will provide the details of minor pothole and drainage issues and repairs. This is the only information available on the system as CORMAC do not hold electronic records for minor works carried out in the area.

- On the 1st September 2013 – [the complainant] submitted a further EIR request in relation to information on '*details of any roadworks and repairs on [redacted address] from September 2009 to September 2010*'. [The complainant] was provided with the relevant logs from our POEMS and COMINO system and had previously been supplied inspection records. POEMS (personalised online enquiry management system) and COMINO are electronic records management systems employed by CORMAC for the work it carries out.
 - On the 9th October 2013 - [The complainant] submitted the following EIR request '*further information with regards to the reporting, inspection and work carried out of the potholes in [redacted address] as dated in previous information given (report dated 28th February 2010) including sizes when inspected and repaired*'. CORMAC informed [the complainant] with regards to the POEMS log dated 26th February 2010 previously supplied to her, that it do not hold any further detail on this reported incident. CORMAC confirmed that inspections carried out on 18th January 2010 and again on 11th May 2010 showed that no defects were found and it had no further records on its system to release.
 - Regarding the report on the 12th January 2011, only observed records were maintained detailing the size of the pothole. [The complainant] has requested to know '*who undertook the work as carried out at [redacted address]*'. From previous correspondence on 8th June 2011 with [the complainant] CORMAC noted that she believes this was undertaken by contractors May Gurney on behalf of South West Water.
18. When the Commissioner receives a complaint that a public authority has not provided any or all of the requested information, it is seldom possible to prove absolutely that there is no information held or anything further to provide. The First-tier Tribunal has in the past outlined that where appropriate searches have been carried out and failed to locate information the decision must be that the information is not held on a balance of probabilities. The Tribunal does not expect that an authority will search every scrap of paper in order to determine whether further information is held or not.
19. An authority does not therefore have to prove 'beyond a reasonable doubt' that no further information is held. The Commissioner will therefore apply the normal civil standard of proof in determining the case, i.e. he will decide on the balance of probabilities whether the information is held. In applying this test the Commissioner will consider:

- the scope, quality, thoroughness and results of the searches; and, or
 - other explanations offered as to why the information is not held.
20. In response to the Commissioner's questions over the searches which it had carried out it referred to the information provided in response to the previous requests and clarified that this is all of the information that it holds relevant to these requests. It confirmed that no information had been deleted and all records were still retained
21. The council explained that CORMAC searched COMINO, which holds all pieces of correspondence and records coming into the Company. It carried out searches of its electronic records using key words, postcode areas and road names to identify the relevant information. It also confirmed that there was no statutory requirement to hold any further information.
22. The Commissioner is therefore satisfied that the council has now carried out adequate searches of its records and has provided all of the information it has located to the complainant in response to her requests.
23. Accordingly the Commissioner's decision is that on a balance of probabilities no further information is held which has not already been provided to the complainant as a result of these, or the previous requests, and that Regulation 12(4)(a) is therefore applicable.

The public interest test

24. Regulation 12 requires that a public interest test is carried out if Regulation 12(4)(a) is engaged by the request. In practice there are few situations where the test has value as regards Regulation 12(4)(a) – regardless of the weight of public interest in information being disclosed the authority is not able to do so if it does not hold that information.
25. In this case the Commissioner considers that there is no specific value in considering the test further.

Right of appeal

26. 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: GRC@hmcts.gsi.gov.uk

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

27. 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.
28. 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

Andrew White
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