

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

Date: 20 May 2015

Public Authority: Northumberland County Council
Address: County Hall
Morpeth
Northumberland
NE61 2EF

Decision (including any steps ordered)

1. The complainant has requested copies of datasets that provide information on the road adoption status of the highways and other related information. The Commissioner's decision is that Northumberland County Council was correct to refuse to provide the information under Regulation 6(1)(b) of the EIR as the information is already publicly available and easily accessible to the complainant in another form or format. He does not require any steps to be taken to comply with the legislation.

Request and response

2. On 19 November 2014, the complainant wrote to Northumberland County Council ('the council') and requested information in the following terms:

"1. Could you please provide copies of your datasets that provide information on the road adoption status of the highways within your area of authority?

2. If you are not able to provide copies of the datasets, could you please explain the reason why?"

3. If you are not able to provide copies of the datasets, could you please advise how we can make arrangements to come and view the information at your offices? Please advise the format the information will be presented in.
 4. If you are able to provide datasets, could you please advise the procedures you would like us to follow to gain copies on a monthly basis (under the assumption that this will show any changes you have made)?
 5. Could you please advise whether you have any other datasets available in relation to highways e.g. improvements, TROs, Rights of Way?"
3. The council responded on 2 December 2014 and refused to provide the requested information citing the exemption at section 21 of the FOIA and providing a link to information on the adoption status of the highways¹ as well as links to other rights of way and highways information². The council also explained that an appointment could be made to view the information at its offices.
 4. An internal review was requested on 3 December 2014. The council provided its internal review response on 19 December 2014 in which it maintained its original position.

Scope of the case

5. The complainant contacted the Commissioner on 19 December 2015 to complain about the way her request for information had been handled.

¹ <http://map.northumberland.gov.uk/adoptedHighways/>

² <http://map.northumberland.gov.uk/prow/>

<http://roadworks.org/?lat=55.29747009&lng=-2.054517031&z=10>

<http://map.northumberland.gov.uk/ParkingRestrictions/>

She specifically stated that she has requested copies of 'datasets for road status i.e. files that make-up the layers of their mapping system'.

6. In his letter of investigation to the council, the Commissioner provided his opinion that the requested information is environmental information by virtue of Regulation 2(1)(c) of the EIR. The council accepted that the matter should be dealt with under the EIR and provided arguments as to why it believes the provision at Regulation 6(1)(b) applies to the request.
7. The Commissioner has therefore considered whether the council was correct to refuse to provide the information on the basis that it is already publicly available and easily accessible to the applicant in another form or format.

Reasons for decision

Regulation 6 – Form and format of the information

8. Regulation 6(1) 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 available and easily accessible to the applicant in another form or format."
9. The Commissioner considers that the use of the phrase 'particular form or format' means that a requester may specify not only the physical form but also how the information is configured or arranged within that form, ie the format. For example, in relation to electronic information the term 'format' is generally used to refer to a file type, such as PDF or Microsoft Excel or CSV, and so a requester may express a preference for one of these formats.
10. In this instance, the council has noted that complainant did not specify the form or format in which the information was required but asked for 'copies of the datasets'. The Commissioner considers that it is reasonable to assume from the wording of the request that the information is required in the form of a dataset, however that may be electronically held by the council, for example, it may be configured or arranged as a Microsoft Excel or CSV file.

11. The Commissioner's guidance on Regulation 6³ states that the EIR Code of Practice⁴ explains why a preference for a particular format must be considered:

"A public authority should be flexible, as far as is reasonable, with respect to form and format, taking into account the fact, for example, that some IT users may not be able to read attachments in certain formats, and that some members of the public may prefer paper to electronic copies." (Paragraph 22)

12. However, the duty to make the requested information available in the preferred form or format is not an absolute one. It is qualified by regulations 6(1)(a) and 6(1)(b) in that a public authority does not have to meet the requester's preference if either it is reasonable for it to make the information available in another form or format or the information is already publicly available and easily accessible to the applicant.

13. In its submission to the Commissioner, the council said that the main ground of refusal is regulation 6(1)(b).

14. The council said that while the information being requested was vague it made an informed assumption that the complainant was requesting information on which roads in the County of Northumberland are public highways maintainable at public expense and the status (classification) of the highway (e.g. A Road, B Road, C Road, Unclassified Road). It also considered that the complainant may be interested to know which highways in Northumberland have been dedicated by the landowner and which have a recorded extent of the highway based on highway historical records (where that information is held by the authority). The council said that it provides all of this information on the digital maps page of its website and that on this basis it did not consider that it was necessary to clarify the exact nature of the request but to instead inform the complainant where the requested and additional ancillary information could be found. It said that it made a reasonable assumption that the complainant would contact the council if this was not a suitable form and could have provided further assistance.

³ <https://ico.org.uk/media/for-organisations/documents/1639/form-and-format-of-information-eir-guidance.pdf>

⁴ Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (SI 2004 no 3391) issued by DEFRA

15. The council explained that the link provided to the complainant is a link to its adopted highway digital map. It said that the map is fully interactive and enables users to view, zoom, pan and select roads and areas of the county by postcode, settlement name and grid reference. The identify tab provides a user with the following additional information on each adopted road:

Section Code: 1130U4009100015

Name: U4011 JCT TO U4010 (CROSSROADS)

Length: 1946

Type: Unclassified

NCC Classification: All Purpose – Usable by all traffic types

Environment: RURAL

Responsibility: New Northern Area

Type: SINGLE 2-LANE CARRIAGEWAY

Hierarchy: 7r - Local Access Road

Speed Limit: 60

16. It further explained that each road, where the information exists, has two additional sub-categories of information:

Dedications

Where a road was legally created by virtue of a landowner dedication, this is depicted on the map as a blue polygon. The identify layer enables the user to examine each individual dedication in terms of location, dedication plan no, dedicator, date of dedication, scale of dedication map, and road number.

Recorded extent

Where a road has come into use other than by express dedication there is a layer which shows the recorded extent (width of the maintainable highway). This information is based on historical highway authority maintenance and inspection plans.

17. The council also noted that the complainant represents a company that offers one stop shop conveyancing services to solicitors, estate agents and the general public. It said it is very familiar with these companies and works proactively with them to provide a full range of conveyancing information and one way in which it facilitates their needs is to manage and maintain an online highway status digital map. It said that this has been promoted to the search companies it works with who are very appreciative of its services. It noted that while the complainant is not one that appears to operate in Northumberland the council were not informed that the provision of the information on the website did not

meet its needs or suggest that it required the information in a re-usable form.

18. The Commissioner has used the link provided by the council and was able to easily navigate to the described information on the road adoption status of the highways in Northumberland. He notes that the complainant has not disputed the level of information that is available but the format in which it has been provided.
19. The Commissioner notes that the council's initial response also informed the complainant that the information could be viewed at its offices.
20. The council confirmed that it has taken into account the particular circumstances of the complainant when deciding whether access is easily available. It said that it has directed the complainant to its online map and, because the request was made through its website, it made an informed decision that the complainant had access to computers and the internet. It also said that the fact that the complainant was asking for datasets also implied that they had a working knowledge of IT systems and the complainant has not made the council aware of any specific requirements that mean they cannot access the information.
21. The Commissioner is of the view that information is easily accessible if a public authority is able to direct the applicant to where they can locate the same information that has been requested. The public authority has to be able to be reasonably specific as to the location of the information to ensure that it is found without difficulty and not hidden within a mass of other information.
22. The Commissioner asked the council to confirm whether the requested information is also available via its publication scheme. It said that the information requested was available on the publication Scheme through a web-link to the Digital Map Internet page but at the time of writing the submission to the Commissioner the links to service pages in the publication scheme are not operative due to the council updating its public website. The Commissioner's general view is that information will be reasonably accessible to the applicant, irrespective of their individual circumstances, if it is included in the public authority's publication scheme.
23. Given the above, the Commissioner considers that the council's provision of the information on its website, and at its offices, and by virtue of it being included in its publication scheme means that it is publicly available and easily accessible to the applicant. He also notes that the council has explained to the complainant how it can be accessed.

24. The Commissioner therefore considers that regulation 6(1)(b) of the EIR applies and the council is not required to make the information available in the form and format requested.

Consideration of the additional duties in the FOIA in relation to datasets

25. The Commissioner asked the council whether it has considered the Commissioner's guidance on 'Datasets' (<https://ico.org.uk/media/for-organisations/documents/1151/datasets-foi-guidance.pdf>)? In particular, paragraph 97 which states:

"The Information Commissioner considers that the term "a particular form or format" in regulation 6(1) of the EIR can encompass a re-usable form. Public authorities should make the environmental dataset available in a re-usable form, so far as reasonably practicable. Although there is no duty to license re-use under the EIR, we would also encourage public authorities to make the dataset available under a licence that permits re-use. Information that is accessible under the EIR may also be the subject of a re-use request under RPSI."

26. The council stressed that the complainant asked for a copy of the datasets but did not state if they were required in a reusable form. Nevertheless, the council said that it thought it appropriate to assume that the complainant wanted the data in a reusable form and wished to apply the legislation correctly, especially as authorities are encouraged to take account of regulation 6 of the EIR in relation to form or format. It said that it is pertinent to this case that the specific dataset provisions brought about by the Protection of Freedoms Act 2012 only apply to the FOIA and not to requests under the EIR.

27. It said that its commitment to providing a full range of environmental information relating to its activities and services is demonstrated by its digital mapping website provision and that the range of information contained there includes:

- Adopted highways
- Public rights of way
- Council land ownership
- Historic landscapes
- Road works
- Conservation

- Parking restrictions
 - Housing land availability
28. It said that its default position is to provide environmental information to the public in accordance with the presumption in favour of disclosure (EIR 12(2)) and that such presumption in favour of disclosure is driving the council's development of its environmental data service. It explained that the digital mapping service is the main means by which it provides environmental information but it is also mindful that this approach may not meet the needs of all of its customers and, as a result of the complainant's request, is currently reviewing how best to make datasets available in other forms and formats to meet other user needs. It said that it is mindful of the ICO Datasets guidance⁵ particularly paragraph 99 where it states "...having dealt with the request under the EIR, the public authority should then consider whether it is appropriate to make the dataset available for re-use pro-actively under its publication scheme, in accordance with section 19(2A) of FOIA, because that section refers to datasets that have been requested, whether they are exempt or not."
29. The council said that while this review is undertaken it believes that it would not be in the wider public interest to go beyond its legal requirements under the Regulations and make this dataset available in another form and format.
30. The Commissioner considers that the council has provided adequate reasons as to why it has not provided the information in a reusable form. More importantly, he fully acknowledges that the EIR, unlike the FOIA, does not impose a duty on public authorities to provide datasets in a reusable format and therefore the council in this case is not in breach of the legislation.

⁵ <https://ico.org.uk/media/for-organisations/documents/1151/datasets-foi-guidance.pdf>

Right of appeal

31. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

32. 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.
33. 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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