

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 27 October 2015

Public Authority: Medway Council

Address: Gun Wharf
Dock Road
Chatham
Kent
ME4 4TR

Decision (including any steps ordered)

1. The complainant has requested information in response to a council letter regarding a parking restriction proposal. Medway Council (the council) provided the complainant with the information it held. The complainant considered that further information was held by the council.
2. The Commissioner's decision is that the council has provided all the information it holds within the scope of the request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 19 January 2015, the complainant requested the following information from the council in relation to a council letter dated 16 January 2015 that was about a proposed traffic regulation order and new no waiting restrictions in the area of Silverspot Close, Rainham:

"a. Paragraph 1 line 1 of letter which states "Medway Council has received a request..."

1. *Who made this "request."? Please supply written copies of the request and any supporting documents, letters, emails, telephone notes etc passing between the council and*

whoever made the "request" or vice versa.

- 2. For any comments or representations received by the council in connection with the above "request" but not in writing, please supply written details of how such comments or representations came to be made including details of face to face contacts and meetings/discussions with residents and/or councillors and/or anyone else.*

b. Paragraph 1 line 3 of letter which states: "...due to concerns of visibility when entering or leaving junctions....."

- 1. Please supply details how this view came to be formed including copies of notes of site visits, copies of documents, records of meetings, technical documents and/or policies of council or others.*
- 2. It is not a mandatory duty of the council to respond to a "request". Please supply information on why you propose these restrictions and why you are asking The Crofters to accept the risk of substantial displaced parking including all day parking by staff of the school who currently park on lengths of the streets where you propose to impose new no waiting restrictions.*

c. The Entire Letter.

We received on January 16th the letter of this date together with a questionnaire and your plan CA/PAR151254. These items were not stapled together and had been stuffed into our letterbox without passing through it. Please advise:

- 1. Whether I have been given all the items for your informal consultation.*
- 2. as the letter is not addressed to any specific address, the full list of addresses to which it has been sent/ delivered.*
- 3. whether all copies of this letter and supporting documents delivered to the address list and myself at 5, The Crofters are in identical form and dated with the same date.*

d. Authority.

- 1. Please supply a copy of the minute of your council which authorises your action in issuing this letter of January 16th*

2015.

2. *If there is no minute of authority, please state your authority in law for issuing this letter."*

5. The council acknowledged receipt of the request on the 21 January 2015 and provided its response on the 5 February 2015, responding as follows:

"A1. The letter was a generic letter being used for all the Traffic Regulation Order schemes I had inherited. Ward councillors had requested we revisit this location following the last consultation in which you had also made representation. My understanding was the original request came about as part of the Planning application for the expansion of Mierscourt School – planning application MC/12/0753.

A2. The officer responsible for the first consultation is no longer working for Medway Council as he is now retired. From the information I can gain you made representations and this went to the Council's Ombudsman. I have enclosed a copy of the Ombudsman's decision response dated 26 June 2013 for your information.

Visibility

B1. Visibility for junctions is mentioned in the Highway Code as part of the Road Traffic Regulation Act 1984. Regrettably many drivers do not abide by this so double yellow lines are installed as a visual reminder.

B2. The proposed areas of double yellow line restrictions only cover the lengths of carriageway where parking is technically already prohibited. We do not consider these proposed restrictions to displace traffic as you have mentioned.

The entire letter

C1 I can confirm the following documents were all part of the consultation: covering letter: plan of proposal and response form. Documents were not stapled, the reason being I did not want people pulling the document apart and ripping the response document which may have caused issues with the Post Office.

C2 From previous experience I have received comments that people did not get the consultation letter so as a consequence my assistant and I physically delivered the letters making a note of all properties receiving a letter.

The letter drop was delivered to:

- *1-95 Silverspot Close*
- *1-8 The Crofters*
- *Mierscourt Primary School*
- *2A, B, C, D, 2, 4, and 6 Harvesters Close*

Authority

D1 All Ward Councillors and the Portfolio Holder who signs off the request gave me the authority to carryout the letter drop. I will have to write to the Councillors after the consultation seeking approval to supply you a copy of the email.

D2 covered within D1

The original request came about as a result of the school planning application. Medway Council originally proposed schemes in 2012/2013 which involved the use of Single and Double Yellow Line Restrictions that came as a result of planning application MC/11/2125. The details of the proposed parking scheme were submitted under planning application MC/12/0753, and local residents on Silverspot Close were consulted on these plans."

6. The complainant wrote to the council on the 7 February 2015 and 13 February 2015 requesting an internal review as he was not satisfied with the council's response. He did not consider that the council had supplied any of the requested documents.
7. On the 16 February 2015, the complainant contacted the Commissioner to complain about the council's response to his information request. The Commissioner advised the complainant that he would need to await the outcome of the internal review before the complaint could be considered.
8. The council provided its internal review on the 27 March 2015. It provided him with a table of correspondence outlining his requests against the information it is able to provide, copies of correspondence and a summary document outlining the responses to the consultation/
9. It also clarified, in relation to the first part of his request that it had correctly identified in its initial response that the school was the original initiator in considering parking and safety related matters. Then as normal practice, the council sought reviews of local representatives. It clarified that there was no 'new' request and therefore no documentation held.

Scope of the case

10. The complainant explained on the 30 March 2015 where and why he is not satisfied with the council's internal review response. He considers that further information is held by the council to parts A1, A2, B1, B2, D1 and D2 of his request.
11. The Commissioner has pointed out to both parties that for part A1 of the complainant's request that he cannot look into the complainant's reason for dissatisfaction as it is a disagreement in interpretation rather than whether the information is held or not. The complainant believes that the school had made a "request" rather than, as the council put it, the school was the "original driver". This difference of opinion in terminology is outside of the Commissioner's remit to consider.
12. The Commissioner therefore considers the scope of the case is to determine whether the council has provided all the information it holds to parts A2, B1, B2, D1 and D2 of his request only.

Reasons for decision

Regulation 5(1) – Information held/ not held.

13. Regulation 5(1) of the EIR states that:

"Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request."

14. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. The Commissioner must decide whether on the balance of probabilities the public authority holds any further information which falls within the scope of the request (or was held at the time of the request).
15. As stated in the scope of the case, above, the complainant has identified that parts A2, B1, B2, D1 and D2 of his request are where he considers further information is held and so the Commissioner has focused his investigation on these parts only.

16. For part A2 of the request, the complainant considers that there would have been contact between the council and the school after the approval was given.
17. The council has told the Commissioner that it does not hold any records of contact between itself and the school. It explained that the contact for the planning application MC/11/2125 was relayed through the schools agent and the council and both the application and the condition can be found at: <http://publicaccess.medway.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>
18. For Part B1 of the request the complainant considers that the council must hold policies (produced by the council or officers) governing what officers must do when a traffic regulation order is to be considered.
19. The council has told the Commissioner does not hold such specified policies, as it works under the statutory guidelines and advised the complainant in its initial response – *“Visibility for junctions is mentioned in the Highway Code as part of the Road Traffic Regulation Act 1984”*.
20. For Part B2 of the request the complainant has stated that he is not satisfied with the response from the council because he says it is not a mandatory duty on the council to make a traffic regulation order when requested and considers the council has not answered why this order is proceeding and what makes this case differ from many other school site cases.
21. The Commissioner can only investigate whether the council holds recorded information on this, and cannot require the council to create new information to answer why.
22. The council has told the Commissioner that the requirement was a condition of planning application MC/11/2125 and the information it holds is published on the council’s planning portal which the council has made the complainant aware of.
23. For parts D1 and D2 of the request, the complainant considers that the council holds minutes recording the council’s director having delegated authority to make traffic regulation orders and he states that in law the council cannot create delegated authority without written proof that it has done so.
24. The council has told the Commissioner that it does not hold these minutes; it reiterated that all that it holds is what is on the planning portal under the planning application MC/11/2125.
25. As well as responding to the above, the council has told the Commissioner that any information relating to this request would be

held within its Planning and Integrated Transport and held in electronic format and a search was carried out on its Planning Portal and Integrated Transports drive.

26. The council has confirmed to the Commissioner that no information has been deleted or destroyed relevant to the scope of the request as the information it holds is that required by its planning retention policy.
27. On review of the above, the Commissioner has considered the council's responses and searches undertaken. The Commissioner notes the information that the complainant considers that the council should hold certain information on as he considers it is required in law.
28. However, it is outside of the Commissioner's his remit to determine whether information should be held. Even if information should have been produced, but was not, again this is something the Commissioner is unable to look in to further under the EIR or the Freedom of Information Act. The Commissioner can only make a determination on what is held, not what should be held, by the council.
29. The Commissioner does understand why the complainant may consider this specific information to be held, and so has specifically asked the council whether this information is held. As the council has confirmed after running searches in the most relevant place that the information is not held, the Commissioner finds that, on the balance of probabilities, the council holds no other information falling within the scope of the request.

Right of appeal

30. 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

31. 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.
32. 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
Group Manager
Information Commissioner's Office
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Water Lane
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