

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

Date: 8 February 2017

Public Authority: Mole Valley District Council
Address: Pippbrook
Dorking
Surrey
RH4 1SJ

Decision (including any steps ordered)

1. The complainant has requested information with regards to Byelaws of footpaths in the Mole Valley District Area. Mole Valley District Council (the council) provided some information to the complainant, however he did not consider that this information satisfied his request.
2. The council determined that to locate and provide any further information would be manifestly unreasonable and so refused the request under regulation 12(4)(b) of the EIR.
3. The Commissioner's decision is that the council is able to rely on regulation 12(4)(b) of the EIR and therefore does not require the council to take any steps.

Request and response

4. On 12 December 2015 the complainant made the following request to the council:

"Please provide, under the terms of the Freedom of Information Act 2000, a list of all footpaths within Mole Valley District Council's authority where a Bye Law determines that a person may not ride a bicycle. Please provide, within the record, the

date of the Bye Law and a map reference that would be recognised by an industry standard reference (such as the Ordnance Survey or Google Maps) of the start and the end of implicated foot paths or alternatively a map with unique reference numbers that cross reference the list of Bye Laws to the footpaths represented on the map"

5. The council responded on the 12 January 2016, it provided the complainant with a copy of its bylaws relating to pleasure grounds, public walks, and open spaces in the Mole Valley District. It also advised that it does not hold a complete list of all the footpaths in the council's area. Its understanding is that Surrey County Council (SCC) would hold it and has directed people to that council in the past.
6. The council also provided a link to SCC's website for Surrey's interactive map and advised how to select options for Footpaths and Byelaws to get relevant information.
7. The complainant requested an internal review on the 23 January 2016. He considered that although SCC looks after footpaths, the council is the authority who would pass the byelaws which made it a criminal offence to cycle on a footpath, so he considered it to be reasonable that these would be available, otherwise how would someone know if they were breaking the law. He stated that he wants information on the bye-laws which the council has passed.
8. The complainant stated that he has previously been sent a copy of byelaws for pleasure grounds, but from his recollections, this was only limited to Meadowbank.
9. On the 23 February 2016, the council provided its internal review. The council referred the complainant to a link on the SCC's website for a list of by-ways and advised him that to find the public bridleways and restricted by-ways on which he can cycle, he would need to use SCC's interactive map.
10. The council also told the complainant that the byelaws or pleasure grounds which it had sent was not just restricted to Meadowbank, but also included several other areas and that the date of the byelaws are on the attachment.
11. With regards to the interactive map, which a link was provided to in the initial response, the council advised that it is also available in hard copy as a legal record and should the complainant wish to view it, he could make an appointment to do so.

12. In summary, the council's review found that the interactive map, the definitive map and the list of BOATS (Byways Open to All Traffic) are already in the public domain. A copy of the relevant byelaws had been provided (including the schedule giving the addresses of the land subject to byelaws).

Scope of the case

13. The complainant complained to the Commissioner on the 23 February 2016 to determine if what he has been provided is all that is held by the council.
14. During the Commissioner's investigations, the council amended its response. It considered that more information could be held within the scope of the request, further to that already provided, but determined that it would be manifestly unreasonable, under regulation 12(4)(b) of the EIR, for it to search for what else may be held.
15. The council advised the complainant of this new position with regards to whether there is any further information held.
16. In applying regulation 12(4)(b) of the EIR to this request, the council explained to the complainant that it interpreted the request to include permissive footpaths as well as public footpaths. But the complainant considered that the request had been interpreted too broadly by the council in including permissive footpaths within the scope of his request.
17. With that, the Commissioner asked the council whether it was still relying on regulation 12(4)(b) of the EIR to refuse to respond further to the request now that the complainant had clarified that permissive footpaths were not to be included within the scope of the request.
18. The council told the Commissioner that it still considers it to be manifestly unreasonable to respond any further, as on review, it would still need to carry out the searches regardless of whether it included permissive footpaths or not.
19. The Commissioner considers the scope of the case is to determine whether the council can rely on regulation 12(4)(b) of the EIR to refuse to provide any further information that may be held falling within the scope of the request.

Reasons for decision

Is the requested information environmental information?

20. The Commissioner has first considered whether the requested information would constitute environmental information as defined by regulation 2(1) of the EIR. Regulation 2(1)(c) with (a) are relevant in this case. As the request is for measures, such as (c) *"policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect..."* (a) *"the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites..."*.
21. The Commissioner agrees with the council's view that the *"measures"* in this case would be in regards to byelaws, footpaths and cycle routes which can in the most part involve changing the surface of the land in order to enable safe passage along it.

Regulation 12(4)(b) of the EIR – manifestly unreasonable

22. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request for information is manifestly unreasonable. There is no definition of 'manifestly unreasonable' under the EIR, but the Commissioner's opinion is that 'manifestly' implies that a request should be obviously or clearly unreasonable.
23. In this case, the council considers the request is 'manifestly unreasonable' due to the time and cost necessary to comply with the request. It has argued that to provide anything further than what it already has would place an unreasonable burden on its resources in terms of time and expense.
24. Unlike the FOIA however, the EIR do not have a provision where a request can be refused if the estimated cost of compliance would exceed a particular cost limit. However, the Commissioner considers that if a public authority is able to demonstrate that the time and cost of complying with the request is obviously unreasonable, regulation 12(4)(b) will be engaged. The Commissioner considers that the section 12 costs provision in the FOIA is a useful benchmark, acting in this case as a starting point for the Commissioner's investigation.
25. Section 12 of the FOIA states that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying would exceed the appropriate cost limit. In this case, the cost

limit is £450 as set out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations'). This must be calculated at the rate of £25 per hour, effectively giving a time limit of 18 hours.

26. A public authority is only required to provide a reasonable estimate or breakdown of costs. Regulation 4(3) of the Fees Regulations states that an authority, when estimating whether complying with a request would exceed the appropriate limit, can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating the information, or documents containing it;
 - retrieving the information, or documents containing it; and
 - extracting the information from any documents containing it.
27. The Commissioner therefore asked the council to provide a reasonable estimate or breakdown of costs to assist with his investigation of this complaint.
28. The council has firstly explained that the information it holds is limited to the land subject to the 1997 Byelaws and the contents of the 1997 Byelaws themselves. However it is possible that there are other byelaws which may be relevant to the request which it is not aware that it holds without searching for it further.
29. This is because there are no specific lists of footpaths (public or permissive) held by the council relating to land subject to the 1997 Byelaws. However, the council has told the Commissioner that it is very likely to hold a substantial amount of relevant information which will most likely be held in its following files: Legal Deeds Packs, Legal Files relating to the relevant areas of land and its Parks Department Files on the relevant areas of land.
30. The council has explained to the Commissioner that in respect to just the Legal Deeds Packets alone, there are in excess of 42 that would need to be reviewed, which are manual documents. Given that there will not necessarily be deeds of dedication or other specific documentation in the relevant deeds packet, each conveyance to the council and all replies and enquiries raised as part of the conveyancing transactions where land was transferred to the council (or its predecessors in title) where these have been retained, would need to be reviewed in order to establish what references to public footpaths there are.

31. The council has told the Commissioner that in addition to the Legal Deeds Packets, there are Legal Files and the Parks Department Files which would also need to be reviewed for relevant information – which there are also in excess of 42 for each of these.

The council has confirmed to the Commissioner that it carried out a sampling exercise of the Legal Deeds Packets for one area in order to try and determine how long it would take to locate any further information it may hold.

32. It explained that it took 1 hour 30 minutes to;
- identify the correct Deed Packets for the deeds relating to the land subject to the 1997 Byelaws in Ashtead and Bookham,
 - review the relevant Deed Packets that it had identified for this area (which were Ashtead Park, Epsom Road and Chrystie Recreation Ground), to which it found three references to footpaths.
33. Although the council has not provided the Commissioner with a copy of these sample deed packets, it has provided a spreadsheet listing the paperwork inside them which had to be reviewed in order to determine whether further information was held relevant to the request.
34. The four spreadsheets listed an average of 20 different types of correspondence in each of the deeds packets and the Commissioner does not see it unreasonable that it would take an hour and a half to review the four deed packets for Ashtead and Bookham as this would equate to just over 1 minute to review each document in the four deed packets.
35. Then when you consider that there are a further 42 Legal Deed Packets to review, plus 42 Legal files and 42 Park Department Files that would need to be manually checked for information, the Commissioner sees that this would most likely exceed 18 hours of work and accepts the councils estimate that it would take in excess of 60 hours to locate and retrieve any further information it may hold.
36. As stated previously, under EIR, unlike under FOIA, there is no appropriate cost limit above which public authorities are not required to deal with requests for information. However, the exception at regulation 12(4)(b) of the EIR can apply if the cost or burden of dealing with a request is too great.

37. In the Upper Tribunal case of *Craven v The Information Commissioner and the Department of Energy and Climate Change* [2012] UKUT442 (AAC)¹, the Tribunal stated:

“Taking the position under the EIR first, it must be right that a public authority is entitled to refuse a single extremely burdensome request under regulation 12(4)(b) as “manifestly unreasonable”, purely on the basis that the cost of compliance would be too great (assuming, of course, it is also satisfied that the public interest test favours maintaining the exception). The absence of any provision in the EIR equivalent to section 12 of FOIA makes such a conclusion inescapable.”
(Paragraph 25)

38. Therefore on consideration of the above the Commissioner finds that the council is able to rely on regulation 12(4)(b) in relation to this request.

Public interest test

39. Regulation 12(4)(b) is a qualified exemption and is therefore subject to the public interest test at regulation 12(1)(b) which states that information can only be withheld if in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.

Public interest arguments in favour of disclosing the information

40. The Commissioner accepts that there is a strong interest in disclosure of environmental information in general as it promotes transparency and accountability for the decisions taken by public authorities and public expenditure.
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<http://www.osscc.gov.uk/judgmentfiles/j3682/GIA%200786%202012-00.doc>

42. The council has also stated that it sees that there is a presumption in favour to disclose environmental information. In this particular case it considers that providing a list of footpaths subject to the byelaws where cycling is not permitted would be a useful source of information to both cyclists and pedestrians.
43. The complainant has stated that the impact of Byelaws would determine whether someone is committing a criminal offence and feels that this matter has been trivialised and he has also told that he, and others he has spoken to, have been subject to abuse for cycling on footpaths to which he considered he was entitled to do.
44. The council has responded to the complainant on this, that if he has been assaulted, then it recommended he report this to the police as a criminal matter.

Public interest arguments in favour of maintaining the exception

45. The sheer volume of time required in order to establish if any further information is held would almost certainly have an impact on the council's ability to perform its other functions and the council considers this would place a significant and unreasonable amount of burden and expense on its resources in order to achieve compliance with this request.

Balance of the public interest

46. The Commissioner is mindful of the presumption in favour of disclosure in regulation 12(2) and the concurrent duty to interpret the exceptions restrictively. Nevertheless, the Commissioner is mindful that the time it would take the council to respond to the request is far in excess of what would be permitted if the information was not environmental and was being processed under the FOIA.
47. The Commissioner considers that there is a strong public interest in the council being able to carry out its core functions without the disruption that would be caused by complying with requests that would impose a significant burden in terms of both time and resources. The Commissioner is of the view that there is very strong public interest in public authorities being able to carry out their wider obligations fully and effectively, so that the service they have responsibilities for providing are delivered. The Commissioner is also mindful of the fact that the public authority's ability to comply with requests submitted by other requesters would be undermined if it had to routinely deal with requests demanding significant resources.

48. There are important reasons why the exception at regulation 12(4)(b) exists. Both the FOIA and the EIR give the public unprecedented rights to access recorded information held by public authorities. However, it was not the intent of the legislation that compliance with requests would impede disproportionately and unfairly on the many other important duties that the public authorities have to carry out, often with limited resources in place.
49. Having regard to the extent of time which processing the request would take, along with the likely resulting effect on the council's other functions, the Commissioner is of the view that, on balance, the public interest lies in favour of maintaining the exception.

Regulation 9(1) – advice and assistance

50. Regulation 9(1) of the EIR states:

“A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.”

51. In this case the Commissioner notes that the council initially provided information it thought the complainant required and has also directed him to SCC, who may hold information that could help satisfy his request.
52. The Commissioner also notes that the council has engaged in correspondence with the complainant to try and provide him with information, but ultimately, it comes down to the amount of searching the council would need to do in order to determine if it holds any further information and the Commissioner cannot see how any further advice and assistance could be provided to reduce the searches for the information required.
53. The Commissioner is therefore satisfied with the council's compliance with regulation 9(1) of the EIR.

Right of appeal

54. 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

55. 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.
56. 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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