

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

Decision notice

Date: 6 December 2017

Public Authority: Derbyshire County Council
Address: County Hall
Smedley Street
Matlock
Derbyshire
DE4 3AG

Decision (including any steps ordered)

1. The complainant has requested any documentation from Derbyshire County Council ("the Council") which might indicate or identify the reasons behind a flooding that occurred in the town of Lower Hartshay.
2. The Commissioner's decision is that the Council has complied with regulation 5 of the EIR, the duty to make available environmental information on request.
3. The Commissioner does not require the public authority to take any further steps.

Request and response

4. On 3 April 2017, the complainant wrote to the Council and requested information in the following terms:

"If, as you state, the cause of flooding was known; I would like to know what you believe that cause to be. If this is simply an officer's opinion, then I would like sight of the evidence which supports that opinion. I would also be grateful if you would confirm whether a Risk Management Authority has acknowledged the known cause.

Yes, I can confirm that you have understood my request "to confirm that I have correctly identified that you are now wanting any documentation which might indicate or identify the reason the flooding

occurred at Lower Hartshay and which is currently held by the Economy, Transport and Communities Department (ETC)”.

5. The Council responded on 24 April 2017. It stated that the information requested was contained in a document it provided to the complainant, which was by then publically available.
6. Following an internal review the Council wrote to the complainant on 19 May 2017. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 24 April 2017 to complain about the way his request for information had been handled.
8. The Commissioner considers that the scope of the case has been to consider whether the Council dealt with this request correctly in accordance with regulation 5 of the EIR.

Reasons for decision

Regulation 5- Duty to make environmental information available on request

9. Regulation 5(1) of EIR states that a public authority that holds environmental information shall make it available on request.
10. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held, she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
11. In its submissions to the Commissioner, the Council set out on 6 October 2017 that they cannot provide the particular information the complainant seems to be seeking as the actual reason for the flooding of Lower Hartshay is unknown.

12. The Council believe that the general cause for the flooding in the area of Lower Hartshay is thought to be in part caused by the established drainage system. However, the Council felt that this was possibly only part of the problem and this explained why the Council held no accompanying records that fully establish the cause of the flooding.
13. The Council added that any information they did hold within the scope of the request, was released to the complainant. The Council stated their Economy, Transport and Communities Department (ETC) searched for all files held to be relevant within the scope of the case both electronically and manually.
14. The Commissioner asked the Council for further clarification on the Council's submissions. In its response, the Council explained that the information initially given to the complainant was provided for context and in an attempt to illustrate why they could not set out definitively the reasons for the flooding. However, it said that staff had also shared an opinion with the complainant in order to be open and honest. This response was sent to the complainant as a "business as usual" response, as opposed to a request for information which would be underpinned by the EIR. The Council stated that if their response had been sent as part of an EIR request, they would have applied regulation 12(4)(a) as the information was not held by the authority at the time the request was received.
15. With regard to the reasons for not holding the specific information sought, the Council said that this is primarily because one area of concern is located within private land and the landowner did not give permission to the Council to investigate the issue. The Council's numerous attempts to investigate the source of the flooding had therefore been unsuccessful. As of 1 November 2017, however, the Council were in negotiations with the landowner.
16. Furthermore, the Council confirmed their ETC department had previously decided to supply all relevant data held, regardless of whether it was covered by the request. This included the Flood Risk Management Study which was carried out in January 2017.
17. The Commissioner accepts that on the balance of probabilities, no further information is held by the Council which is relevant to the request. The Commissioner understands that the complainant appears to be distrustful of the Council but there is no evidence to suggest that the Council has deliberately sought to conceal information or not taken appropriate measures in response to the request. Instead, the evidence available suggests that the Council has provided the information held which pertains to the issue of the flooding.

18. In the absence of any further argument from the complainant indicating that there are valid and specific reasons for believing that further information was held, the Commissioner has decided there are no further steps for the Council to take.

Right of appeal

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

Alun Johnson
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF