

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 23 March 2018

Public Authority: Highways England

Address: Piccadilly Gate

Store Street

Manchester

M1 2WD

Decision (including any steps ordered)

1. The complainant has requested information about litter hotspots and this was provided by Highways England (HE) within 18 working days. The complainant contends that the information was not made available "as soon as possible". The Commissioner's decision is that there has been no breach of the time limits in Regulation 5(2). The Commissioner does not require HE to take any steps.

Request and response

2. On 16 August 2017 the complainant requested the following information:

'Please refer to this list of the initial 25 litter hotspots identified by HE in response to the request from John Hayes MP

<https://www.whatdotheyknow.com/request/4...>

What exactly is included in the following sections:

M25 (A1089 spur)

M25 (A13 spur)

Does it include all of the section of these roads for which Highways England has the statutory responsibility for cleaning?

If not, which sections are included?

Is the section of the A13 to the west of its junction with the M25 included?'

3. On 12 September 2017 HE responded under FOIA and provided a full response with copies of documents relating to the request.

4. On 14 September 2017 the complainant queried the timing of the response:

'5(2) of the EIR says that "Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request".

Your response took, I calculate, 18 working days to action. That is over a month in real time. Surely it would only have taken a couple of phone calls to obtain the information.

While you did not exceed the statutory maximum of 20 days it is difficult to believe that the information has been made available "as soon as possible".

Why did it take so long?'

5. HE responded to this query on 15 September 2017 and explained that:

'I can confirm we have a legal responsibility to reply to an FOI within the allotted time of 20 working days. This allows us time to investigate and liaise with a number of departments to provide a full and accurate response. We endeavour to provide an informative response as quickly as possible once we have received and validated information from our partners.

We hope this has helped clarify the reasoning behind our timescales and thank you for your feedback.'

Scope of the case

- ~~6.~~ On 28 September 2017 the complainant contacted the Commissioner that he had not received a prompt response under EIR.
7. As there has been no complaint about the actual response provided by HE, the Commissioner has only considered whether HE has breached regulation 5(2) by taking 18 working days to respond to the request.

Reasons for decision

Regulation 5 Duty to make available environmental information on request

8. Regulation 5(1) of the EIR says that a public authority that holds environmental information shall make it available on request.
9. Regulation 5(2) says that held information shall be made available as soon as possible and no later than 20 working days after the date of receipt of the request.

10. The Commissioner's guidance on [Time limits for compliance under the EIR](#) states that whilst the duty to respond 'as soon as possible' will always be linked to the obligation to comply 'no later than 20 working days after receipt of the request', it should be treated as a separate requirement. Therefore an authority will need to both respond as soon as possible and within 20 working days. The 20 working day limit should be regarded as a 'long stop', in other words the latest possible date on which the authority can comply. An authority which complies close to, or on, the final day of the 20 working day limit ought to be able to both account for, and justify, the length of time taken to meet the obligation concerned.
11. In this case the Commissioner asked HE to explain how the request was responded to as soon as possible and to account for, and justify, the length of time taken to provide the information requested
12. HE responded with a detailed timeline (from Wednesday 16 August to Tuesday 12 September) showing the placement of the request in the correct team inbox, the allocation of the case to an FOIA officer, the request for the information from the relevant department and response, three requests for clarification from the FOIA officer to the relevant department with the three responses and the review of the response and sign off by a senior colleague.
13. HE also explained that the FOIA officer was managing other queries which had shorter deadlines and was required to prioritise the workload according to each deadline.
14. The Commissioner's guidance refers to the decision notice FER0348473 (https://ico.org.uk/media/action-weve-taken/decision-notices/2010/562646/fer_0348473.pdf):

'The Information Commissioner ruled that the Council had replied as soon as possible, stating that:

'The test of whether a public authority has complied "as soon as possible" is a subjective one, because it could be argued that if the Council set aside all of its other tasks and focuses solely on complying with the request, a response could be sent very promptly. However, the Commissioner accepts that a public authority is entitled to balance its duties under the EIR with its other responsibilities and commitments. He also accepts that it was appropriate for the Council to delegate the task of searching relevant records to staff that have experience and knowledge of this area. He considers that the Council therefore complied with this request as quickly as possible particularly given its obligations to comply with a wide range of responsibilities.' (para 32)'

15. In this case the Commissioner accepts that HE is entitled to prioritise its workload and to seek clarification and a review of the response to the

request. The Commissioner is satisfied that the request was responded to as soon as possible.

16. Taking all of the above into account, the Commissioner does not consider that there is any evidence that HE did not comply with this request as promptly as possible. Consequently, she finds that HE has not breached regulation 5(2).

Right of appeal

17. 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

18. 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.
19. 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

Pamela Clements
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