

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

Decision notice

Date: 8 February 2018

Public Authority: Suffolk County Council
Address: Endeavour House
Russell Road
Ipswich
IP1 2BX

Decision (including any steps ordered)

1. The complainant has requested information held by Suffolk County Council on the proposal to build a bypass in Sudbury. The information requested included correspondence with consultants, government departments and other parties on the bypass as well as a copy of the Business Plan. The Council provided information in response to the request but the complainant considered further information was held.
2. The Commissioner's decision is that, on balance, the Council has complied with the request and fulfilled its obligations under the EIR by providing the information within the scope of the request.

Request and response

3. On 28 September 2016, the complainant wrote to Suffolk County Council ("the Council") and requested information in the following terms:

"The period for which I am requesting the information is from 1 January 2015 to the present.

1. *Please supply all information held by your Council concerning the work of your consultants WSP Parsons Brinkerhoff on a possible bypass/relief road for Sudbury, Suffolk, in particular all*

correspondence or exchange of documents between [name redacted] and/or officials of his department and [name redacted] and/or any other employee or associate of WSP Parsons Brinkerhoff.

2. *Will you please supply a copy of the draft business plan for a proposed Sudbury bypass or relief road which was submitted to the Department for Transport in or around March 2016 as well as copies of all communications in the period since January 2014 relating to the possible bypass/relief road between [name redacted] and/or officials of his department on the one hand, and officials of the Department for Transport on the other.*
3. *Finally, will you please provide copies of all correspondence relating to the possible bypass/relief road between [name redacted] and/or officials of his department and relevant persons including the MP for South Suffolk, Mr James Cartlidge, councillors and officials at Suffolk County Council, Essex County Council, Babergh and Braintree District Councils, Sudbury Town Council, the New Anglia Local Enterprise Partnership as well as local land-owners and residents."*
4. The Council provided some documents within the scope of the request including an early draft of the WSP Parsons Brinkerhoff business case, a document entitled Sudbury Bypass B Case, a consulting agreement, a review of potential alignments, a work sheet and a draft environmental study and survey report. It refused to comply fully with the request on the basis that it would be manifestly unreasonable to do so under regulation 12(4)(b) of the EIR. This decision is the subject of a decision notice¹ in which the Commissioner found that it would not be manifestly unreasonable to respond fully to the request and required the Council to locate and identify any information held within the scope of the request and consider whether this could be provided to the complainant or any exceptions from disclosure applied.
5. Following the Commissioner's decision notice, on 13 December 2017 the Council sent a large number of documents to the complainant on a memory stick stating this was now all the information requested. The complainant disputed this was all of the information that was held by the Council.

Scope of the case

¹ FER0670464

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled and particularly his belief that the Council had still not fully complied with his request.
7. The Commissioner considers the scope of her investigation to be to determine if the Council has, on the balance of probabilities, provided all the information it holds within the scope of the request.

Reasons for decision

Regulation 5 – Duty to make environmental information available on request

8. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request. 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 arguments. She will also consider the actions taken by the authority to check that no further information is 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.
9. Following the decision notice and the disclosure of information to the complainant, he responded with a summary of the reasons why he considered that not all of the relevant information had been provided. He firstly raised concerns that much of the information disclosed was quite dated, some going back to detail an earlier attempt to build a bypass in the early 2000's. He argued that in 2015 the Council commissioned WSP to carry out a first stage business case study and that some of the documents disclosed related to this early stage of the process but no documents were provided which related to the progress of the project and the guidance to WSP which would have been provided by the Council.
10. Specifically, the complainant referenced a traffic survey which the Council and WSP conducted in April 2016. The complainant had engaged in correspondence with a Director of WSP about the survey and had been provided with some key facts and references to "many discussions" with the Council. The complainant provided the Commissioner with these emails to demonstrate this and show that the traffic survey and any

discussions regarding this had been omitted from the information disclosed.

11. Similarly, the complainant provided an email which pointed out an error in the drafting of the Business Case in which two roads had allegedly been mixed up. The complainant expressed his belief that there would also be information held by the Council discussing this error.
12. Finally, the complainant referred to pages 26-30 of the Business Case which discuss a potential housing and commercial development and argued that such a major proposal would have generated correspondence and required consultation documents, none of which had been provided.
13. The Commissioner wrote to the Council about some of these points. She asked the Council to explain why no information on the traffic surveys conducted in April 2016 had been identified and whether any further information, particularly correspondence on the progression with the Business Study was held by the Council. The Commissioner also discussed with the Council the need to explain how it had searched for information which may be within the scope of the request and asked the Council to explain any searches it had conducted.
14. The Council responded and provided a list of the search terms it used to search for information that may be within the scope of the request. These search terms we used to search email accounts and were wide ranging enough that the Commissioner would accept the view of the Council that they were comprehensive enough to capture any relevant information. These search terms included (but were not limited to) the words "Sudbury", "bypass", "New Anglia Local Enterprise Partnership", "New Anglia", "LEP", as well as the various names of people specified in the request and the names of the Council's involved.
15. The Commissioner is of the opinion that searching using these terms in the email accounts of relevant individuals in the teams that were involved in the planning process should have returned relevant information. In addition to this, the Council advised it searched for relevant information on the Council's servers using additional search terms. The Council indicated that any information held would be electronic and all searches conducted were for electronic records.
16. One of the main areas of concern for the complainant was the omission of the traffic surveys from the information provided to him. The Council informed the Commissioner they did not consider that the traffic surveys fell within the scope of the request but did, after correspondence with the Commissioner, provide these to the complainant. Following receipt of this information the complainant raised a further concern that there

was no additional information on the analysis of the figures. The complainant also again raised the lack of documentation on the proposed housing development proposed for the southern end of the bypass which he considered would have involved significant consultation between the Council and WSP.

17. The complainant also pointed to the Business Case document produced by WSP which states (in Appendix B) that an indicative quantitative assessment had been undertaken doing a high level review of the traffic data. This assessment document had not been provided. In addition to this the complainant referred to an email exchange he had with WSP in October 2016 in which it was explained to him that the traffic survey was part of the work of WSP in assisting the Council with the "Suffolk County Model". In this email exchange, which the Commissioner has had sight of, there is a reference to the date of the traffic surveys being agreed following discussions between WSP and the Council. Again, the complainant argues that both the discussion and the "County Model" should have been provided.
18. The Commissioner wrote to the Council about these points to try and establish if the "missing" information was held by the Council and if it would be within the scope of the request. The Commissioner asked the Council about the indicative quantitative assessment, correspondence around the proposed housing development and the discrepancy between the number of documents the Council stated had been found and the number subsequently provided to the complainant.
19. In response to this the Council informed the Commissioner it did not hold the indicative quantitative assessment document. Searches had been conducted for this based on the title of the document as stated in the business case but no files or documents matching this description were located.
20. With regard to the correspondence and documents held on the proposed housing and commercial development; the Council does not dispute it holds information on this but argues it is not within the scope of the original request. The request specifically asks for information on the Sudbury bypass/relief road and the Council does not believe that information on housing development is caught by this description.
21. On the point of the different number of documents referred to and subsequently disclosed; the Council explained that initially it considered the request manifestly unreasonable and at this stage it identified in excess of 300 emails that may have been relevant to the request. However, these had not been examined in any detail until after the Commissioner issued her decision notice on the use of regulation 12(4)(b) and determined the request was not manifestly unreasonable.

At this time, the Council reviewed each of these 300 plus emails relating to work by WSP and the Council on various projects in the Sudbury area and identified those which related to the Sudbury bypass/relief road. This was not all of the 300 emails originally located which is why there is a discrepancy in these numbers.

22. Regarding the information relating to the housing development the complainant argues that the proposed bypass and the proposed housing development are intrinsically linked. In the Strategic Outline Business Case on page 26 it states *"the Sudbury relief road.... would provide significant capacity for additional housing and employment ... The Sudbury relief road is the sensible first stage given the problems faced within Sudbury, the availability of land for development and the considerable work already undertaken in assessing and consulting on a relief road."* The complainant argues that this demonstrates that any correspondence on the housing development is also correspondence on the relief road as the two cannot be separated.
23. The Commissioner has been provided with arguments from both parties; who have had opportunities to put forward evidence and views to support their positions. In reaching a decision on whether the Council has complied with its obligations under the EIR the Commissioner reiterates she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities. This means she will offer her view on whether it is likely or unlikely the request has been complied with and relevant information provided.
24. Firstly, the Commissioner considers the explanation given by the Council as to why fewer documents than the number originally cited were disclosed is a reasonable explanation. Given the history of the Council's responses to this request it is expected that an approximate figure for the number of documents containing relevant information would be located before this was then narrowed down on further examination.
25. There are then a number of contentious points which the Commissioner will address in turn:
 - Information relating to the traffic survey, specifically the "indicative quantitative survey" and the "county model";
 - Correspondence on the proposed housing development; and
 - The searches and overall thoroughness of the Council's response.
26. On the subject of the "indicative quantitative survey" the Council has stated it searched for this document using its titles as the search term and no results were returned. The Council has not specifically addressed the "County Model" but this was referred to in an exchange between

WSP and the complainant. The traffic survey was part of work done by WSP to assist with the County Model.

27. The Commissioner recognises that the indicative quantitative assessment is referred to by that name in Appendix B of the Business Case and therefore the complainant sees no reason this should not be held and disclosed. There are however a number of factors to consider. The Council does not consider that the traffic surveys or any information relating to them are actually within the scope of the request and that the surveys were provided to the complainant outside the scope of the request to be as open and transparent as possible.
28. The Commissioner has referred back to the wording of the request and in particular notes that parts 2 and 3 of the request were more specific in wording, relating to the business plan and correspondence involving the Department for Transport and correspondence between specific named individuals and departments. It is part 1 of the request that is more open-ended and possibly more open to interpretation. This asked for all information on the work of WSP on the bypass/relief road including correspondence and documents between named individuals at the Council and WSP. The Council argue that this should be interpreted as just for information on the relief road but the Commissioner would accept that the traffic surveys were an integral part of the work done by WSP to establish the proposed routes and plans for the relief road.
29. However, whilst the Commissioner might consider information on the traffic surveys would be in the scope of the request and the indicative quantitative assessment would therefore be relevant to part 1 of the request; she has no reason to question the assertion of the Council that this document is not held. The searches conducted are reasonable and whilst it may seem logical that if the traffic surveys are held by the Council that the quantitative assessment is also held it is equally possible that the Council does not hold this and it is held only by WSP for their own purposes. However, this is only speculation and the Commissioner can only reach a decision on the information she is provided with and on balance would have to accept that the assessment document is not held.
30. With regard to the County Model; this document is not specific to the Sudbury relief road and, as far as the Commissioner understands, is a broader document looking at a variety of issues in Suffolk. Whilst there may be some reference in this document to the situation in Sudbury and the traffic issues this does not seem to be directly relevant to the request in that it asked for information on the work of WSP on the relief road, not on the broader subject of traffic issues across the County.

31. Turning to the issue of the correspondence on the proposed housing development on the relief road; the issue here is whether this information is within the scope of the request. The Commissioner does acknowledge the complainant's point that the proposed housing and commercial development is, to an extent, intrinsically linked to the relief road in so much that the proposed housing development would not be proposed without the relief road having first been proposed. That being said, because the two are linked this does not mean they cannot also be separated. The plans to build a new housing development on the relief road and discussions and correspondence around this (should they exist) do not necessarily fall within the scope of the request which relates to information on the work of WSP on the relief road, the business plan and correspondence between the Council and various parties.
32. Discussions on the relief road can be separated from discussions on the housing development and the Commissioner accepts that the wording of the request was specific to the "Sudbury Bypass/Relief Road" and a literal reading of this would suggest the scope of the request is limited to information on the road and factors which influence the decision to require a relief road, such as the traffic survey.
33. The Commissioner accepts this is an area of some contention and that the Council should have made attempts to clarify the scope of the request when it was first received. However, as this was not done at the time the Commissioner has to make a judgement on whether the view of the Council is a reasonable one and she accepts that a straight forward reading of the request would suggest that only information relating directly to the relief road is included in the scope of the request.
34. In addition to this the Commissioner has taken into account the view of the Council that, although the request was not deemed to be manifestly unreasonable previously, Council staff has now spent a significant amount of time (stated by the Council to be in excess of 100 hours) on providing responses to the complainant and that the requests for information on housing developments are an attempt to widen the scope of the request from its original intention. The Council believes there is no further information or assistance it can provide and that it has exhausted its avenues of investigation since it first received the request on 26 September 2016. One other key point the Council has made is that there is not as much information as the complainant may believe as, at the time of the request the bypass was not going ahead and no funds had been allocated to it.
35. The complainant has also listed a number of other documents he considers should have been provided as part of his request. These are documents referred to in the final version of the Business Case. The final version of the Business Case was disclosed to the complainant by the

Council but the Council has pointed out this was outside the scope of the original request as it is dated March 2017. Therefore some of the documents referred to by the complainant are also outside the scope of the request as they post-date the request. Another point to note is that this Business Case is the Strategic Outline Business Case presented by WSP which was intended to investigate the potential for change and be a platform for a later Outline Business Case.

36. The documents referred to by the complainant include environmental reviews referred to on page 5 of the Business Case, discussions with stakeholders including those mentioned in part 3 of the request, reports into the scheme impact referred to on page 27 and details behind the calculations of journey time saving shown in page 41. There are other documents referred to as well, including all correspondence from a meeting that took place in November 2016, after the date of the request.
37. The Commissioner has considered these documents and notes that some of them may not have been held at the time the request was made but in the event they were she has to accept the assurances of the Council that appropriate searches have been conducted and that any information directly on the building of the bypass have been provided. In terms of the correspondence referred to on page 23 this information does seem to be the information requested at part 3 of the request in that it is correspondence with various stakeholders but the request specifically asked for correspondence between *[name redacted]* and/or members of his department and these stakeholders not between WSP and these stakeholders. The Commissioner would also point out that much of the information referred to by the complainant which is mentioned in the Business Case would not have been in the possession of the Council at the time the request was received. The final Business Case was presented to the Council in March 2017 and itself is not in the scope of the request and it stands to reason that some of the evidence base for this Business Case would also not have been in possession of the Council until this time.
38. 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 recognises in cases such as this there will always be some dispute between the public authority and the requester over what information is held and the amount of information that has been generated by an issue. As the Council points out; no funds had been allocated to the bypass at the time of the request so whilst there would have been documents and correspondence relating to the planning of the proposed bypass these are likely to be less voluminous than the complainant believes. The Commissioner also has to accept the

view of the Council that information on the proposed housing development is outside the scope of the request based on its wording.

39. The Commissioner acknowledges that the Council has, at times, provided information in a piece-meal fashion which has led to the complainant's belief that there has been deliberate attempts to conceal information or delay providing it until it is no longer worthwhile. However, the Commissioner believes on the evidence provided that the Council has complied with the request.
40. In making this decision the Commissioner is mindful that her obligation is not to establish beyond any reasonable doubt that the Council has fully complied with the request, but to be satisfied that on the balance of probabilities that the request has been complied with. The Commissioner has to be proportionate in doing this and in this case, based on the assurances given by the Council, the information that has been disclosed as part of this request, the timing of the request and the fact that much of the information the complainant considers outstanding seeming to post-date the request, she is of the view that the Council is likely to have provided all of the information in the scope of the request.

Right of appeal

41. 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

42. 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.
43. 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

Jill Hulley
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