

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

Decision notice

Date: 25 February 2020

Public Authority: North Yorkshire County Council
Address: County Hall
Racecourse Lane
Northallerton
North Yorkshire
DL7 8AL

Decision (including any steps ordered)

1. The complainant has requested a 1:50 "hybrid satellite map" of a particular street. North Yorkshire County Council ("the Council") refused the request under the FOIA because it was "reasonably accessible" to the applicant – albeit for a fee. It therefore relied on section 21 of the FOIA to withhold the information.
2. The Commissioner's decision is that the Council should have dealt with the request under the EIR and not FOIA. She also finds that the Council does not in fact hold the requested information and therefore should have issued a refusal notice citing Regulation 12(4)(a) of the EIR. The Commissioner therefore finds that the Council failed to inform the complainant that it did not hold information and thus breached Regulation 14 of the EIR.
3. The Commissioner does not require any further steps.

Request and response

4. On 12 August 2019, the complainant wrote to the Council and requested information in the following terms:

"I wish to request the following information under the Freedom Of Information Act 2000:

- 1) *The exact point marked on a hybrid satellite map (see attached for an example) at a scale of 1:50 where the exact boundary is of the public highway on Scott Road (Selby) (that is the legal responsibility of SDC) and that of the privately owned land of Abbey Walk car park (Selby) leading to Sainsbury's (that is the legal responsibility of a private third party)."*
5. The Council responded on 29 August 2019. It stated that it had "a standard administration fee for dealing with Search related correspondence. The fee for this enquiry is £15.00 (not subject to VAT)." The Council also pointed the complainant towards mapping and highway data that it already published.
 6. The complainant contacted the Council again on 30 August 2019, he argued that the Council was only permitted to charge for the costs of sending the information to him and therefore its request for a fee was invalid.
 7. The Council responded again on 6 September 2019. It now refused to provide the information. It relied on section 21(2)(a) of the FOIA to refuse to provide information. It argued that the requested information was covered by its publication scheme, even though it was only available on payment of a fee.
 8. Following an internal review the Council wrote to the complainant on 30 September 2019. It upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner on 30 September 2019 to complain about the way his request for information had been handled. He was unhappy that the Council was attempting to charge him for information he believed should be available for free.
10. At the outset of her investigation, the Commissioner drew the Council's attention to a recent decision notice that she had issued in relation to a similar request for mapping data.¹ In that decision, the Commissioner had ruled that the requested information (a map on a particular scale) was not "easily accessible" because the council in question did not in

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615928/fer0810614.pdf>

fact hold the information – it would have had to create a new map to satisfy the request.

11. On that basis, the Commissioner considers that she is unable to consider questions regarding the accessibility of the information or the applicability of fees until such times as she has determined whether or not the information is held by the Council. If the information is not held, it cannot be accessible.
12. The Commissioner considers the scope of her investigation is to determine whether or not the Council holds the requested information.

Reasons for decision

Would the requested information be environmental?

13. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) *the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*
 - (b) *factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*
 - (c) *measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;*
 - (d) *reports on the implementation of environmental legislation;*
 - (e) *cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
 - (f) *the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred*

to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

14. The Commissioner has previously held that maps will usually be environmental information as they will contain information on the state of the elements of the environment: the natural landscape, areas of woodland and bodies of water. Furthermore, she has also previously held that Rights of Way are "measures" affecting the elements of the environment and that these are often shown on maps. For procedural reasons, she has therefore assessed this case under the EIR.

Does the Council hold the requested information?

15. Regulation 5(1) states that: *"a public authority that holds environmental information shall make it available on request."*
16. The original request sought a "hybrid satellite map" of a particular area. The Commissioner understands a "hybrid satellite map" in this context to be very similar to the type available via Google Maps – whereby a schematic plan, depicting roads and place names, is overlaid onto either aerial or satellite photographs of the same area.
17. Given her earlier ruling in the similar case, the Commissioner asked the Council whether it in fact held such a map and, if it did not, what steps it would have to take in order to satisfy the request.
18. The Council responded to say that it did *not* possess such a map. It went on to say that:

"NYCC does not provide a mapping service and does not own any mapping equipment, the mapping used is under an agreement with Ordnance Survey. Highway spatial data is not surveyed by the Council but has been digitised from coloured up paper maps either from formal adoption agreements or handed down from predecessor highway authorities, therefore this data cannot be relied upon to be accurate at 1:50 scale. NYCC data is overlaid onto OS Mastermap base mapping data. We understand that OS Mastermap data is collected at between 1:2500 and 1:500 resolution and therefore this mapping data cannot be relied upon to be accurate at scales more detailed than this. Allied to this, satellite imagery is often not up to date when compared to OS Mastermap. 1:50 scale satellite imagery will not show detail at any discernable quality. Although a highway extent map based on OS Mastermap could be provided at 1:50 scale, we are unaware of the process of how to create a 1:50 hybrid satellite map."

19. The Commissioner's guidance on determining whether information is held states that a public authority will be deemed to "hold" particular

information if that information can be collated or summarised from other data which the authority holds.² This would include, for example, collating a list of documents that it held (if no such list existed already) or calculating an average from a dataset.

20. The request was very clear in what it was seeking. It set a very specific scale and a very specific type of map.
21. In this particular case, it is clear that, not only does the Council not hold the building blocks to create the requested information but that, even if it did, it would not have the necessary skillsets in-house to create that information. The fact that such a map might be of little use is irrelevant: the Council could not satisfy the request even if it wanted to.
22. The Commissioner therefore finds that the Council does not hold the requested information.

Procedural matters

23. Regulation 12 of the EIR states that:

- (1) *Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if—*
 - (a) *an exception to disclosure applies under paragraphs (4) or (5); and*
 - (b) *in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.*
- (2) *A public authority shall apply a presumption in favour of disclosure.*
- (4) *For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—*
 - (a) *it does not hold that information when an applicant's request is received;*

24. Regulation 14 of the EIR states that:

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<https://ico.org.uk/media/fororganisations/documents/1169/determining Whether Information is held foI eir.pdf>

- (1) *If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.*
 - (2) *The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.*
 - (3) *The refusal shall specify the reasons not to disclose the information requested, including—*
 - (a) *any exception relied on under regulations 12(4), 12(5) or 13;*
25. Unlike the FOIA, there is no explicit requirement within the EIR which requires a public authority to confirm or deny whether it holds information within the scope of a particular request. However, the Commissioner still considers it good practice (and helpful to the requestor) for the public authority to do so.
26. In cases where a public authority does not hold the requested environmental information, it may respond by simply stating that fact or, more properly, it should issue a refusal notice which relies on Regulation 12(4)(a) of the EIR.
27. In this case, the Council did not issue a refusal notice relying on Regulation 12(4)(a) and it did not inform the complainant that it did not hold the requested information. The Commissioner therefore finds that the Council breached Regulation 14 of the EIR in responding to the request.

Other matters

28. The Commissioner recognises that there are circumstances where a public authority may not *hold* particular information, but could create it on request and for a fee. In such circumstances, the requestor is essentially paying for the *service* of creating the new information – rather than the information itself.
29. When receiving a request for information, ostensibly under the FOIA or EIR, the public authority needs to ensure that it has responded under the appropriate legislation first, before directing the requestor towards its paid-for services. It should not be attempting to put off requestors by attempting to charge for information it does not hold.

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@justice.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

**Phillip Angell
Group Manager
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Wycliffe House
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