

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 8 December 2020

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

Decision (including any steps ordered)

1. The complainant has requested copies of Traffic Regulation Orders (TRO) relating to two roads, together with information as to how they were published. The council provided a copy of two maps together with some details on how one of the TRO's was published. It said that it did not hold information on how the other TRO was published, but provided details as to where and when a consolidation order, which succeeded the TRO, was published. The complainant disputes that the information provided was actual copies of the TRO's and argues that he has not received all of the information which he requested.
2. The Commissioner's decision is that the council has provided the information which it holds which falls within the scope of the request to the complainant. She has also decided that, on a balance of probabilities, no further information is held by it falling within the scope of the request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 1 February 2020, the complainant wrote to council and requested information in the following terms:

"Under the FOI 2000 act I request the following information.

A copy of the TRO for the A616 at Barlborough.

A copy of the TRO for Tontine Road Chesterfield.

The dates of publication of the above stated TROs"

5. The council responded on 11 February 2020 and asked the complainant for clarification of the part of the request relating to the A616.
6. The complainant provided clarification on 12 February 2020 stating that his request was for: *"The area stated is that from the junction of the A619 roundabout and the junction of the M1 roundabout. J 30.*
7. The council responded on 5 March 2020 providing information in relation to the request. It provided a copy of a map detailing restrictions on the A616 and a map relating to Tontine Road, Chesterfield.
8. On 10 April 2020 the complainant requested that the council review its response. He argued that:

"The information provided by you did not conform to that which I required.

The maps where [sic] not from schedule 2 of the consolidation order and useless.

Tontine Road is now in two parts and it is the bottom half (Southern end) to which I refer and not the location you provided.

You state that the TROs for both areas, Tontine Road and the A616 are in the consolidation order dated 2-5-2015, however, I have the consolidation order of the 21st April 2016 and question if this is the same, if so, the order is defect in some parts and unenforceable. If as you state, they are in another consolidation order of the 2-5-2015 then please also provide a copy of that document.

My original request was for COPIES of the above TROs and also the DATES of publication in the press as required under the 2004 TMA."

9. The council provided an internal review on 3 June 2020 in which it provided further documents, including a map of the southern section of Tontine Road, together with copies of TRO notifications. It also provided the complainant with dates and areas when the TRO's for Tontine Road were publicised by the council.
10. It referred to its previous response as regards the A616 but did not provide details of how that TRO was publicised by the council. It did however provide the dates and places where the consolidation order of 2 May 2016 had been publicised.

Scope of the case

11. The complainant contacted the Commissioner 4 June 2020 to complain about the way his request for information had been handled. He believes he has not been provided with the information which he requested, and that the information which was provided does not constitute a copy of the TRO for the areas he stipulated. He said that:

"...their latest response is also unacceptable as they have only provided maps and are not TROs, only the locations, of which the Tontine Road map does not even provide the named location of the road in question even though it is in that area.

Nothing that they have provided is a TRO, only maps of locations.

They quote their digital schedule two map but have never provided a copy of that document after many previous requests and I would be pleased to receive a copy from them."

12. The Commissioner considers therefore that the complaint is that the council has not provided all of the information which it holds falling within the scope of the request for information.
13. Additionally, she notes the complainant's request for a copy of the schedule 2 map. This does not however fall within the scope of the complainant's request and she cannot therefore consider this point further within this decision notice.
14. The Commissioner must also point out that it is not her position to decide whether a particular TRO is legally enforceable or whether it is defective. She can only use her powers to decide whether the council's response met with the requirements of either the EIR or the FOI Act.

Reasons for decision

The Complainant's arguments

15. The complainant argues that the schedule 2 Map is a requirement within the 2004 Traffic Management Act and should be included within their Consolidation Order.
16. He argues that the council claim the Map to be the legal TRO document and therefore within the public domain, but that this has been removed due to him arguing that no lay-bys were shown on the Map (presumably for the A616). He argues that the maps provided to him are not copies of the TRO's as claimed by the council.
17. Regarding the A616 information requested. He argues that he cannot locate any TRO which refers to that location, only that of a TRO within the village, which is not the location which is stated in his request.
18. On the subject of Tontine Road, he argues that the Council stated that the road had been terminated and therefore no longer a road. He notes that there was civil parking enforcement (CPE) operated on that section which must have had a TRO at some time, and states that this was his reason for requesting a copy of the TRO. If there is no longer CPE i.e., a TRO at that location, then he considers that the council would clarify this.
19. For the avoidance of doubt, under the EIR the council is only required to state whether it holds relevant information, and to provide that information unless it is exempt from disclosure.
20. The council has provided the information which it says it holds in the form of the map tiles, and associated documents highlighting the introduction of the TRO's. It argues however that it does not hold publication information as regards the TRO on the A616.

Regulation 5(1)

21. Regulation 5(1) of the EIR provides that – "*...a public authority that holds environmental information shall make it available on request.*"
22. The council has not sought to apply exemptions to withhold the information from disclosure. It argues that it has provided the information which it holds to the complainant. Additionally, it argues that it does not hold some of the information, namely the details of the publication of the TRO on the A616.

23. The complainant argues that the information which has been provided is not correct. He considers that the information which has been disclosed is not copies of the TRO's he has requested. Although this is his main argument, the question which the Commissioner actually needs to consider is whether the disclosed information is the information which the council holds as the relevant TRO's. The Commissioner has no powers to make a decision as to whether the documents constitute valid and enforceable TRO's; that is a decision for the courts, not the Commissioner.
24. The Commissioner asked the council to explain what documents form the legal evidence held by public authorities that demonstrate that a valid TRO is in place for a specific area should a parking/traffic offence go before the relevant regulatory appeal body.
25. The council explained that a legal TRO is produced to a 'standardised' legal format/layout (template) for a particular location or number of locations under each individually processed order. Paper copies of these orders are then held within the council's Modern Records Department. These remain valid until they are either revoked by an amendment to the particular location(s) or are consolidated into a consolidation order. It said that last consolidation order was dated 2 May 2016.
26. The Commissioner notes that in his request for review, the complainant confirmed that he holds a copy of a consolidation order dated 21 April 2016, but he claims that it is defective and unenforceable. He asked the council to confirm whether the consolidation order dated 2 May 2016 was the same consolidation order which the council was referring to in its response, and if not, he asked it to provide him with a copy of it. In its review response, the council confirmed that this was the same document, and provided details of how, and where, that consolidation order had been publicised.
27. The council said that in response to the complainant's request for review the council provided the map tiles which were taken from Schedule 2 of the Consolidation Order 2016. Page 30 of the Consolidation Order specifies Schedule 2 of the restrictions for the County of Derbyshire, the area for which the map is concerned.
28. In respect of the request in relation to Tontine Road, it said that the complainant was provided with a copy of the schedule 2 map tile that covered the relevant location in its initial response to his request.
29. It said that in the internal review response, the complainant was also provided with a PDF version of the map tile for the Southern section (Chesterfield coach station) that the request also made specific reference to. It confirmed that the complainant was again provided with a PDF version of the map tile of Chesterfield Town Centre that he had

been provided with under cover of the council's response. It confirmed that the map tiles which were provided to the complainant were copies of the schedule 2 map for the relevant areas.

30. The council also confirmed that it has now introduced an online portal which allows members of the public to see the entire static TRO's via a live mapping portal for all the streets across the county, in addition to these being backed up by the text based schedules in the paper copies of the TRO's.
31. The Commissioner is therefore satisfied that the council has provided the relevant maps tiles for the areas stipulated by the complainant in his request for information. If the complainant disputes the legality, or the enforceability, of the TRO's stipulated within those maps he is able to seek legal advice as to how to challenge this. This is not an issue which the Commissioner is able to make a judgement about.
32. The complainant also stipulated that the council had failed to demonstrate how the TRO for A616 had been publicised. The council said that it does not hold this information. It did however provide details of how the 2016 consolidation order had been publicised in its internal review response.
33. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First Tier Tribunal decisions, applies the civil standard of the balance of probabilities.
34. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
35. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, she will consider any other information or explanation offered by the public authority which is relevant to her determination.
36. During the course of her investigation, the Commissioner asked the council to describe the searches it carried out for information falling within the scope of the request, and the search terms used. She also asked other questions, as is her usual practice, relating to how it established whether it held further information within the scope of the request.

37. The council said that the GIS Computer Mapping Software known as ParkMap is the Map for all of the TRO restrictions. It said that all text-based schedules relating to specific roads and lengths of roads are included within this software. The council therefore confirmed that if relevant information was held, it would be held in ParkMap.
38. The council informed the Commissioner that it is unable to answer how the original TRO (relating to limited waiting bays on the A616) were publicised. It said that they were in situ when they were mapped and added to the Consolidation Order for the Districts of North East Derbyshire and Bolsover on the 18 February 2009. It said, therefore, that they would have been promoted and subsequently introduced prior to this date, but that the respective TRO was no longer valid when it was consolidated into the 2009 order for the above districts. The Commissioner understands this statement to be saying that as the consolidation order of 2009 was published, the original TRO would have been superseded by the consolidation order and no longer valid. The council said that this was subsequently consolidated again in 2016 in the county wide Consolidation Order dated 2nd May 2016. As regards the initial TRO, therefore, the council argues that this information is not held.
39. As regards Tontine Road, the complainant argues that as there was Civil Enforcement Parking (CPE) operating on sections it at one point it must have had a TRO at some time to allow this. The Council confirmed that Tontine Road was stopped up as a road many years ago to allow the construction of the Chesterfield Coach Station and construction of a new road subsequently categorised as Beckingham Way. It said responsibility for highways was vested in Chesterfield Borough Council pre-2002, and the council consider that it therefore does not hold detailed information. The land reverted to Chesterfield Borough Council as the landowners, and therefore did not form part of the adopted publicly maintainable highway.

The Commissioner's conclusions

40. The Commissioner recognises that the complaint, in essence, revolves around a dispute between the parties as to whether the documentation which the council relies upon to state that a TRO is in place actually constitutes a legally valid and enforceable TRO. The council's argument appears to be that if the TRO appears on its schedule 2 map, then it is legally enforceable even if it no longer holds the relevant initial documentation. This can occur where a consolidation order supersedes a previous TRO.
41. The complainant disputes that the copies of the maps, as provided to him, demonstrate the existence of a legally enforceable TRO's. He also

argues that he wants an actual copy of the schedule 2 map as a whole, although the council has refused such a request from him under Regulation 12(4)(b). This particular aspect is not the subject of this decision notice. The council has now published its online version of the full map, however.

42. If the council has supplied the information which it holds, which it in turn relies upon to demonstrate that a legally enforceable TRO is in place, then it has complied with the requirements of the EIR. It is not the Commissioner's role to determine whether the documentation relied upon by the council is legally correct. In other words, if it relies upon map tiles of the Schedule 2 Map to demonstrate that a valid TRO is in place, then the provision of the same documentation to the complainant will meet its obligations in respect of the EIR.
43. Similarly, if the council has admitted that it does not hold, or no longer holds, some of the paperwork and publicity documents which the complainant argues are necessary, but it is able to demonstrate that it has done adequate and appropriate searches to locate it, or has provided appropriate reasons to explain why that that is the case, then on a balance of probabilities the council will again have met with its obligations under the EIR.
44. If the complainant disputes that the TRO is enforceable as a result of a lack of supporting paperwork, or because the council is seeking to rely upon incorrect documents or maps, this is a matter which he is able to pursue with the council in the first instance. If he disagrees with the council's response, he is able to take legal advice as to how to challenge the council's position further. The Commissioner has no powers to consider such issues.
45. The questions which the Commissioner must consider are therefore:
 - a) Has the council provided all of the information which it holds which it *relies upon to demonstrate* whether a valid TRO is in place for the areas specified by the complainant?
 - b) Has the council demonstrated that it has done appropriate searches and has sufficient explanations to state, on a balance of probabilities, that it does not hold, or no longer holds, any further information which falls within the scope of the request?
46. Having considered both the arguments of the council, and of the complainant in this instance, the Commissioner has decided that, on a balance of probabilities, the council has provided all of the information which it holds to the complainant in relation to the terms of his request for information.

Right of appeal

47. 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

48. 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.
49. 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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