

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 17 June 2021

Public Authority: Isle of Wight Council
Address: County Hall
Newport
Isle of Wight
PO30 1UD

Decision (including any steps ordered)

1. The complainant has requested information relating to the felling and cutting back of some trees which the council ordered in order to facilitate a temporary bus route. The council disclosed some information however it withheld other information on the basis that Regulation 13 applied (personal data of a third party).
2. The Commissioner's decision is that the council was correct to withhold the personal data of the individuals under Regulation 13. She has also decided that, on a balance of probabilities, no further information is held by the council falling within the scope of the complainant's request for information. She has decided, however, that the council did not comply with the requirements of Regulation 5(2) in that it did not disclose all of the information to the complainant within 20 working days of the receipt of the complainant's request for information.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 30 August 2019 the complainant wrote to the council and requested information in the following terms:

1. I require a copy of the PFI contract to establish IR's [Island Roads] authority and obligations, and to know if there has been any discussion relating to its adequacy given my difficulties and the Council's new 'climate emergency' policy and its impact of tree policy.

2. I require to know at what stage it was considered suitable to commence work without following 'strict procedure', and who authorised commencing without expert and thorough reports.

3. I require to know who issued the media statement and the scale of those involved in the falsehood. Also, when did [name of individual redacted] make arrangements to go on holiday and the arrangements for work in progress for his cover.

4. At the meeting of IR with Cllr Churchman on 9th May, my complaint was considered. I require to know who was present and see the minutes and analysis of competency of the three positions to be adopted, 'vegetation trimmed back... 0.60m from the edge of the carriageway', IR 1st May) 'there are no requirements or indeed plans to fell this tree' IR's PR press release 8th May)' '0.60m clearance from the edge of the carriageway would constitute removal ([name of individual redacted] 24th June).

5. I require to know the details of the discussions around [name of oak redacted]'s oak. Was [name of tree redacted as it would allow the identity of land owner to be ascertained]'s Oak on the original list to be felled? Had Southern Vectis requested it? Has there been an inquiry in to how the 1st May letter came to be sent out? I require to know what meetings of the Joint Committee have discussed [redacted]' Road debacle, and my 20 Failures list, and whether the letter of 24th May from [name redacted] had their approval?

6. It was known on Tuesday 29th April to Cllr Churchman and [name of individual redacted], that I disputed the need for the felling. I require to know if there were other personnel involved, and meetings to discuss the felling, and the various issues I raised before [name of individual redacted] signed the IR's letter of the 1st May, and rang threatening me with costs if I did not comply. I require a transcript of that telephone conversation.

7. I require to know whether Cllr Ward (Highways Cabinet member) and Cllr Hobart (Environment Cabinet member) were informed and discussed the complaint I raised with Cllr Churchman on the 29th April. When were they first informed and involved and what action was taken? I require to know the areas of responsibility Cabinet members have to oversee and investigate and must be informed of complaints against the council and Island roads.

8. I require to know who authorised calling the police in to remove a resident who was lawfully trying to protecting [sic] [tree name redacted]'s Oak?.... ...Were Cabinet members informed and involved? What action was taken? That definitely has a 'chilling' effect on residents in the area, and there is suspicion that was intended.

9. I require to know what was the legal advice relating to the wording of the 1st May letter, given that I was in dispute? Clearly there was no president [sic] for this level of road clearance on the NO 37 bus route. The use of s154 of the Highways Act 1980 was clearly wrong, as the tree formed no immediate or foreseeable danger. The lack of complaints procedure including reference to a magistrate, and the need to give appropriate notice to the 'owner or occupier' was a breach of the Act.

10. I require to know if legal advice was obtained relating to the scale of work under s 154. There has been constant reference to this section of the Highways Act 1980, yet certainly the scale and nature of the work would seem to fall outside of this section.

11. I require notes of any official conversations and meetings that discussed the proposed work. It seems that in part, although never formally stated, that tree work in [redacted]'s Road was claimed necessary to facilitate a relief bus route for a week, while major road improvement was to be carried out in Upton Road. I doubt the expediency of this line of action, and at this time of year, and require proof that proper consideration was given to all alternative options.

12. Given that there appears to have been a greater degree of clearance than other roads to meet Southern Vectis requirements, I require to know if there had been meetings or reports relating to a [redacted]'s Road upgrading, since the last tree trimming two years ago. It seems inappropriate that s154 should be used for what are upgrades.

13. I require details of the 'jobs' raised prior to work in [redacted]'s Road starting, and the reason. Some emanated from the joint evaluation with Southern Vectis, but there are omissions in the details

forwarded on the 28th May by [name of individual redacted]. Particularly, it is important to establish the reasons for felling of [redacted]'s 100 years old oak. It was thought to have been entirely unnecessary by the tree contractor, not part of the Southern Vectis requirements and it appears was over-ridden by [name redacted]. I require the paper work to support this action.

14. I require to see any expert reports and analysis done relating to [redacted]'s Oak and [redacted]'s Oak and other trees in [redacted]'s Road.

15. As the land owner, as with myself, disputed road width and claimed tarmac creep, what legal advice was on trespass?

16. I require to see the report [name of individual redacted] produced for [name of individual redacted], IWC's PFI contract officer, relating to my complaint and the report [name of individual redacted] forwarded to his senior officer and committee.

17. [name of individual redacted]'s reply to my complaint and his endorsement of IR's dismissive answer to my serious questions and comments, raises my concerns as to the objectivity of any response I am likely to get. I require to know if his letter was seen by the Joint Committee or any Councillors before being sent?

5. The council responded on 26 September 2019. It provided some information, however it said that other information was not held.
6. Following an internal review, the council wrote to the complainant on 23 January 2020. It revised its initial position and replied, as follows, to each of the requests:
 1. Information already provided in the initial response.
 2. Information already provided in the initial response.
 3. Section 40 applied (personal data) of the Freedom of Information Act 2000 (FOIA). Island Roads issue the media statements with prior agreement from the council.
 4. No records of individuals, however roles were provided.
 5. Information not held. There was no joint committee, and no list of trees.
 6. No record of the telephone is held.
 7. Information provided.
 8. Island Roads did not call the police – no information held.
 9. No legal advice held.
 10. No legal advice held. Any requirement to cut private vegetation would only be undertaken following informal written instruction from the council.

11. No notes are held.
12. No notes are held.
13. An email was provided, section 12 of FOIA applied as regards any further information within the scope of the request
14. No records are held.
15. No information held as legal advice was not sought.
16. No information held beyond that provided with initial response.
17. No information held.

Scope of the case

7. The complainant contacted the Commissioner 30 March 2020 to complain about the way his request for information had been handled.
8. The majority of the issues which concerned the complainant are not matters which the Commissioner has the powers to consider. However, the complainant believed that the information which he had requested should not have been redacted or withheld, and that further information should be held by the council which will shed light on these wider issues.
9. During the course of the Commissioner's investigation the council disclosed to the complainant the information initially withheld under section 12 of FOIA (part 13 of the complainant's request) on 19 April 2021.
10. Also, during the Commissioner's investigation, the council accepted that the requested information falls within the scope of environmental information for the purposes of the Environmental Information Regulations 2004. It therefore applied Regulation 12(4)(a) as regards to information it does not hold, and Regulation 13 as regards the information it had initially withheld under section 40(2) of FOIA (personal data of third parties). This relates to part 3 of the complainant's request for information.
11. The remaining areas of the complaint are whether further information was held by the council, and whether it was correct to apply Regulation 13 to withhold information relating to the Island Roads employee's leave details. The Commissioner has also considered the time which the council took to disclose the additional information to the complainant.

Reasons for decision

Background to the request

12. The complainant is unhappy as a number of ancient oak trees were either threatened to be, or actually, felled by Island Roads to accommodate a temporary bus route. The complainant is concerned as to whether the council has adequate supervision and oversight over Island Roads. He argues that its actions led to some trees being felled which did not need to be. One of the oak trees which was threatened with being felled was an ancient oak tree, subject to a tree protection order, which is on the complainant's land.
13. The council argues that the information did not instruct the felling of the Oak. However, the complainant noted that the plans did require a 0.6m clearance from the edge of the carriageway. This would, in fact, require the removal of the tree because the main trunk was directly at the edge of the roadway. The council argues, however, that the intention was only for the removal of low hanging branches that could endanger passengers on the top deck of buses using the route. It was not for the tree to be felled, and argues that the Oak was not on any list to be felled.
14. The Isle of Wight Council, as Highway Authority, has delegated powers to Island Roads to ensure that vegetation does not obstruct footpaths and roads. Island Roads is a partnership established by the Isle of Wight Council with 3 private companies to provide the highway maintenance services on the council's behalf.
15. Island Roads' website clarifies that freedom of information requests will be dealt with by the Isle of Wight Council. The Freedom of information section on its website, at <https://islandroads.com/compliments-complaints-and-information/> states:

"Freedom of information Requests

The Isle of Wight Council is responsible for handling all requests for information relating to its contract with Island Roads for the provision of highway services.

To make a freedom of information request visit the council's website [here](#)."
16. There is a separate question as to whether Island Roads is a public authority under the EIR in its own right, and therefore where legal responsibility would lie should Island Roads fail to comply with the requirements of the EIR in response to a request for information.

However, it is not necessary to consider this issue within this decision notice as the request was made to the council.

17. The complainant was told by a neighbour that Island Roads were in the process of cutting back vegetation and trees in the area that week, and that he should have received a letter to that effect.
18. He contacted Island Roads on 29 April 2019 and the officer explained that Island Roads had sent letters out to landowners where it had managed to identify these through land registry details. The complainant's land is not registered and so he had not received a letter. The officer therefore sent him details of the intended work.
19. The complainant analysed the information he had been provided with given that the work was due to be carried out two days later. He then submitted his response on 30 April 2019 outlining his issues with Island Roads' plans.
20. Later that same day that the complainant telephoned Island Roads. Work was to begin the next day, and he was concerned to know the outcome of Island Roads consideration of his response. He found that the officer was on leave and the officer who took the call said that he could find "*nothing on file*" regarding the discussions from the day before.
21. The council argues that, due to a miscommunication, the complainant sent his response to the personal work email address of the officer, not to the standard email address of Island Roads, where the department as a whole would have picked up the relevant message.
22. The complainant is angry as he considers that the officer should have informed him of his leave, and/or clarified the correct mail address to send his representations given that he would be away the next day.
23. This is the background to part 3 of the complainant's request for information, which requests details about when the officer booked his leave.
24. On 1 May 2019 he received the letter from Island Roads stipulating its plans and, he argues, threatening legal action if he did not allow the work to be carried out as required. The complainant also argues that the council and Island Roads subsequently changed their position to argue that they had never required the felling of the tree.
25. The complainant wishes to know what level of oversight the council had over Island Roads' actions relating to this event.

Regulation 13 - personal data

26. Regulation 13(1) of the EIR provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.
27. In this case the relevant condition is contained in regulation 13(2A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ("the DP principles"), as set out in Article 5 of the General Data Protection Regulation ("GDPR").
28. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ("DPA"). If it is not personal data, then regulation 13 of the EIR cannot apply.
29. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

30. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

31. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
32. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of the individual.
33. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

¹ As amended by Schedule 19 Paragraph 307(3) DPA 2018.

34. The information in question relates to part 3 of the complainant's request for information. He requested to know when the officer made arrangements to take leave and the arrangements for work in progress for his cover. Information has been provided as regards the latter part of the request.
35. The council applied Regulation 13. During the Commissioner's investigation the council confirmed that it wished to maintain its reliance on this exception in order to withhold the information.
36. The relevant information therefore relates to an identifiable officer of the council and contains biographical information about him – when he made his leave arrangements with the council for the day in question.
37. In the circumstances of this case the Commissioner is satisfied that the information relates to the officer concerned. She is satisfied that this information both relates to and identifies the officer. This information therefore falls within the definition of “personal data” in section 3(2) of the DPA.
38. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the EIR. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
39. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

40. Article 5(1)(a) of the GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

41. In the case of an EIR request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair, and transparent.
42. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

43. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that “*processing shall be lawful only if and to the extent that at least one of the*” lawful bases for processing listed in the Article applies.

44. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"².

45. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the EIR, it is necessary to consider the following three-part test:-

- i. **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- ii. **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
- iii. **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

46. The Commissioner considers that the test of "necessity" under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

47. In considering any legitimate interest(s) in the disclosure of the requested information under the EIR, the Commissioner recognises that

² Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, regulation 13(6) EIR (as amended by Schedule 19 Paragraph 307(7) DPA) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.

48. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
49. The complainant has some, albeit limited, legitimate private interest in knowing why the officer did not inform him that he would be on leave the next day. However, the Commissioner notes that this may simply have been an error by one party or the other, in that the officer may have expected to email any response to the departmental email even though he sent the documents to the complainant from his own personal email.
50. The Commissioner also considers that there is always a public interest in creating greater transparency over the work of the council and organisations carrying out work on its behalf. In this instance, where it appears that an urgent message was not received due to the officer taking leave, the public has a legitimate interest in knowing what arrangements were in place to cover for the officer in the case of any pressing appeals, information or representations being made.

Is disclosure necessary?

51. "Necessary" means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the EIR must therefore be the least intrusive means of achieving the legitimate aim in question.
52. The question for the Commissioner is therefore whether it is necessary for the requested information to be disclosed in order to meet the legitimate interests identified above.
53. The council said that:

"We have provided generic information in relation to the holiday booking process but it remains our position that this information is not relevant to the issue in hand. Our customer contact processes do not rely on the availability of a particular individual. We make use of a generic contact email addresses that allows all available handlers to pick up and manage customer contact. We operate a rolling shift pattern to provide 24hr / 365 day availability making it less likely that

the same handler will manage a particular enquiry when it extends beyond a period of one working shift. It is unfortunate that the handler had inadvertently allowed a response to be sent using his personalised address as the email response address."

54. The Commissioner notes that Island Roads does provide contact details on its website, including a telephone number and email address and a "report it online" function. Its reception is only open on weekdays, however.
55. Disclosing details of the officer's leave, and when that leave was booked with his employer, would be an infringement of the officer's private life. He would not expect that information about his private affairs would be disclosed in response to a minor mistake which he made in providing his personal email to the complainant to respond to his request, rather than a departmental address.
56. The Commissioner also considers that, whilst noting that this error occurred, it is not necessary for the complainant to know when the officer booked leave as the council has clarified why it occurred. She accepts that there are many other ways to contact Island Roads, and that the complainant did manage to contact Island Roads in the end, albeit that the officer who he spoke to was not able to find records of the previous discussions.
57. The mistake which was made was unfortunate, however this does not mean that the officer's right to privacy over matters relating to his private life should be undermined. The important fact as regards the service provided was that the complainant did manage to contact the department via other means, and Island Roads admitted that it was unfortunate that he was provided with the wrong contact address. If the complainant has concerns with the customer service provided by Island Roads, he was able to take this up with it and ask it to review the arrangements given the issues which occurred. The Commissioner notes that the complainant did make a separate complaint to the council over these wider issues.
58. Given the alternative departmental address the Commissioner considers that it is not necessary to disclose information which is effectively a side issue to the main legitimate interest she has identified – what arrangements were in place to contact the department should people wish to make urgent representations against work being carried out by Island Roads.
59. Whilst the complainant may be annoyed that his email did not reach the officer concerned on the day in question, there is no evidence that this was deliberate obstruction. The council has already acknowledged the

error and provided details on how it is set up to ensure that members of the public can contact Island Roads with their urgent representations.

60. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest in disclosure, she has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing, and it is unlawful. It therefore does not meet the requirements of principle (a).

The Commissioner's view

61. The Commissioner has therefore decided that the council was entitled to withhold the information under regulation 13(1), by way of regulation 13(2A)(a).
62. Since the end of the transition period following the UK's departure from the EU, the GDPR were replaced by the UK GDPR. As this request was received before the end of that transition period, the application of regulation 13(1) has been decided by reference to the GDPR. However, the Commissioner is also satisfied that the disclosure of the personal data to which that exception was applied would contravene the UK GDPR for exactly the same reasons.

Regulation 12(4)(a) information not held

63. As regards the complainant's argument that further information must be held, he considers that there are gaps in the information which has been disclosed to him. The complainant argues that more information must be held by the council or that information has not been passed on to it by Island Roads to consider for disclosure in response to his request for information.

Regulation 5(1)

64. Broadly, Regulation 5 requires that a public authority that holds environmental information shall make it available on request. An authority should provide a valid exception in order to exempt itself from providing that information. Where an authority does not hold information at the time that it receives a request for information then authorities should state that that is the case and apply the exception in Regulation 12(4)(a) (information not held).
65. The council has claimed that no information is held in response to a number of the complainant's requests for information.

Regulation 12(4)(a)

66. Regulation 12(4)(a) provides that a public authority may refuse to disclose information to the extent that it does not hold it when an applicant's request is received.
67. 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 proof; on a balance of probabilities.
68. 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.
69. 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.
70. She will also consider any other information or explanation offered by the public authority (and/or the complainant) which is relevant to her determination.
71. 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 or not it held further information within the scope of the request.
72. A complicating factor in this case is the involvement of Island Roads. However, as its website refers requestors to the council as regards freedom of information requests, the council has responded to the request by asking Island Roads to carry out the necessary searches to locate information.

The complainant's position

73. Following the council's disclosure of information in April 2021, the complainant argued that:

"The sheets, in great degree, endorse my suspicions, that there was more relevant detail that could have been sent to me previously, and there are some glaring gaps..."

...It is clear that meetings and details for the re-designating of [redacted]'s Rd, took place in 2016, and there should be more details and quotes for the work as they approached 1st May 2019. The route was considered unsuitable for buses by [name redacted], District Steward, at that time. There were no environmental considerations over the three years and there was malfunction of the agreed PFI contractual procedures and Sec 154 processes."

74. In his request for review he stated to the council that:

"The impression given that suitably trained, experienced and competent staff travel the highways and randomly and unilaterally decide major works. As to competency all evidence to the contrary. As to experience of similar works, it is difficult and horrific to contemplate that this is usual. You contend that the IWC has confidence in this procedure and is happy that the planning, execution and aftermath were competently handled."

The council's position

75. The council said that Island Roads uses an electronic case management system called "Confirm". All searches were carried out using this system as no information is held elsewhere.

76. It said that no information has been deleted, and that all information relating to the issue has now been disclosed to the complainant other than the information which it has withheld, as noted above.

77. It confirmed that with regards to information Island Roads holds on behalf of the council, Island Roads said:

"Communications received directly by Island Roads are generated within their Confirm system which records all enquiries through the Help Desk/Hub. This system is self-governed by Island Roads, although the council's Highways PFI Contract Management Team can gain access if required. Communications received directly by Island Roads would be managed by them and the council would not have any input unless an issue was brought to our attention, or it was identified in a random search of their Confirm system as part of our internal audit."

78. The council clarified that Island Roads did not carry out a search of personal/work email accounts as all relevant information would be held on its Confirm database. It also argued that, as it had taken in excess of

18 hours to respond already, it did not believe that it was required to carry out further searches, particularly as all information would be held on the database, which has been searched.

79. As regards the complainant's specific questions, and the reasons why it is sure that no information may be held outside of the Confirm database system, it clarified its responses to the complainant's requests as follows:

5. There is no joint committee between Island Roads and the council, so no information is held in this respect.

6. The council does not record telephone calls. No telephone calls were therefore ever recorded or transcribed.

7. The named councillors were not informed. Matters are dealt with at a direct operational level and only escalated as required.

8. Island Roads did not call the police. No cabinet members were informed. No information is therefore held.

9 & 10. No legal advice was sought over the matter and therefore no information is held.

11. There are no records of any official discussions/meetings regarding the proposed work. No information is therefore held in this respect.

12. There are no meetings or reports relating to [redacted]'s Road upgrading.

13. Trees would only be cut back due to their proximity to the roadway or if they were diseased, dead or dying.

14. The council does not hold any expert reports and analysis on this matter. None were ever created.

15. No legal advice was ever sought.

16. There is no report from [name redacted] to senior officers or committee. The only document ("report") that held is an email dated 14th May 2019 which has already been disclosed to the complainant.

17. The reply to the complainant's complaint to Island Roads was not sent to any joint committee or councillors. It argues that that would not follow standard practice under the council's complaints policy, and there would therefore be no reason for its officers to do so. Therefore, it considers that no information is held. As noted above, it also

confirmed that there is no joint working committee which addresses such issues.

The Commissioner's conclusions

80. The questions which the Commissioner must consider are:
- a) Has the council provided all of the information which it holds which responds to the questions specified by the complainant?
 - b) Where no information is held, has the council demonstrated that it has done appropriate searches and/or has provided a sufficient explanation of its processes in order to state, on a balance of probabilities, that it does not hold any, or further, information falling within the scope of the request?
81. The Commissioner notes that, as Island Roads is a private company, information which is held by Island Roads will not necessarily be caught within the scope of an EIR request to the council. It will only be held where the contract requires that that information is shared with the council, or where it is held on behalf of the council. As noted above, Island Roads is carrying out a function of the council and it is possible that it may be a public authority on its own right, dependent upon the legal powers which have been delegated to it. This is not, however, an issue which the Commissioner needs to consider in this decision notice.
82. The Commissioner understands that Island Roads acts with a fairly wide degree of autonomy in ensuring that its contractual arrangements with the council are met. For some functions it does not appear to report directly back on its standard day to day business. The council's PFI contract management team do have some degree of access to the Confirm database, and audits are carried out by the council to ensure that the contract is fulfilled.
83. The complainant believes that Island Road's autonomy should not be as wide in scope as it is and considers this to be a lack of oversight by the council. The level of oversight is not a matter which the Commissioner has powers to consider.
84. Whether or not Island Roads creates adequate records, carries out adequate assessments on the work planned, and has an appropriate reporting and decision referral processes with the council on the work it intends to, or actually carries out, are also not issues which the Commissioner has the powers to consider.

85. The question for the Commissioner is also not whether information should be held, nor whether it would have been pertinent for the council to hold such information. The question which the Commissioner must consider is whether any information *is* held falling within the scope of the request.
86. The issue is compounded by the fact that Island Roads is the main organisation carrying out the work, however the request was made to the council. Whilst this follows Island Roads guidance on its website, this leads to a situation where any questions responded to by the council regarding the records it keeps, actually necessitates it asking Island Roads to explain the searches which it carried out.
87. Nevertheless, the Commissioner considers that the council's description of its searches demonstrate that it has carried out appropriate and adequate searches necessary to locate, on a balance of probabilities, any information it holds which falls within the scope of the complainant's request for information. It has confirmed that all information which is held by Island Roads would be held on its database, Confirm, and clarified that Island Roads acts with a degree of autonomy when it decides what work needs to be carried out in these circumstances. It also confirmed that there is no joint committee which would discuss the intended work. It would not therefore hold any communications relating to this issue to the degree which the complainant expects.
88. Where it has not demonstrated that adequate searches have been carried out, the Commissioner considers that it has provided adequate explanations to clarify why no information would be held.
89. The Commissioner's decision is that, on a balance of probabilities, the council has therefore complied with the requirements of Regulation 5(1).

Regulation 5(2)

90. Regulation 5(1) provides that "*...a public authority that holds environmental information shall make it available on request.*"
91. Regulation 5(2) provides that information shall be made available under paragraph 5(1) as soon as possible and no later than 20 working days after the date of receipt of the request.
92. The complainant submitted his request for information on 30 August 2019. The council responded on 25 September 2019.
93. However, it then disclosed further information to the complainant on 19 April 2021 having decided that it would no longer apply section 12 of FOIA to part 13 of the complainant's request.

94. This falls outside of the period of 20 working days required by Regulation 5(2).
95. The Commissioner has therefore decided that the council did not comply with the requirements of Regulation 5(2).

Right of appeal

96. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

97. 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.

98. 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

Ian Walley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF