

Freedom of Information Act 2000 (FOIA)
The Re-use of Public Sector Information Regulations 2015
(‘RPSI’)

Date: 31 May 2022

Public Authority: Buckinghamshire Council
Address: The Gateway
Gatehouse Road
Aylesbury
HP19 8FF

Decision (including any steps ordered)

1. The complainant made two separate requests regarding a copy of a spatial dataset for conservation area boundaries in a specified format under Open Government Licence.
2. Buckinghamshire Council initially refused the requests on the basis of the Environmental Information Regulations (“EIR”) 6(1)(b) (information available in another format). It did release some information under a restrictive licence which did not meet the scope of the request.
3. During the course of the investigation the council reviewed its response and decided to release the information, in the requested format and licensing conditions, under the RPSI.
4. The Commissioner has decided that Buckingham Council breached regulation 8(1) of RPSI by failing to provide the requested information within a reasonable time.
5. As the information has now been provided, no further steps are required.

Request and response

Request 1, 14 December 2020

6. On 14 December 2020, the complainant made a request to Buckinghamshire Council ("the council") in the following terms:

"Please can you supply a copy of your spatial dataset for conservation area boundaries in South Bucks, ideally in shapefile, KML or a similar spatial format, under Open Government Licence. This is for consolidation into a new national dataset comprising other OGL licenced data. Thank you."
7. The council responded on 21 January 2021. It stated that it had already provided the complainant with the information which is accessible at [Buckinghamshire Council – South Bucks Area – Conservation Areas](#). However it refused to provide the information in the format requested, citing EIR 6(1)(a) and 6(1)(b). It stated:

"As the information is already publicly available and easily accessible and has been provided to you, under Regulation 6(1)(b) the Council is not required to make the information available in another form or format, as specified by an individual requestor... While our public sector Member Licence lets us publish and share our data under Open Government Licence, the data you have requested does not currently meet the publishing criteria and therefore cannot be published under OGL at this time."
8. The complainant requested an internal review on 21 January 2021, stating: "With regard to the specifics of your reasons for rejecting my request, I have already made clear that provision of the data in "pdf" format is very different to its provision in an appropriate spatial data format, given the amount of geocoding required to get from one to the other." The complainant further stated that the council holds the information in the format requested.
9. The council responded on 17 February 2021 with the outcome of an internal review in which it upheld its position. However it also stated:

"We have recently made this information publicly available through our Heritage Portal. Conservation Areas can be viewed on the mapping tool but cannot be downloaded. Please see <https://heritageportal.buckinghamshire.gov.uk/> for more information."
10. During the investigation the council advised the Commissioner that "...in September 2021 and as a result of further internal considerations due to

the correspondence with [the complainant] we did in fact provide conservation area datasets in respect of the Buckinghamshire Council administrative area to Historic England (HE) in ArcGIS shapefile (.shp) format. The datasets are available to the public to download from the HE website under the Open Government Licence. Please see <https://historicengland.org.uk/listing/the-list/data-downloads>.

We informed [the complainant] that the information for both of [their] requests was now published in the format requested under OGL by email on 30 September 2021.”

11. The Commissioner advised the council on 11 April 2022 that the request should be considered under the Re-use of Public Sector Information Regulations 2015 (“RPSI”).
12. The council reconsidered the request under the RPSI and changed it’s position. It provided the complainant with the information, in the requested format on 25 April 2022.

Request 2, 2 March 2021

13. On 2 March 2021, the complainant requested information from the council in the following terms:

“The former Buckinghamshire districts of Aylesbury Vale, Chiltern and Wycombe have historically supplied copies of their spatial data for local conservation area boundaries to Historic England, granting permission to re-publish under Open Government Licence (OGL). I am seeking to review and update (where necessary) the data provided via the HE INSPIRE dataset, which does not appear to have been updated for at least three years, and would be grateful if you could supply current OGL versions of these three spatial datasets in a suitable format such as SHP, KML, Mapinfo TAB or Geopackage.”

14. The council responded on 30 March 2021 and refused to provide the information. It stated that it:
 - Is not aware that this information has been released in the format requested by any of the former council areas following conversations held with the respective Buckinghamshire Council GIS team.
 - Under it’s Ordinance survey licence arrangements, the council is unable to issue the data in the format requested.
 - The duty to make the requested information available in the preferred form or format is not an absolute as it is qualified by EIR

6(1)(a) and 6(1)(b). The Council has made this information publicly available in a format that is easily acceptable.

15. The complainant requested an internal review on 1 April 2021, disputing the council's response, and stating that former district authorities had previously provided the requested information.
16. The council provided a copy of the internal review response on 27 May 2021. It stated that the request had been reconsidered under the INSPIRE regulations. It provided the requested information with restrictive licensing conditions for reuse.
17. The complainant did not accept the response, stating that the restrictive licence meant that information is not usable for the purposes that they had clearly set out in the request.
18. The information provided to the complainant in response to Request 1 on 25 April 2022, satisfied the scope of Request 2.

Scope of the case

19. The complainant contacted the Commissioner on 24 February 2021 to complain about Request 1; and on 12 June 2021 to complain about Request 2. Specifically for both requests, that the council had not provided information in the format requested nor did it make the information useable for the purposes set out in the requests.
20. During the course of the investigation the Commissioner advised the council that the requests should have been considered under RPSI which states:

A person who wishes to make a request for re-use must ensure that the request—

 - (a) is in writing;
 - (b) states the name of the applicant and an address for correspondence;
 - (c) specifies the document requested; and
 - (d) states the purpose for which the document is to be re-used.
21. The Commissioner advised that the complainant had specified the re-use purpose and format required. Furthermore he drew the council's attention to regulation 11 which states that —

(1) A public sector body must make a document available to an applicant under regulation 8(4)(b) or (c)—

(a) in the format and language in which it is held on the date of the request for re-use; and

(b) where possible and appropriate, in open format and machine-readable format together with its metadata.

He also drew the council's attention to regulation 12 which states

(1) A public sector body may impose conditions on re-use, where appropriate through a licence.

(2) Where conditions are imposed they must not unnecessarily restrict—

(a) the way in which a document can be re-used;

22. The council reviewed its position under the RPSI and decided to provide the information to the complainant.
23. The complainant confirmed that they were satisfied with the disclosed information, and that it meets the scope of Request 1 and Request 2. However they remain dissatisfied with the way the council handled the requests and the lengthy period of time to provide the data. The complainant states that they felt the council had made multiple attempts to frustrate their information requests.
24. The scope of the case, following the disclosures made during the investigation, is to consider the time the council took to respond to the request.

Reasons for decision

Regulation 8 – Responding to a request for re-use

25. Regulation 8(1) of RPSI provides that a public sector body must respond to a request for re-use promptly and in any event before the end of the twentieth working day beginning with the day after receipt.
26. In this case the complainant made Request 1 on 14 December 2020, and Request 2 2 March 2021. The council did not provide its final response, releasing the requested information, until 25 April 2022. This is 16 months after Request 1 was made, and nearly 14 months after Request 2.

27. The complainant states that they are extremely dissatisfied with the delay incurred and the lack of apology from the council.
28. The Commissioner considers that the time taken to provide the final response to the requests is clearly unreasonable, being a period of over 1 year. He therefore finds that the council breached regulation 8 of RPSI.

Other Matters

29. The Commissioner is concerned about the lengthy delay in providing the complainant with the requested information, and the incorrect use of the EIR and INSPIRE regulations in this case.
30. The purpose of the RPSI is to encourage re-use of public sector information.
31. The Commissioner has published a guide to RPSI¹. He suggests that the council familiarises itself with the regulations such that it can recognise future requests and ensure that they are completed in a timely manner.

¹ [Guide to RPSI | ICO](#)

Right of appeal

32. 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

33. 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.
34. 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

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