

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

Decision notice

Date: 26 April 2023

Public Authority: Staffordshire County Council
Address: County Buildings
Main Steet
Stafford ST16 2LH

Decision (including any steps ordered)

1. The Commissioner's decision is that Staffordshire County Council ('the Council') is entitled to withhold certain information about a specific road under regulations 12(5)(b) and 13 of the EIR. These exceptions concern the course of justice and personal data respectively. It is not necessary for the Council to take any corrective steps.

Request and response

2. The complainant made the following information request to the Council on 14 February 2023:

"...Specifically, my query relates to the [redacted].

Please can you send me:

1. A copy of your current road maintenance policy relating to that road. Please send me the full policy, but this should include details of the intended frequency of road safety inspections, how these inspections should be conducted and the maximum time between identification of a defect and repairs being carried out.

2. A copy of the road repair history for that road over the period of 12 months to the date of this letter. Again, please send me the full road repair history, but this should include:
 - a) dates of all safety inspections
 - b) details of how safety inspections were undertaken (walked or driven, speed of inspection vehicle etc
 - c) details of all carriageway defects identified, with description, date, and time
 - d) details of how the authority handled these defects, what repairs were undertaken and the time between the identification of each defect and a repair being carried out.”
3. The Council disclosed information within scope of the request. It redacted some information – the reference numbers and dates of inspections - under regulation 12(5)(b) of the EIR and redacted personal data under regulation 13. The Council maintained its reliance on these exceptions following its internal review.

Reasons for decision

4. This reasoning covers the Council’s application of regulation 12(5)(b) and regulation 13 of the EIR to the information it is withholding.

Regulation 12(5)(b) – course of justice

5. Under regulation 12(5)(b) a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature. The exception is subject to the public interest test.
6. In its correspondence to the complainant, the Council advised that in the case of this information request, and similar requests for highway site history information, it was concerned about the potential for speculative, or fraudulent damage or personal injury claims if it were to release the withheld information into the public domain under the EIR.
7. In its submission to the Commissioner, the Council has explained that it receives a high volume of requests asking for details of highway inspections, defect reports and maintenance works carried out on specific routes/sections of routes. These requests are usually submitted, as stated by the requestors, in relation to alleged damages caused to their vehicle by highway defect(s) either prior to their making a claim for damages or having submitted a damages claim. Usually they are

dissatisfied with the outcome of the claim and are seeking information to contest the decision of the Council's claims handler, or with a view to taking action for damages against the Council.

8. The Council's Access to Information Team is not advised by the Highways department and does not ask the Highways department whether a particular request is claim-related. When the Council deals with requests such as the complainant's it says it is 'requestor neutral' and does not take into account the individual requestor nor their known, or assumed, reason for requesting information. The Council says it deals with requests on the assumption that, whether it would be the case or not, any information it releases [under the EIR] must then be assumed to be available in the public domain.
9. The Council's Highway Claims and Recharges Manager raised concerns that releasing the withheld information into the public domain would, or would be likely to, provide information that would enable fraudulent claims to be submitted. This is because the information is dates and references of highway inspections, reports and repairs. Any such fraudulent claims would be to the detriment of 'the public purse'. The Council notes that information requests and the highway damages claim processes are two separate regimes and releasing full details would, or would be likely to, also adversely affect the claims process and the court process.
10. If inspection dates and references are not redacted from highway site history reports, the Council considers that there is a real and likely risk that individuals would be able to identify periods of time when the Council was responsible for a highway defect. They could do this by using both information within the site history reports, and then using information within the reports to interrogate the Council's online 'Report It' system.
11. The Council says it has identified instances of requestors who have actually used references to interrogate the 'Report It' online system when only dates have been redacted from site history reports. If it was in the public domain, the unredacted information would therefore provide persons with the information necessary to submit false claims in an attempt to defraud the public purse. Releasing unredacted site history reports would therefore pose a real risk to the Council's ability to assess damages claims and would adversely affect the Council's ability to defend itself against such claims, including through the court process. The Council has a legal responsibility to prevent and tackle fraud and has a legal obligation to protect the public purse from fraudulent claims.
12. Disclosing the withheld information would therefore be contrary to this, as it would allow individuals to circumvent one of the means by which

the Council assesses a claim for legitimacy. This could result in fraudulent claims being successful.

13. In terms of the claims process, the Council says it is for claimants to provide sufficient and appropriate evidence to support their damages claim. Details of the Council's claims process are available on its website. Potential claimants are required to first report the specific defect that they allege caused the damage using the Council's online 'Report It' system.
14. When the Council receives a claim, it carries out an initial assessment and then passes the claim to a Council's claim handler together with:
 - 13 month unredacted site history report covering 12 months prior to the alleged incident and 1 month after.
 - Three month redacted site history which can be provided to the claimant if they request it from the claims handler.
15. The claims handlers assess the evidence the claimant provided and the evidence the Council provided in light of relevant legislation ie the facts and the law. They then issue the claimant with a decision notice and details of how to contest rejected claims. Claimants must then follow the appeal process as set out in the letter advising of the outcome of the claim.
16. Should a claim get as far as the court process, unredacted information is provided to the litigant and/or their legal representative as part of the disclosure process. Under Part 36 of the Civil Procedure Rules the Council is required to release supporting evidence to enable the preparation of a court case.
17. This would normally include the last safety inspection prior to any alleged incident. It would also include reports of all complaints and repairs undertaken between the inspection and the date of the alleged incident. This would represent sufficient information to allow the claimant to take the matter to court.
18. Information obtained in this way is not published to the 'world at large' and can be provided at this stage without the redactions, solely for the purpose of allowing a person to pursue a claim.
19. There is therefore a more appropriate regime other than the EIR through which the information can be accessed.
20. The Council says that it reviewed the Commissioner's published decisions on complaints about requests for the same or broadly similar

information: FER0611819¹, FER0742277² and FER0777390³. The decisions it identified confirmed first, that it was appropriate to categorise the requested information as 'environmental information'. The decisions also indicated that the application of regulation 12(5)(b) of the EIR was appropriate.

21. The Council has noted that the Commissioner states in his published guidance about regulation 12(5)(b) that the meaning of 'course of justice' is broad and includes information about 'investigations'. The Council says it is strongly of the opinion that releasing unredacted information would adversely affect its ability to conduct the inquiries and investigations that are necessary to validate highway damages claims.
22. The Council believes that sufficient information can be released to a claimant/requestor about the specific defects that are alleged to have caused damage through the claims process. Information can also be disclosed in the event of court action and that appropriate information is available to claimants/requestors in order to hold the Council to account.
23. As the Council has noted, the Commissioner has found that regulation 12(5)(b) is engaged in cases where the requests have been for similar information. As such, there is a clear precedent, and he is satisfied that the Council correctly applied regulation 12(5)(b) of the EIR to some of the information within scope of the current request. This is for the reasons the Council has given and those discussed in FER0611819.
24. As the Council advised the complainant, they may have submitted the request for a perfectly legitimate reason. However, disclosure under the EIR is disclosure to the wider world and other individuals may therefore be able to access the information for nefarious purposes if it were disclosed.

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1624521/fer_0611819.pdf

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259595/fer0742277.pdf>

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2553901/fer0777390.pdf>

Public interest test

25. The Council has acknowledged that there is a public interest in openness and transparency about the condition of highways and how they are maintained. It says that requests for information about highways would usually ask for, for example: How often is a route inspected? How many defect reports have been received since a particular date or between date range? How many potholes? Or what are the timescales for repair?
26. The Council says it can answer these types of questions without providing copies of site history reports or causing the above adverse effects through releasing unredacted site history reports.
27. The Council considers that this request relates to a private matter/interest and has decided that there is minimal wider public interest in the condition of specific sections of a route. It has a legal responsibility to prevent and tackle fraud and a legal obligation to protect the public purse from fraudulent claims. Disclosing the requested information would enable individuals to submit fraudulent claims for damage which are likely to be successful. It is not in the public interest for public funds to be squandered on fraudulent claims.
28. Appropriate information will be made available to claimants through the claims process and/or the court process under Civil Procedure Rules. In the Council's view, if relevant the complainant has the option of making the appropriate application for the information to be disclosed as part of the proceedings relating to any claim and/or can take independent legal advice on how to pursue a claim.
29. Finally, the Council says it makes available appropriate and sufficient information to enable the public to hold the Council to account about how the Council manages and maintains highways for which it is responsible.
30. The Commissioner considers that there is greater public interest in this case in withholding the information redacted under regulation 12(5)(b) in order to protect the public purse from fraudulent claims and to prevent the associated court process from being frustrated. The public interest in transparency is met through the information the Council is able to disclose in response to information requests and through the related information it proactively publishes. As in FER0611819, FER0742277 and FER0777390 the Commissioner is satisfied that the balance of the public interest again favours non-disclosure.

Regulation 13 – personal data

31. Regulation 13(1) of the EIR provides an exception for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in regulation 13(2) or 13(3) of the EIR is satisfied.
32. The Council has redacted from the disclosed site history report the name of the employee who generated the report, and the names and contact details of inspectors and operatives, and the names, contact information and other identifying information of people who have reported defects.
33. Similar information was redacted under regulation 13 in FER0777390, and the Commissioner found that the council in that case was entitled to rely on regulation 13. For the same reasons, in this case the Commissioner has decided that the Council is entitled to redact personal data from the disclosed information under regulation 13 of the EIR.

Right of appeal

34. 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

35. 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.
36. 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

Cressida Woodall
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