

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 16 May 2024

Public Authority: Hertfordshire County Council
Address: County Hall
Pegs Lane
Hertford
Hertfordshire
SG13 8DE

Decision (including any steps ordered)

1. The complainant has requested information about road repairs. Hertfordshire County Council ("the Council") disclosed information in response. The complainant disputed that further information was held.
2. The Commissioner's decision is that no further information is held.
3. The Commissioner does not require further steps.

Request and response

4. On 19 September 2023, the complainant wrote to the Council and made the following requests (numbering in square brackets added by the Council):

"[1] How many complaints were made about pothole in [address redacted by ICO], Letchworth, Herts outside my house no. [address redacted by ICO].

[2] Could I have the days of all of the complaint made in 2022/23.

[3] How many complaints were made about damages to cars from the same pothole in 2022/2023. Could I have the dates of all claims.

[4] When was the pothole repaired, I believe it was prepared twice. Could I have both dates.

[5] Could I have copies of reports of the road conditions from Oct 2022 until pothole in [address redacted by ICO] was repaired."

5. The Council responded on 11 October 2023. It disclosed held information.
6. On 27 October 2023, the complainant asked for an internal review. This was on the basis that they considered further information was held, and specifically that about 'complaints' and their dates (request [1]), and the dates any repairs were made (request [4]).
7. The Council provided the internal review outcome on 27 November 2023. In respect of requests [1] and [4], it maintained that all relevant held information had been provided and explained the basis for this. It also disclosed additional information in respect of request [3] that had been identified.

Reasons for decision

Is the requested information environmental?

8. 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);
9. The Commissioner understands that the requested information relates to the condition of highways. As such, he believes that it is likely to represent information about (a) the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 5(1) – Duty to make available environmental information on request

10. Regulation 5(1) of the EIR states that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions that may apply.
11. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any – or additional – information which falls within the scope of the request (or was held at the time of the request). In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any – or additional – information which falls within the scope of the request (or was held at the time of the request).

The complainant's position

13. The complainant has explained to the Commissioner they have sustained damage to their car, which they believe to be a result of a pothole in the road near their home.
14. The complainant has also explained to the Commissioner that they have spoken to a Councillor about this, who has indicated that they also raised the road condition with the Council in their role as an elected representative.

The Council's position

15. The Commissioner has reviewed the Council's response and internal review outcome.
16. From these, the Commissioner understands that the Council has disclosed that information it considers relevant to request [1]. This information is the 'fault reports' received, and their dates. The Council confirmed that no complaints were received by it under its formal complaint's procedure.
17. The Commissioner further understands that the Council has disclosed that information it considers relevant to request [4]. This information is the logged records it has of repair work nearest the address given in the request. The Council explained that, whilst maintenance staff may be visible whilst inspecting a road, this does not always mean that a site is identified as needing repair, and it will only have a record of a repair if a repair was considered to be necessary, and therefore undertaken.

The Commissioner's conclusion

18. The Commissioner has considered the Council's position, in conjunction with the complainant's concerns.
19. There is no evidence available to the Commissioner that the Council's response, or the searches it has undertaken, is deficient. Whilst the Commissioner notes that the complaint disagrees with the terminology used by the Council ('fault reports' rather than 'complaints'), this is not a matter that the Commissioner can consider under the EIR.
20. Whilst the Commissioner appreciates that there may be other information relating to this matter (such as general correspondence between the councillor and Council in which the former raises the matter), he does not consider that this is the information that has been requested.
21. Having considered all the circumstances, the Commissioner therefore accepts the Council's position that it has disclosed all held information. As such, the Commissioner has decided that the Council has complied with regulation (5)(1) of the EIR.

Other matters

22. The Commissioner notes, for the benefit of the complainant, that he can only consider matters under the EIR. He cannot require the Council to any action outside the EIR, such as provide compensation.

Right of appeal

23. 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

24. 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.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Daniel Perry
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF