

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

Date: 22 July 2024

Public Authority: Central Bedfordshire Council
Address: Priory House
Monks Walk
Chicksands
Shefford
Bedfordshire SG17 5TQ

Decision (including any steps ordered)

1. The complainant requested information about a pothole. Central Bedfordshire Council (the "Council") disclosed information and confirmed that further information was not held.
2. The Commissioner's decision is that the Council disclosed all the relevant information that it holds and complied with regulation 5(1); and that, as it has correctly confirmed that further information is not held, regulation 12(4)(a) applies.
3. The Commissioner does not require further steps.

Request and response

4. On 24 November 2023, the complainant wrote to Central Bedfordshire Council (the "Council") and asked for the following information:

"Severely dangerous pothole on the A6 northbound towards Barton

Q1. I request a copy of the March 15 site inspection report, with site measurements, confirming that any defect present at that time was below the actionable threshold

Q2. I request a copy of the assessment criteria / procedure that determines if a defect is actionable

Q3. I request a copy of the post March 24 repair work order for the section on carriageway where the defect I encountered was located.

Q4. I request a copy of the procedure outlining Central Beds Council document retention policy in respect of site inspection reports and repair orders."
5. The Council responded on 13 December 2023. It disclosed some information and confirmed that further information was not held.
6. Following an internal review Council wrote to the complainant and disclosed more information. It confirmed that no further relevant information was held.

Scope of the case

7. On 31 March 2024 the complainant contacted the Commissioner on to complain about the way their request for information had been handled.
8. The Commissioner has considered whether the Council correctly confirmed that it has disclosed all the relevant information that it holds.

Reasons for decision

Is the requested information environmental?

9. 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);
10. In this case the requested information relates to decisions taken in respect of a pothole. The Commissioner considers that the information is likely to, therefore, constitute information on a measure as defined in regulation 2(1)(c). He has, therefore, assessed this case under the EIR.

Regulation 5 – duty to provide environmental information

- 11. Regulation 5(1) requires public authorities to provide environmental information on request.
- 12. Where requested information is not held at the time of a request, authorities have a duty under regulation 12(4)(a) confirm this.
- 13. In this case the Council disclosed information to the complainant and confirmed that no further information was held. The complainant disputes its position that no further information is held. They have also raised concerns about the Council's governance of the substantive matter (its management of the pothole) but this matter fall outside the Commissioner's jurisdiction.

14. 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 ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
15. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
16. To make this determination the Commissioner asked the Council a range of standard questions. The questions and a summary of the Council's response are set out below.

What searches have been carried out to check no information was held within the scope of the request and why would these searches have been likely to retrieve any relevant information?

17. The Council confirmed that it carried out searches on its Insight database ("Insight") by section as inspections and works would be logged on its systems under the relevant road section number.

Please describe thoroughly any searches of relevant paper/electronic records and include details of any staff consultations.

18. The Council confirmed that searches carried out by section number were sufficient and explained that staff consultations were not needed to carry out searches on Insight.

If searches included electronic data, which search terms were used and please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.

19. The Council confirmed that searches were undertaken on Insight for the location and timeframe requested. It explained that this is where all inspection records are kept. It confirmed that no information is held on personal devices.

What does your formal records management policy say about the retention and deletion of records of this type? If there is no relevant policy, can you describe the way in which it has handled comparable records of a similar age?

20. The Council confirmed that it has an overarching retention period of close date +6 years for any records that do not have a specific retention

period within its retention schedule. It confirmed that records on Insight date back further and are embedded into the system.

21. The Commissioner notes that the complainant has genuine concerns about the Council's handling of the substantive matter as he understands that they were involved in an incident relating to the pothole in question. As noted above, the Commissioner has no jurisdiction over the Council's governance of such matters and the complainant may wish to pursue other remedies in this regard.
22. In relation to the question of the Council's compliance with the EIR, the Commissioner's decision is that, on the balance of probabilities, and based on the searches carried out, the Council has provided all the information it holds in relation to the request and complied with regulation 5(1). He has also concluded that, in relation to the question of further information falling within the scope of the request, the Council has correctly confirmed that this is not held and that regulation 12(4)(a) applies.

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.

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