

Freedom of Information Act 2000 (Section 50) Environmental Information Regulations 2004

Decision Notice

Date: 5 November 2009

Public Authority: Huntingdonshire District Council
Address: Pathfinder House
St Mary's Street
Huntingdon
PE29 3TN

Summary

The complainant requested copies of the public authority's authorisation for the construction of a vehicular crossing for use by properties on High Street in Ramsey. The public authority replied that the information was not held. The Commissioner investigated and found that the requests should have been processed under the Environmental Information Regulations 2004 ("EIR"). However he has determined that the exception in Regulation 12(4)(a) of the EIR applied. As the public authority did not issue a refusal notice compliant with the requirements of Regulation 14(1) the public authority failed to comply with that Regulation. The Commissioner has not ordered the public authority to take any steps.

The Commissioner's Role

1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

Background

2. The complainant made the same requests for information to Cambridgeshire County Council (CCC) on 17 January 2008. On 12

February 2008 CCC responded to the complainant explaining that in 1974 it had entered into an Agency Agreement with Huntingdonshire District Council (HDC) in which HDC agreed to take on responsibility for highways matters on behalf of CCC and this covered the town of Ramsey. This agreement was terminated in 2005 and the staff and responsibility transferred back to CCC. It went on to explain that the written authorisation sought was not held by CCC as previous paperwork regarding these functions was not transferred. It was therefore suggested that the complainant make the request to HDC.

The Request

3. On 17 January 2008 the complainant requested the following information from Huntingdonshire District Council (HDC):

“Written authorisation issued by your public body and/or your agents for the construction of vehicular crossings (in full compliance with Section 184 of the Highways Act 1980), for the use of properties to the south side of the High Street, Ramsey PE26 1AB (in particular numbers 43 to 49).

Documentary proof that your public body and/or your agents hold that you /or agents have approached the District Planning Authority regarding planning permission that was granted or was not necessary for vehicular crossings to be constructed for the properties to the south side of the High Street Ramsey PE26 1AB (in particular numbers 43 to 49).

The information detailing the Procedures and Specification for the construction of the vehicular crossings over footways and verges to be used by the applicants of numbers 43 to 49 High Street Ramsey PE26 1AB on the dates those vehicular crossings were constructed”.

4. On 13 February 2008 the complainant wrote to the Commissioner as he had not received an acknowledgement of his request and included the response he had received from CCC as background information.
5. The Commissioner wrote to HDC on 19 February 2008 regarding the complainant's request. HDC replied that it had not received the request but accepted the copy sent by the Commissioner and said it would log and deal with it.
6. The public authority wrote to the complainant on 17 March 2008 stating that it did not hold the requested information. It explained that although the Highways function had previously been undertaken by HDC

responsibility for it had now passed to CCC and all records had been transferred to that public authority.

7. The complainant asked HDC to conduct an Internal Review on 30 March 2008.
8. The public authority responded on 4 July 2008 in which it confirmed that the information was not held. It went on to say that during the internal review some highways files were found, but that they did not contain the information requested.

The Investigation

Scope of the case

9. The complainant made a complaint to the Commissioner regarding HDC's handling of his requests on 12 July 2008. The Commissioner has considered the delay and the complainant's contention that the information he requested is held by the public authority.

Chronology

10. Regrettably the complainant's case was not allocated for investigation until 6 April 2009. On 6 April 2009 the Commissioner wrote to HDC asking for submissions about the way it handled the complainant's requests and determined that the requested information was not held.
11. The public authority provided a response to the Commissioner on 5 May 2009 and supplied details of its records management policy.

Findings of fact

12. The Local Authority's Highways function for the town of Ramsey was undertaken by HDC on behalf of CCC between 1974 and 2005.

Analysis

Environmental Information Regulations

13. The Commissioner has concluded that the requests should have been processed under the EIR. In his view the requests are for information on a measure falling within Regulation 2(1)(c), in this case section 184 of the Highways Act 1980. Section 184 is a measure likely to affect the elements in Regulation 2(1)(a) as it is under this provision that authority to construct vehicular crossings, which affects the land and landscape, is given. The Commissioner is satisfied that details of the authority,

planning, procedures and specifications sought by the complainant constitutes information on that measure.

Substantive Procedural Matters

Regulation 12(4)(a)

14. Regulation 12(4)(a) states that a public authority may refuse to disclose information to the extent that:

“it does not hold that information when an applicant’s request is received.”

15. The Commissioner considers that the normal standard of proof to apply in determining whether a public authority does hold any requested information is the civil standard of the balance of probabilities. In investigating whether the public authority holds any information which falls within the scope of the complainant’s requests the Commissioner has considered the following issues.

- Whether it is reasonable to expect the public authority to hold the information?
- The records management policies of HDC and CCC;
- The scope, quality, thoroughness and results of searches.

Is it reasonable to expect the public authority to hold the information?

16. As HDC was responsible for Highways issues in Ramsey in 1985 when the vehicular crossings of interest to the complainant were constructed, the Commissioner is content that it was reasonable for the complainant to have expected HDC to have held the requested information at that time and to have retained it for some time as part of an audit trail. However, given that at the time of the request, some 24 years had passed since the construction the Commissioner does not consider it reasonable for the complainant to have expected the public authority to continue to hold the information. He is unaware of any reason or business need for the public authority to retain the information sought by the complainant for such a significant period of time.

Records management

17. As mentioned earlier the Commissioner obtained a copy of HDC’s records management policy. Whilst this did not contain a section for Highways, it did include an entry as follows: “maintaining and repairing roads, streets, bridges, bridle paths, rights of way and tunnels - Destroy 7 years after action completed”. As mentioned above the complainant has explained that the construction of the vehicular crossings was completed in 1985. The complainant’s request was made 24 years after the work was completed and the information would have been

well outside of the retention period set out in the records management policy.

18. In view of the transfer of Highways responsibilities the Commissioner also obtained CCC's retention guidance from 2005. As highlighted by CCC "the longest retention period for those records would have been 12 years. As the information sought would have been 20 years old at the time of transfer, it is likely that if it had not already been destroyed by HDC it would have been destroyed by us at the time of the transfer."
19. Having considered both records management policies the Commissioner is satisfied that on a balance of probabilities the information requested by the complainant had been destroyed at the time of the request and was not held by HDC.

Scope, quality, thoroughness and results of searches

20. The Commissioner considers that there is sufficient evidence on the basis of the two criteria above to conclude that on a balance of probabilities the information sought by the complainant was not held by HDC. However he notes that, having initially told the complainant that all records had been transferred to CCC in 2005, HDC did locate some highways information during the internal review. However that information was searched and no information relevant to the request located and the complainant was informed of that fact. The public authority also explained that, when asked, officers recalled that at the time of transfer of duties, a decision was taken to retain 6 years plus current year's records as there was no business need for older records and any older records were then destroyed. This would fit with the aforementioned records management policy timescales. The Commissioner considers that this information about the searches supports his conclusion that the information is not held by HDC though it has not been a major factor when reaching his decision.
21. Regulation 12(1)(b) states that all exceptions are subject to the public interest test, however the Commissioner does not consider that it will usually be possible to consider the public interest test in respect of information which is not held. He does not therefore consider that it is possible in this case and has not commented on it further.

Regulation 14(1)

22. Regulation 14(1) states that a public authority must issue a refusal notice,

"as soon as possible and in no later than twenty working day after the date of receipt of the request."

As the public authority did not issue a refusal notice to the complainant within 20 working days citing the exception in Regulation 12(4)(a) the Commissioner finds the public authority in breach of regulation 14(1).

The Decision

23. The Commissioner's decision is that the public authority should have handled the requests under the EIR. He is satisfied that on a balance of probabilities the information requested by the complainant is not held by HDC and that therefore the exception in Regulation 12(4)(a) applied. As the public authority did not issue a refusal notice compliant with the requirements of Regulation 14(1) the public authority failed to comply with that Regulation.

Steps Required

24. The Commissioner requires no steps to be taken.

Right of Appeal

25. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 5th day of November 2009

Signed

**Jo Pedder
Senior Policy Manager**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Regulation 2

(1) In these Regulations –

“the Act” means the Freedom of Information Act 2000 (c);
“applicant”, in relation to a request for environmental information, means the person who made the request;
“appropriate records authority”, in relation to a transferred public record, has the same meaning as in section 15 (5) of the Act;
“the Commissioner” means the Information Commissioner;
“the Directive” means Council Directive 2003/4EC (d) on public access to environmental information and repealing Council Directive 90/313/EEC;
“environmental information” has the same meaning as in Article 2 (1) of the Directive, namely any information in written, visual, aural, electronic or any other material form 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;
- (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) and (b) as well as measures or activities designed to protect those elements;

Regulation 12

(4) For the purposes of paragraph (1) (a), a public authority may refuse to disclose information to the extent that –

- (a) it does not hold that information when the applicant's request is received;

Regulation 14

- (2)** The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.
- (3)** The refusal shall specify the reasons not to disclose the information requested, including –
 - (a) any exception relied on under regulations 12 (4), 12 (5) or 13.