

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 31 October 2011

**Public Authority:** London Borough of Merton  
**Address:** Merton Council  
Civic Centre  
London Road  
Morden SM4 5DX

#### **Decision (including any steps ordered)**

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1. The complainant requested information from London Borough of Merton (the Council) about its carriage and footway maintenance programmes.
2. The Information Commissioner's decision is that the Council did not deal with the request under the correct legislation. Access to environmental information should be considered under the Environmental Information Regulations 2004 (the 'EIR').
3. The Information Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - to provide the information requested in compliance with regulation 5(1); or
  - issue a valid refusal notice that complies with regulation 14 of the EIR.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Information Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. Further to a previous request for information about its pavement renewal and maintenance scheme, which the Information Commissioner address in his decision notice reference FER0296764, the complainant wrote to London Borough of Merton (the Council) on 19 July 2011 making another request for information.
6. Full details of the request in this case can be found in the annex to this decision notice. In summary, the request is for:
  - all documentation relating to the Council's review of the process used for prioritising carriageway and footway planned maintenance;
  - the difference between the planned outcomes in terms of both financial expenditures and highways and footway coverage in square metres, and the actual outcomes in terms of expenditures and coverage of the Councils 2009/10 Highways and Footways accelerated schemes programme and the actual expenditures and coverage realised on this programme;
  - how the decision that the planned work on Stanley Avenue was not to take place was communicated to the contractor and whether this decision resulted in the Council making penalty payments to the contractor or incurring any other contractual penalty;
  - a list of all Traffic and Highways programmes during the period from the beginning of the financial year 2001/2001 up to and including the financial year 2010/2011 and for each individual programme, the planned outcomes; and
  - whether any meetings were held to decide to drop work from each programme and/or add work to that programme or to change the materials used, who was present when these decisions were taken and if minutes were taken recording those decisions.
7. The Council responded on 16 August 2011. It stated that it had developed a new method for prioritising footway and carriageway maintenance works and provided the complainant with a summary of the criteria used in its prioritisation model. It provided a full response to the request for information about the planned work on Stanley Avenue. It also provided information about its footway and carriageway planned maintenance programmes for the period 2006/07 to 2010/11. It confirmed that there were no formal meetings, where minutes were taken, regarding any decisions to include or exclude schemes from any of the works programmes.

8. With respect to the planned maintenance programmes for the earlier time periods, the Council told the complainant that the information was not held in the requested format and would take in excess of 18 hours (ie outside of the costs limit) to re-produce. Similarly, it told him that it was unable to provide him with information on the planned and actual coverage of the schemes as to do so would exceed 18 hours: it explained that it would be necessary to produce it in such a way as to redact commercially sensitive information.
9. The complainant considered not only that the Council had incorrectly withheld information within the scope of his request, but also that the Council held more information within the scope of the request than had been acknowledged.
10. Following an internal review, the Council wrote to the complainant on 27 September 2011. It provided him with some more information in relation to the prioritisation scheme but upheld its decision that information about the planned and actual coverage of its carriageway schemes was exempt from disclosure.

### **Scope of the case**

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11. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He acknowledged that the Council had provided him with some of the requested information. However, he disagreed that the council had disclosed all the information it held within the scope of his request.
12. Although the complainant did not complain about which regime had been used to handle his request, due to the nature of the information sought and the information that has already been provided, the Information Commissioner has considered whether the remainder of the requested information is governed by the EIR.

### **Reasons for decision**

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13. The Council originally processed the complainant's request for information under FOIA and considered the information to be exempt, referring to costs and commercially sensitive information. However, the Information Commissioner has first considered whether the requested information in this case constitutes environmental information and that the correct access regime is, therefore, the EIR.
14. Environmental information is defined in regulation 2 of the EIR as:

*"any information in written, visual, aural, electronic or any other material form **on** ...":*

- the state of the elements of the environment, such as air, water, soil, land;
  - emissions and discharges, noise, energy, radiation, waste and other such substances; and
  - measures and activities such as policies, plans, and agreements affecting or likely to affect the state of the elements of the environment.
15. The Information Commissioner's approach is to interpret "*any information... on*" fairly widely. He does not consider it necessary for the requested information itself to have a direct effect on the environment in order for it to be environmental information. It will usually include information concerning, about, or relating to measures, activities and factors likely to affect the state of the elements of the environment.
16. In this case, the requested information is in relation to the Council's carriageway and footway network, including the materials used.
17. Having considered the nature and context of the request, the Information Commissioner has concluded that it constitutes environmental information as defined by regulation 2(1)(c) of the EIR. This is because the information in this case relates to information on a measure or activity and the measure or activity in question affects, or is likely to affect, the environment or is designed to protect it.
18. The Information Commissioner acknowledges that some information has been provided to the complainant in response to his request. With regards to the remaining information, the Information Commissioner requires the Council to reconsider the request, under the correct regime, and advise the complainant accordingly.

## **Other matters**

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19. The provision of advice and assistance is a wide-ranging duty, and has the potential to be relevant to most, if not all, stages of the request process. Advice and assistance can simply be seen as the means by which a public authority engages with an applicant in order to establish what it is that the applicant wants and, where possible, assists them in obtaining this. In effect, it provides for good customer service.

20. The Information Commissioner notes that the complainant was invited to contact the Council if he would like advice about how to refine his request:

*“so that it can be answered within the time limit”.*

21. The Information Commissioner has not been provided with any evidence to suggest that this course of action was followed.

## Right of appeal

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22. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

23. 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.
24. 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** .....

**Jon Manners**  
**Group Manager**

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

## Annex

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25. The complainant's request for information was as follows:

*"I understand from the Commissioner that the Council has implemented a review of the process used for prioritizing carriageway and footway planned maintenance. I request all documentation relating to this review under the provisions of the FOI Act.*

*Given the causal [sic] nature of the decision process in this matter, further questions about the adequacy of control information used by the Council obviously arise. The most immediate concerns the difference between the planned outcomes, in terms of both financial expenditures and highways and footway coverage in square metres, and the actual outcomes in terms of expenditures and coverage of the Council's 2009/10 Highways and Footways accelerated schemes programme and the actual expenditures and coverage realised on this programme. Please consider this a request made under the provisions of the FOI Act.*

*How was the decision that the planned work on Stanley Avenue was not to take place communicated to the contractor, and did this decision result in the Council making penalty payments to the contractor or incur any other contractual penalty? Please consider this a request made under the provisions of the FOI Act.*

*As the Commissioner's decision emphasises the ad hoc nature of the Traffic and Highways decision processes in this instance, I would also like to request under the provisions of the FOI Act that:*

*you identify and list all Traffic and Highways programmes during the period from the beginning of the financial year 2001/2001 up to and including the financial year 2010/2011;*

*and, for each individual programme, list the planned outcomes, in terms of both financial expenditures and coverage in square metres by material used, and the actual outcomes in terms of expenditures and coverage clearly indicating the proportion of actual expenditures against planned expenditures realised, and what form these differences, if any, took in terms of absolute expenditures and coverage;*

*and I further request that I be informed if any meetings were held to decide to drop work from each programme and/or add work to that programme or to change the materials used, and who was present when these decisions were taken and if minutes were taken recording these decisions."*