

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 25 January 2016

Public Authority: Bath and North East Somerset Council

Address: Lewis House
Manvers Street
Bath
BA1 1JG

Decision (including any steps ordered)

1. The complainant has requested recorded information which concerns a traffic calming scheme at Station Road, Clutton and a change in traffic priority at the junction of Station Road and Maynard Terrace, Clutton. The information which the complainant seeks is for the period April 2013 following the Council's decision in planning application 12/01882/OUT.
2. The Commissioner's decision is that Bath and North East Somerset Council has disclosed to the complainant all of the recorded information it holds in respect of her request and therefore it has complied with Regulation 5(1) of the EIR. The Commissioner has also decided that the Council has contravened Regulation 5(2) of the EIR by failing to provide all of the information it holds within the twenty day compliance period.

Request and response

3. On 21 March 2015, the complainant wrote to Bath and North East Somerset Council and requested the following recorded information:

"1. All correspondence, notes of telephone conversations, notes of other conversations, other file notes, notes of meetings both internal (officer to officer, member to member, member to officer, officer to member) and external (officer to PC and any others and vice versa, member to PC and any others and vice versa) for the period April 2013 to date relating to the proposed traffic calming scheme in Station Road, Clutton; and

2. All correspondence, notes of telephone conversations, notes of other conversations, other file notes, notes of meetings both internal (officer to officer, member to member, member to officer, officer to member) and external (officer to PC and any others and vice versa, member to PC and any others and vice versa) for the period April 2013 to date relating to the proposed change in traffic priority at the Junction of Station Road and Maynard Terrace in Clutton."

4. The Council acknowledge its receipt of the complainant's request on 23 March, giving it the reference 0492/15.
5. On 20 April the Council sent the complainant its response to her request. This was contained in document 492.pdf. The Council provided some explanation about the background to the changed junction priorities at Maynard Terrace and also a URL to what the Council considers is relevant information regarding the planning application, consultation and decision-making process. The URL given is:

<http://isharemaps.bathnes.gov.uk/projects/bathnes/developmentcontrol/default.aspx?requesttype=parsetemplate&template=DevelopmentControlApplication.tmplt&basepage=default.aspx&Filter=^REFVAL^='12/01882/OUT'&SearchLayer=DCApplications&SearchField=REFVAL&SearchValue=12/01882/OUT>
6. On 20 April, having reviewed the information supplied by the Council, the complainant wrote to the Council to challenge the Council's response. She pointed out that the Station Road traffic calming scheme is separate from the change in priorities at Maynard Terrace, and in a separate email also sent on 20 April, she asserted that the Council had not answered the second part of her request. The complainant made clear to the Council that she had asked for information from April 2013 to date, which is the period after the Appeal Decision was upheld.
7. On 29 April the complainant wrote to the Council to ask it to undertake an internal review of its handling of her request.
8. The Council acknowledged the complainant's request for an internal review on 30 April and on 11 June the Council provide its final response in a document dated 4 June.
9. The Council confirmed that it had contacted its Highways Team in respect of part 1 of the complainant's request. The Highways Team identified a large amount of information which the Council sent to the complainant in a number of pdf-format documents. The documents sent to the complainant were redacted of personal data in reliance on section

40(2) of the Freedom of Information Act and Regulation 12(3) of the EIR.

10. In respect of part 2 of the complainant's request, the Council advised her that the Highways Team had confirmed that no further information is held from April 2013 following the appeal decision.
11. On 12 June the complainant wrote to the Council again to assert her belief that the Council's response is not complete, particularly in respect of correspondence relating to a traffic survey undertaken in January 2015. The complainant further asserted that the Council must hold correspondence between the Council and the contracted party appointed to carry out the second traffic survey, including the letter or email from the contracted party containing 'the relevant data when provided'.
12. The complainant also explained her belief that the traffic survey should have been circulated to the Parish Council and/or otherwise circulated internally within the Council, including those responsible for funding.
13. The complainant's email discussed the speed counts which the Council had sent her. She pointed out that the speed count figures do not meet the set criteria for further physical traffic calming for other rural villages and therefore the complainant considered that the information the Council had sent her was initially deliberately withheld.
14. On 13 June the complainant wrote to the Council about its response to the second part of her request. She challenged the Council's position that it holds no further information: She pointed out that she was not asking for information relating to how the Council made its decision to change traffic priorities. The complainant made clear that she is seeking information which relates to what has happened to implement the decision since it was made.
15. The complainant advised the Council that design drawings have been prepared and presented to the Parish Council and that she understands discussions had taken place concerning the safety of the proposals. Furthermore, she understands that the Council has agreed to carry out a stage 2 safety audit and one of the documents - pdf 41 (36) attachment (a), refers to a change in traffic priorities at the junction of Station Road and Maynard Terrace. In consequence of this, the complainant stated her belief that there is further information which the Council should have provided.

Scope of the case

16. The complainant initially contacted the Commissioner on 20 May 2015 to complain about the way her request for information had been handled. The complainant was concerned that the Council had ignored the first part of her request and had failed to properly answer the second part.
17. The focus of the Commissioner's investigation was to determine whether the Council holds any information relevant to the complainant's request which it has not already disclosed to her.

Reasons for decision

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

18. Regulation 5(1) states that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions or exclusions that may apply.

The Commissioner's investigation

19. On 26 August 2015 the Commissioner wrote to the Council to request evidence about the searches it had made to locate the information which the complainant seeks. The Commissioner asked the Council to outline its position in respect of the specific information sought by the complainant and particularly the information which she considers should have been provided in response to her request.
20. The Council responded to the Commissioner's enquiry on 15 October, informing him that it has disclosed all the information it holds which falls within the request and that the disclosure of the requested information has been made in the course of the Council's correspondence with the complainant.
21. The Council confirmed that all relevant information is stored on its main IT system or as paper-based records and that this information is retained in accordance with the Council's Retention Policy – a copy of which was supplied to the Commissioner.
22. The Commissioner was informed that the Council had asked all appropriate members of staff to look for information falling within the scope of the complainant's request and it had carried out searches of its IT system using a variety of appropriate search terms.

23. The Council informed the Commissioner that it does not use personal or Council-owned laptops for information of the type requested by the complainant.
24. The Commissioner asked the Council to comment on the complainant's assertion that the traffic survey must have, or should have, been circulated to her local Parish Council or otherwise internally within the Council itself, including those responsible for the funding. The Council responded to this enquiry by stating that: "There is no link between funding approvals and the traffic survey. Therefore it [the Parish Council] would have no role to play in the funding approval".
25. The Commissioner asked the Council whether it holds any recorded information relating to the funding of the traffic survey or the traffic calming scheme. The Council responded to this enquiry by advising the Commissioner that TIP funding was approved by the Council's Cabinet and that information relating to cabinet meetings can be found on its website¹.
26. The Commissioner also asked the Council whether it holds any information similar to that which the complainant has requested and whether the Council considers that it has given the complainant appropriate advice and assistance under Regulation 9 of the EIR. The Council responded to this question by advising the Commissioner that it has entered into significant correspondence with the complainant and that through this correspondence it has always endeavoured to assist her, particularly in respect of this matter. The Council re-stated its position that it has disclosed all of the information it holds and confirmed that it had an open offer to the complainant for her to meet with its Highways Team to discuss any concern she may still have.
27. Having considered the Council's representations, and in the absence of any evidence to the contrary, the Commissioner has determined that, on the balance of probabilities, the Council does not hold any further recorded information falling within the scope of the complainant's request other than the information it has already provided. The

¹ <http://democracy.bathnes.gov.uk/ieDocHome.aspx?bcr=1>

Commissioner has therefore decided that the Council has complied with the provisions of section Regulation 5(1) of the EIR.

28. The Commissioner has noted that, following the complainant's request for an internal review, the Council sent her further recorded information which was considered to be relevant to her request. This action confirms that the Council provided the complainant with information falling within the scope of her request after the twenty working day compliance period had expired and consequently the Commissioner finds that the Council has contravened Regulation 5(2) of the EIR.

Right of appeal

29. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF