

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

Date: 29 June 2017

Public Authority: Cambridgeshire County Council
Address: Shire Hall
Castle Hill
Cambridge
CB3 0AP

Decision (including any steps ordered)

1. The complainant has requested information relating to roads in Cambridgeshire. The Commissioner's decision is that Cambridgeshire County Council has incorrectly applied the exception at regulation 12(5)(c) of the EIR where disclosure would adversely affect intellectual property rights.
2. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation.
 - Disclose the requested unclassified roads data to the complainant.
3. The public authority must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 6 May 2016, the complainant wrote to Cambridgeshire County Council ('the council') via the WhatDoTheyKnow website¹ and requested information in the following terms:

"Please provide a copy of the following documents in digital format:

- 1 The List Of Streets as required under Highways Act Sec 36(6).
2. The returns made to central government of the mileages of each class of road including unclassified roads.
3. The condition surveys that will enable me to identify the unsurfaced unclassified roads.
4. The unsurfaced Unclassified Roads and Byways Open to all Traffic in shape file format (GPX or KLZ (or KLM))

Also please advise how the above are cross referenced to each other."

5. The council responded on 3 June 2016. In relation to question 1 it provided a link to information on its website, and in relation to question 2 it provided a document. In relation to question 3 it said that it does not use a condition survey for its classification, and in relation to question 4 it said that the release of information is subject to a fee. It explained that its fees have been revised following recent guidance on the EIR and set out the ways in which customers can access highway asset record information. It provided the following link:
<http://www.cambridgeshire.gov.uk/info/20...>
6. The complainant expressed dissatisfaction with the response on 18 June 2016, and having not received a response to that communication, on 25 July 2016 he requested an internal review.
7. The council did not provide an internal review.

Scope of the case

8. The complainant contacted the Commissioner on 10 September 2016 to complain about the way part 4 of his request for information had been handled.
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https://www.whatdotheyknow.com/request/the_list_of_streets_for_the_coun_2#comment-71962

9. During the course of the investigation, the Commissioner informed the council that it appears feasible the Byways Open to all Traffic ('BOAT') data has previously been provided, free of charge, in response to a previous request from another individual² because, in that case, the council provided Public Rights of Way shape files following the Commissioner's decision notice³. She asked the council to confirm whether the information provided in the above case includes the BOAT data requested in this case.
10. Following this, on 17 May 2017, the council confirmed to the complainant that BOAT data is part of its Public Rights of Way dataset and attached a copy of such data in ERSI Shape File format alongside the Open Government Licence. Given that the BOAT data has been provided to the complainant, the Commissioner has not deemed it necessary to consider the council's initial response to this part of the request in this decision notice.
11. The council explained to the Commissioner that in its original response to the request, it included unclassified roads data in the dataset that could be purchased but, having considered the request further, it has concluded that its initial response was incorrect and that, for the unclassified roads element, it should have cited regulation 12(5)(c) as being an exception to disclosure.
12. Therefore, the Commissioner has considered whether the council has correctly applied the exception at regulation 12(5)(c) of the EIR where disclosure would adversely affect intellectual property rights to the request for unsurfaced unclassified roads.

Reasons for decision

Regulation 12(5)(c) – intellectual property rights

13. Regulation 12(5)(c) states:
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² https://www.whatdotheyknow.com/request/public_rights_of_way_gis_data

³ https://ico.org.uk/media/action-weve-taken/decision-notice/2015/1432993/fer_0557948.pdf

“For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—

(c) intellectual property rights”

14. As stated in the Commissioner’s guidance on this exception⁴, Intellectual property (IP) rights arise when owners are granted exclusive rights to certain intangible assets. To establish that there would be an adverse effect on IP rights a public authority must demonstrate that:

- the material is protected by IP rights;
- the IP rights holder would suffer harm. It is not sufficient to merely show that IP rights have been infringed;
- the identified harm is a consequence of the infringement or loss of control over the use of the information; and
- the potential harm or loss could not be prevented by enforcing the IP rights.

15. In determining whether this exception has been correctly applied the Commissioner considers that the onus is on the public authority to identify the specific IP right that would be adversely affected and its owner. The Commissioner considers that there are three main forms of IP rights: copyright, database rights, and copyright in databases. In demonstrating that information falls within the scope of the exception, public authorities must, therefore, identify the form of IP right which information is protected by and explain why.

16. In its submission to the Commissioner, the council said that it is unable to provide the unclassified roads data as this information is derived data from the Local Street Gazetteer, and disclosing it would infringe its licence with GeoPlace⁵. It said the following:

⁴ https://ico.org.uk/media/for-organisations/documents/1632/eir_intellectual_property_rights.pdf

⁵ Geoplace is a Limited Liability Partnership jointly owned by the Local Government Association (LGA) and OS (<https://www.geoplace.co.uk/about>). The Commissioner understands that Local Authorities provide Geoplace with data who then collate it to be used under licence.

"Disclosing the information would adversely affect the intellectual property rights of GeoPlace. GeoPlace is entitled to set licensing restrictions around its data and the Council is required to comply with the terms of the licence. It would not be in the public interest for the Council to breach its licensing terms and to infringe another organisation's intellectual property rights."

17. The council also provided the Commissioner with the following information:

"GeoPlace licence

The licence with GeoPlace is in respect of our Local Street Gazetteer licence with GeoPlace in accordance with the New Roads and Street Works Act 1991 (Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters) (4th Edition – October 2012)

4.2 The Street Gazetteer:

"Every local highway authority produces a Local Street Gazetteer (LSG) and a validated copy is held centrally by the NSG Concessionaire. Each of these local gazetteers shall contain the information, required by and defined in the Technical Specification for EToN, about the streets in that authority's area."

4.2.1 Creating and updating the NSG:

"Street gazetteers shall be created, maintained and published at Level 3 (as defined in BS 7666). It is the local highway authority's responsibility to create and maintain street gazetteer data for all streets within its geographical area, whether or not it is the street authority for any particular street

- *EToN (Electronic Transfer of Notices) 2013*
- *10.2 Compliance with BS7666:*

"Street data must be created and maintained in accordance with the revised BS7666 part 1 standard and the associated guidance documents produced by the NSG Custodian. LSGs must be created at level 3 and include all records required to describe the street in accordance with BS7666-1: 2006."

18. Having viewed its submissions, the Commissioner considers that the council has failed to define the specific IP right which is being protected in this case. Simply stating that disclosing the information would adversely affect the intellectual property rights of GeoPlace does not explain how the information is subject to an IP right or how the IP rights holder would suffer harm. The Commissioner has considered the information provided by the council at paragraph 17 but does not see

how this provides the information required to engage the exception as described in paragraph 14.

19. The Commissioner notes that in the recent decision notice for case reference FS50619465⁶, the council suggested that re-use of Public Rights of Way data under the Open Government Licence would infringe the IP rights of GeoPlace. During the investigation for that case, Geoplace informed the Commissioner that none of its IP rights would be infringed by granting re-use of the Public Rights of Way data requested in that case under the OGL.
20. The Commissioner draws attention to paragraph 13 of the aforementioned guidance on this exception:

“In general, the owner of the IP rights has exclusive control over how the asset is used. However there are exemptions, where some uses of protected material are permitted. Importantly, the different pieces of legislation that collectively provide protection to these three IP rights contain provisions which mean that any act carried out under statutory authority will **not** infringe those IP rights. This is explained in more detail in our guidance on Intellectual property rights and disclosures under the Freedom of Information Act⁷. Therefore a public authority will not infringe IP rights when it discloses information in response to an EIR request, because it is an act authorised by statute. The issue when applying regulation 12(5)(c) is the infringement of IP rights by any user who may receive the information.”

21. Having considered all of the above, the Commissioner has concluded that the council has failed to demonstrate that the information falls within the scope of the exception. It follows that the exception is not engaged and she has not, therefore, gone on to consider the public interest test.

⁶ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013892/fs50619465.pdf>

⁷ https://ico.org.uk/media/for-organisations/documents/1150/intellectual_property_rights_and_disclosures_under_the_foia.pdf

Other matters

22. The Commissioner is concerned about the delay in responding to her enquiries in this case.
23. She wrote to the council on 18 January 2017 to make enquiries regarding this case and requested a response by 15 February 2017. On 14 February 2017, the council informed the Commissioner that it aimed to provide a response by 24 February 2017.
24. Having not received a response to the enquiries, the Commissioner telephoned the council on 28 February 2017. The council emailed the Commissioner on 2 March 2017 stating that the response should be provided the following week.
25. Having still not received a response, the Commissioner emailed the council on 14 March 2017. The council replied on 16 March 2017 apologising for the delay.
26. During a telephone call on 24 March 2017, the council informed the Commissioner that a response was likely to be provided by 29 March 2017.
27. The council provided its response to the Commissioner on 31 March 2017.
28. It was then necessary for the Commissioner to make further enquiries on this case to clarify the council's position.
29. In future, the Commissioner may consider the use of her powers under section 51 of the FOIA to issue an Information Notice in order to reinforce the need to comply with the enquiries being made and obtain the information required in order to make a decision.
30. The delay in responding to the Commissioner's enquiries may indicate resource issues at the council that need to be addressed. The council should ensure that its responses to the Commissioner's enquiries are as thorough and timely as possible in future.

Right of appeal

31. 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

32. 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.
33. 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

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