

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 19 June 2017

Public Authority: Hampshire County Council
Address: The Castle
Winchester
Hampshire
SO23 8UJ

Decision (including any steps ordered)

1. The complainant has requested information from Hampshire County Council (the council) regarding the maintenance of drainage systems near to her property. The council provided information in response to the request, but the complainant maintained that more information must be held. The complainant was also concerned about the time it took for the council to respond to her requests.
2. The Commissioner's decision is that the council has complied with the requirements of regulation 5(1) and regulation 5(2). However, she has also decided that the council has failed to comply with regulation 11(4) by failing to respond to the internal review request within the prescribed time frame.
3. However, as the internal review request has been responded to, the Commissioner does not require the public authority to take any steps.

Request and response

4. On 20 March 2016 the complainant made the following request for information:

"In accordance with the Freedom of Information Act 2000, please arrange for me to be supplied with the following information relating to the Hampshire County Council Highway Authority Maintenance

Records. This being for the Maintenance of roadside gullies and drainage systems for the Poulner area of Ringwood, Hampshire, as follows:

- a) Maintenance of drainage systems records, at Southampton Road, Ringwood, adjacent to The Mount. Including gully's maintenance records.*
- b) Maintenance of drainage records for Somerville Road, Ringwood, adjacent to no. 26 Somerville Road, including maintenance records of gullies and drainage to the junction with Gorley Road.*
- c) Maintenance of drainage systems records, at Gorley Road, Ringwood, adjacent to the junction with Somerville Road and White Hart Fields, including gully's maintenance records.*
- d) Maintenance of drainage systems records, at Gorley Road, Ringwood, adjacent to and including the junctions with Butlers Lane and Northfield Road. Gully maintenance records included.*

It is requested that these records be certified as a true and correct record by the department responsible for such records.

It will also be most helpful if you could also supply a detailed plan of the drainage system that services my property and adjacent properties. The plan you previously provided does not include the direction of flow of drainage water sufficiently to determine the entire path of drainage from adjacent to these properties, to the final point of discharge."

5. The council acknowledged receipt of the request on 29 March 2016. The complainant contacted the council on 22 April 2016 chasing a response to the request. The council responded on 25 April 2016 advising that a response was sent by email to the address included in the request letter on 20 April 2016. The complainant confirmed by email on 27 April 2016 that she had not received an email dated 20 April 2016.
6. The complainant states that on 12 May 2016 she received by post the council's response dated 20 April 2016. The council provided a table of maintenance records and some additional records for the unblocking of weir kerbs at location in Gorley Road. It also provided a copy of the adoption plan which it stated provided detail of the highway drainage.
7. The complainant wrote to the council by post requesting an internal review in a letter dated 26 May 2016 (posted on 28 May 2016).

8. She chased a response to her internal review request by post in a further letter, dated 27 June 2016. This letter was addressed to the Head of Information Compliance, and a copy was sent to a specific Legal Officer. The certificates of posting show that the two copies of the letter were sent on 29 June 2016.
9. A second chaser letter dated 20 July 2016 was sent by recorded delivery on 23 July 2016. The council received this on 25 July 2016 and responded by post on the same day. It advised that a letter dated 6 July 2016 had been emailed to her on 7 July 2016 in response to her letter of 27 June 2016. It provided her with a copy the 6 July 2016 letter which advised that it had not received her letter dated 26 May 2016, and asked her to resend it or provide further details of her dissatisfaction with the EIR response.
10. The complainant forwarded her internal review request to the council in a letter dated 4 August 2016 by recorded delivery on 10 August 2016. The council wrote to the complainant on 15 August 2016 and acknowledged that her internal review request had been received on 11 August 2016.
11. The complainant contacted the council by recorded delivery letter on 13 September 2016 to chase a response to the internal review. The council provided the outcome of its review on 13 October 2016. It maintained that it had responded to the initial request within the required time limit of 20 working days. It also maintained that it had provided a full response, and that no further information was held.

Scope of the case

12. The complainant contacted the Commissioner on 30 November 2016 to complain about the way her request for information had been handled.
13. In particular she was concerned about the time it took the council to respond to her request and internal review, and that the council had not provided a full response to her request. She specified that she considered the delays in responding to her correspondence were deliberate.
14. The scope of this case therefore is to determine whether the council has complied with regulation 5(1) in providing all the information held within the scope of the request. It will also consider whether the council has breached any procedural regulations.

Reasons for decision

Regulation 5(1) – duty to provide environmental information

15. Regulation 5(1) of the EIR provides that a public authority that holds environmental information shall make it available on request.
16. In this case the council disclosed information to the complainant and confirmed that no further information is held. The complainant disputes this.
17. 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 Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
18. In other words, in order to determine such complaints the Commissioner 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).
19. The complainant considered that the council should hold more information in respect of her request. In particular she expected the following information to be held:
 - a. *“The information supplied only dealt with cleansing matters. It did not show any information reference ‘Maintenance’ other than that.*
 - b. *The information was brief throughout.*
 - c. *There was no information reference repairs that probably may have been undertaken at any of the locations specified, such as repairs/replacement of drainage pipes and culverts etc.*
 - d. *There were also no details of who had carried out this work.*
 - e. *How the cleansing was carried out and to what degree.*
 - f. *It became apparent that this information must have been compiled from other maintenance records, which have not been disclosed.*
 - g. *If such records did not exist, how did the brief information get compiled?”*

20. On this matter, the council explained that the maintenance referred to by the complainant is undertaken as part of the cleansing programme. It stated that during the cleaning of the gullies, they are inspected and any fault is recorded. It clarified that the information provided on 20 April 2016 was details of orders which were raised as a result of such inspections.
21. The council further advised that the gulley cleansing is carried out by a term maintenance contractor, Amey, who subcontracts specialist drainage work to Euro Environmental Group. The contract is for inspection and cleansing of all gullies on a regular basis. With regard to how the cleansing is carried out, the council explained that a vacuum tanker truck sucks of the contents of the pots under the grates. The truck then tips some water back in to prove the connection is working. The workmen then electronically record any defects found on a mobile electronic device which is automatically linked to the council's Geographic Information System (GIS). The council confirmed that in the time frame specified, a range of silt levels from 25% to 75% was recorded. At no point was a full pot recorded which concurs that there were no obvious problems with the line prior to the 2013 floods.
22. Turning to the question of how the information was compiled, the council explained that it was retrieved from GIS. This is because all the workmen's reports of the cleansing and inspection of gullies is automatically loaded into GIS. GIS is a graphical map tool containing many different layers stored by financial year. In order to locate the requested information, the council officers located the complainant's property using the address finder option, then turn on the associated inspection and cleansing layers to view the history of gully and catch pit cleansing in that location. The information was then transposed into the table that was disclosed to the complainant.
23. The council has stated that no other information in respect of the request is held. It has confirmed that there is no electronic data on the topic stored locally on laptops or personal computers as the information is created on the workmen's mobile electronic devices and is only stored on GIS, which is accessed through the council's corporate IT system.
24. It advised that there is no specific statutory requirement to retain information regarding when and where gullies have been inspected and cleansing. The information that the council does hold, which it has provided to the complainant, is retained for the purposes of making decisions on future policy making. It is also required in relation to defending claims made against the council.

25. The council has conceded that its response and internal review response to the complainant could have provided clearer explanations regarding the processes for cleansing and inspecting gullies. However, it remains of the view that its response of 20 April 2016 provided all the information that was held within the scope of the request.
26. Having considered the council's explanation of the records held with regard to this request, the Commissioner has decided that, on the balance of probabilities, the council has provided all the information it holds within the scope of the request. She has therefore concluded that the council has complied with regulation 5(1) of the EIR.

Regulation 5(2) time for compliance

27. Regulation 5(2) of the EIR requires public authorities to provide environmental information specified in a request no later than 20 working days after the date of receipt.
28. In this case, the council has provided the Commissioner with a copy of the complainant's request with the date stamp of when it was received into the council's post room. This confirms the date of receipt of the request as 29 March 2016.
29. The council states that it responded to the request on 20 April 2016 and has provided the Commissioner with a copy of the email including the header information which confirms that the email was sent to the correct address at 12:00 on 20 April 2016. The council confirmed that the email was not returned, and so it had no reason to believe that the response did not reach the complainant. However, the complainant maintains that she did not receive this email.
30. The complainant contacted the council on 22 April 2016 by email to advise that she had not received a response to her request. The council responded on 25 April 2016 confirming that a response had been sent and asking the complainant to confirm if she had received it. She confirmed on 27 April 2016 that having checked her junk mail folders, she was certain that she had not received an email dated 20 April 2016.
31. On 28 April 2016 the council advised that the FOI Team would resend the information. On 7 May 2016 the complainant wrote to the council by letter to state that she was yet to receive the council's response.
32. The complainant states that on 12 May 2016 she received by post the council's response dated 20 April 2016.
33. 20 working days from the date of receipt of the request in this case is 26 April 2016. Although a response was emailed to the complainant on 20

April 2016, the Commissioner accepts that the complainant did not receive this. The council has explained that the email sent at 12:00 on 20 April 2016 was not returned as undeliverable, The Commissioner finds that the council had no reason to know that the email had not been received until the complainant confirmed on 27 April 2016 that she had not received it in any of her email folders.

34. Regulation 5(2) specifies that the information must be provided within 20 working days. In this case there is conflicting evidence regarding whether and when information was supplied and received. The Commissioner therefore must follow the evidence that is available to her. She accepts that the request was first received by the council in its post room on 29 March 2016, as the council has provided a copy of the date stamped letter. The Commissioner also accepts that the council initially sent the response on 20 April 2016, as the email header has been provided. The Commissioner must therefore find that technically the council complied with regulation 5(2) in this case. However, in doing so, she is sympathetic to the complainant as there have clearly been some issues with both postal and email correspondence between the two parties.

Regulation 11 – Internal review

35. Regulation 11(1) provides that an applicant may make representations to a public authority, if he or she considers that the authority has failed to comply with the requirements of the EIR in relation to the request.
36. Regulation 11(3) requires that the public authority consider the complainant's representations, along with any supporting evidence provided by the complainant, and to decide whether it has complied with the requirements of the EIR.
37. Finally, regulation 11(4) requires that the authority notify the applicant of its decision in relation to the applicant's representations no later than 40 working days after receipt of those representations.
38. The complainant wrote to the council by post requesting an internal review on 26 May 2016.
39. She chased a response to her internal review request by post on 27 June 2016 and 20 July 2016. The letter of 20 July 2016 was sent by recorded delivery. The council responded by post on 25 July 2016 and advised that a letter dated 6 July 2016 had been emailed to her on 7 July 2016. It provided her with a copy the 6 July 2016 letter which advised that it had not received her letter dated 26 May 2016, and asked her to resend it or provide further details of her dissatisfaction with the EIR response.

40. The complainant forwarded her internal review request to the council by recorded delivery letter dated 4 August 2016. The council wrote to the complainant on 15 August 2016 and acknowledged that her internal review request had been received on 11 August 2016. This is confirmed by the recorded delivery signed for receipt. The council provided the outcome of its review on 13 October 2016. Taking the start date of the internal review as 11 August 2016, this response is outside the prescribed 40 working day time frame. The Commissioner therefore finds that the council failed to comply with regulation 11(4).

Right of appeal

41. 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

42. 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.
43. 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
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