

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 18 January 2018

Public Authority: Surrey County Council
Address: County Hall
Penryhn road
Kingston upon Thames
Surrey KT1 2DN

Decision (including any steps ordered)

1. The complainant has requested information about a local right of way. Surrey County Council ('the Council') denies holding the requested information.
2. The Commissioner's decision is that the Council is entitled to refuse to provide the requested information under regulation 12(4)(a) of the EIR because, on the balance of probabilities, it does not hold the information.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 13 June 2017, the complainant wrote to the Council and requested information in the following terms:

"Can you confirm please that Highview Road is an extension of Mac Donald Road and historically has been a right of way for hundreds of

years for the public to gain access to Curley Hill Bagshot Heath and beyond.

I do not have to specify particular files or documents and that is your departments responsibility to provide this information I require."

5. The Council responded on 6 July 2017 and denied holding the requested information.
6. The Council provided an internal review on 2 August 2017. It said that it understood the complainant's view to be that High View Road is a continuation of MacDonald Road up to the point where it has a junction with Curley Hill Road and turns more northerly. The Council confirmed that it does not hold recorded information supporting this view. It posited that, historically, it may have been signed that way (although its current records do not record this), but that this is of no relevance to its status or use.
7. The Council said that road naming and signing is the responsibility of the Borough Council and not the County Council. It noted that MacDonald Road is a full vehicular highway (D-Class) although a bridleway also runs over it. Curley Hill Road is a bridleway only and High View Road is a public restricted byway. The Council observed that the complainant has been provided with the definitive mapping showing this many times. It said he had also had this situation confirmed to him (in terms of highway extent) by Highway Information on previous occasions.
8. The Council confirmed that its current records state that Curley Hill Road is listed as Public Bridleway 182 (Windlesham) and that High View Road is Restricted Byway 188 (Windlesham). Curley Hill Road has been on the Surrey Definitive Map since 1952 and High View Road since 2011. Both roads were constructed sometime between 1877 and 1893 as indicated by the Ordnance Survey (so '*hundreds of years*' would be incorrect. The Council informed the complainant that neither road was constructed for public use or at public expense. MacDonald Road was also constructed at this time.
9. The Council maintained its position that it does not hold information falling within the scope of the complainant's request.

Scope of the case

10. The complainant contacted the Commissioner on 3 August 2017 to complain about the way his request for information had been handled.

11. The Commissioner's investigation has focussed on whether or not, on the balance of probabilities, the Council holds the information the complainant has requested and has complied with regulation 12(4)(a) of the EIR.

Reasons for decision

Regulation 12(4)(a) – information not held

12. Regulation 12(4)(a) says that a public authority may refuse to disclose information that has been requested to the extent that it does not hold that information at the time it receives the applicant's request.
13. In its submission to the Commissioner the Council has provided a background to the request. It considers that the matter behind the request is the Council's position on the status High View Road. The complainant has been questioning the status of the road through all channels available to him for over 10 years, including at a public inquiry in 2011. The complainant was in attendance at this inquiry and was able to present any evidence to the Inspector and to examine all the evidence on the matter that the Council held.
14. The Council says the complainant has been provided with mapping information showing the land prior to and after the construction of High View Road during the late 1800s. It says he is also aware of the Order confirmed by the Secretary of State confirming that the status of the way is 'Restricted Byway', following the extinguishment of vehicular rights by section 67(1) of the Natural Environment and Rural Communities Act 2006.
15. It says that the complainant has made a series of requests regarding the status of rights of way in the local area and that, as a result, he already holds all the information that is available.
16. The Council has confirmed that it does not hold evidence that High View Road is an extension of MacDonald Road and/or that it has existed as a right of way for '*hundreds of years*'. It has referred to its internal review decision and provided the Commissioner with mapping information that indicates the highway status and rights of way in the area. The Council has noted that High View Road does not appear on the First Edition Ordnance Survey Map; the earliest of which dates from the mid nineteenth century.
17. In its submission, the Council says that High View Road does not have full highway status if, by 'right of way' the complainant means including by mechanically propelled vehicles. It is however a public highway of

lesser status hence has been confirmed as a Restricted Byway by the Secretary of State. It is the Secretary of State's decision on which the Council says its understanding of the route that is the complainant's concern is based.

18. The Council has told the Commissioner that the question about High View Road being an extension of MacDonald Road relates, it thinks, to the issue raised at the inquiry in 2011 about a changed junction at Curley Hill Road. A copy of the inquiry report had been sent to the complainant and the Council also provided a copy to the Commissioner.
19. It says that the issue of High View Road (which the Commissioner understands to concern its status as a Restricted Byway) had been the subject of an application made under section 53 and Schedule 14 of the Wildlife and Countryside Act 1981. As such this matter was intensely researched both by the Council and by the complainant. Following the Council's decision to make a map modification in order to add a restricted byway to the Surrey Definitive Map and Statement, the complainant objected to the order made and the above public inquiry ensued in 2011. This was held under an independent Inspector appointed by the Secretary of State. By this time a substantial number of documents had been brought together for the Inspector's opinion. All of these were provided to the complainant at the time. The entirety of this file (now held electronically) was examined. In addition, paperwork relating to several phases of complaints to the Council and the Local Government Ombudsman were considered.
20. Relevant information would include Ordnance Survey and other historic mapping. The Council has confirmed that none of this material shows that the route in question has been in existence for '*hundreds of years*'.
21. As a Highway Authority, the Council says it holds records of those ways considered to be public highways. It also records where private roads are located. The Council has confirmed that High View Road has never been recorded as part of MacDonald Road and therefore it does not hold any information relevant to this.
22. According to the Council, the complainant's request has two parts. It says that information covered by the first part, if held, would have been shown on historical or Ordnance Survey mapping (either in paper or electronic form). As it is not, the second part of the request cannot be shown to be true without further evidence, which the Council says it does not possess, has not seen and is not aware of. The Council confirmed that it does not hold any information to support the latter position, nor had the complainant presented any.

23. Finally, the Council has confirmed that, irrespective of the long history and background to the request, it had nonetheless also searched for information on its 'Countryside Access' shared drive for matters relating to High View Road, and any files on the 'Rights of Way' work 'F: drive'. No relevant information was found.
24. The Complainant has also sent material to the Commissioner, which he has described as evidence which supports the position he and others gave at the 2011 Inquiry; namely, the Commissioner understands, that High View Road's status as a Restricted Byway is incorrect. This material comprises documents relating to the local area in question: Land Registry Certificates, photographs, letters and so on. The complainant provided further material on 16 January 2018 which he considered would aid the Commissioner's understanding of the wider issues.
25. In the Commissioner's view, the material may, or may not, support the complainant's own view regarding the status of High View Road. It does not however support a position that the Council holds information on whether High View Road is an extension of MacDonald Road. In the absence of which, and having considered the background to the request and the Council's submission, the Commissioner is prepared to accept on the balance of probabilities that the Council does not hold the information that the complainant has requested.

Right of appeal

26. 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

27. 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.
28. 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

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