

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 3 December 2021

Public Authority: Staffordshire County Council
Address: 1 Staffordshire Place
Stafford
ST16 2DH

Decision (including any steps ordered)

1. The complainant has requested details of the design and maintenance of traffic calming measures on a specific road. Staffordshire County Council ("the Council") provided some of the information, advised some information within the scope of the request was not held and refused to provide some information by virtue of regulation 12(4)(b) of the EIR.
2. The Commissioner considers that based on the balance of probabilities, the Council does not hold further information other than that which has been provided. Due to the Council taking longer than 20 working days to confirm this, it has breached regulation 5(2) and Regulation 11 of the EIR.
3. The Commissioner does not require the public authority to take any further steps.

Request and response

4. After corresponding with the Council relating to another matter concerning a specific incident, the complainant wrote to the Council on 22 October 2018 and requested information in the following terms:

"In accordance with this Protocol as well as the FOI provisions I request the following information, bearing in mind that I believe that the Highways Authority as the Client, and/or its servants and Agents have liability for this incident due to negligence in one or more of the following aspects; concept, design, construction and maintenance.

Please provide me with a copy of the following documents;-

- 1. Design brief including justification for the scheme.*
- 2. Details of design*
 - a. Design effective date*
 - b. List of standards used*
 - c. Layout and detail drawings*
- 3. Design Risk assessments, including mitigation and residual risks.*
- 4. Amendments to design included amended and new Standards adopted.*
- 5. Road Safety Audits – design and on opening of scheme.*
- 6. Construction – Completion Certificate including date.*
- 7. Maintenance*
 - a. Routine Maintenance requirements including schedule.*
 - b. Risk assessments.*
 - c. Records of Routine maintained, including work done and dates.*
 - d. Records of accidents/ incidents associated with the Traffic Calming measures implemented since completion.*
 - e. Record of claims associated with 7(d) above.*

I reserve the right to request additional relevant information in support of my claim (competency details in compliance with CDM regulations etc for example)”

5. The Council responded on 31 January 2020. It provided some of the requested information and advised that it would provide more information when it could. The complainant was dissatisfied with this response and wrote to the Council to express this on 3 February 2020.
6. After the Commissioner’s involvement, the Council provided an internal review on 2 July 2021 in which it revised its position to provide all the information it held in response to part 7 of the request, advised that it did not hold some of the information and refused to provide some information by virtue of regulation 12(4)(b) – manifestly unreasonable due to it exceeding the cost limit.

Scope of the case

7. The complainant contacted the Commissioner on 18 August 2020 by letter to complain about the way his request for information had been handled.
8. Due to the Information Commissioner's Office being physically closed and there being complications with lost post, the Commissioner did not contact the Council until 29 June 2021 to request that it review its handling of the request and provide the complainant with a proper response.
9. After the Council had revised its response and applied regulation 12(4)(b) on the grounds of cost and burden to the request, the Commissioner accepted the complaint for consideration and asked the Council to explain why the request would impose a manifestly unreasonable burden. The Council informed the Commissioner that the works on Oakdene Road (which is the location this request relates to) were not carried out in isolation but could have been carried out as part of a number of 'Safer Routes' schemes in the area. The highways service at the Council gave an estimate based on looking at one of the folders of digital records still retained for one of the schemes which they thought might contain relevant information. Information could not be located using searches of folder and document titles. The estimate was provided to the complainant in the Council's internal review response and had advised that the searches would far exceed the 18 hour time limit.
10. However, during the Commissioner's investigation, the Council had advised that it had located the folder for the specific site that the request is about. It confirmed that this digital folder system contains very limited and incomplete information such as meeting minutes, some correspondence, and some drawings but none relating to Oakdene Road.
11. Having reviewed the Council's arguments about burden, whilst the Commissioner accepts that the Council has spent a considerable amount of time attempting to locate relevant information, it was not clear from its submissions why it would need to incur any additional burden in order to comply with the request. For reasons that will be elaborated on below, the Commissioner considers that the Council has performed sufficient searches to establish, on the balance of probabilities, that it has already identified all the information it holds.
12. The Commissioner considers the scope of his investigation to be whether the Council holds any further information within the scope of the request.

Reasons for decision

Regulation 2 - Is the requested information environmental?

13. Regulation 2(1) of the EIR defines environmental information as being information on:

- (a) *the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*
- (b) *factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*
- (c) *measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;*
- (d) *reports on the implementation of environmental legislation;*
- (e) *cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
- (f) *the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);*

14. As the requested information relates to the design, standards and safety of traffic calming measures, the Commissioner believes that it is likely to be information on plans and activities affecting or likely to affect the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 5(1)/12(4)(a) - Duty to make environmental available on request

15. Regulation 5(1) states that: "*a public authority that holds environmental information shall make it available on request.*"
16. Regulation 12 of the EIR states that:
 - (1) *Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if—*
 - (a) *an exception to disclosure applies under paragraphs (4) or (5); and*
 - (b) *in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.*
 - (2) *A public authority shall apply a presumption in favour of disclosure.*
 - (4) *For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—*
 - (a) *it does not hold that information when an applicant's request is received;*
17. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held, and any other reasons offered by the public authority to explain why the information is not held. Finally, He will consider any reason why it is inherently likely or unlikely that information is not held.
18. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
19. A public authority is only required to make "reasonable searches" to decide whether it does or does not hold information. That means it must search in any location where the information might reasonably be expected to be. A public authority is not required to carry out exhaustive searches of all the information it holds – just in case a particular document has been mis-filed or mis-labelled.

20. When detailing the searches performed, the Council provided some context to its efforts to search for any information held within the scope of the complainant's request. It advised of office and archive moves which has made searching for information more difficult, leading it to rely on regulation 12(4)(b) initially. However, these have been completed as the Council outlines:

"The Head of Integrated Transport Projects has advised that in 2001 highway records were primarily retained as hard copy even if created digitally.

"In 2011 the then Development Services department re-located, as did the majority of Stafford-based offices, to new Council headquarters buildings with limited storage for paper records. Council services were required to undertake a records rationalisation programme following advice from the Council's Information Governance Unit. Services were required to identify hard copy records that were still needed to support business needs or for legal purposes and either transfer these records to the Council's own off-site storage facility, scan records to digital format, or destroy records assessed as no longer required.

"The Head of Integrated Transport Projects has communicated with officers involved in the schemes that still work either for the council or the council's contracted partner. Of the two persons identified, neither were able to provide information about what happened to the hard copy documents for these schemes.

"The Council's off-site records centre staff have conducted searches of their storage and loans database and associated records and have confirmed that from the names of schemes and any references that the Head of Integrated Transport Projects has been able to provide no records relevant to the schemes in the area were transferred to off-site storage"

21. As previously mentioned, the Council had advised in its submissions to the Commissioner that it did not hold the outstanding information. It explained that parts 1-6 of the request relate to the design, construction and completion of the traffic calming measures.
22. The works the request relates to were completed twenty years ago and the Council has stated that any information it did hold would have been deleted or destroyed in accordance with its retention policy which states that:

"The Council's Records Retention and Disposal Schedule states that 'Highway Delivery Schemes' should be retained for 15 years after

scheme completion. This is based on a 15 year long stop in which an action can be brought in the case of latent damage under the Limitation Act 1980 s.14b. Neither hard or digital copies of the scheme information should now still be held under the Council's retention policy, due to the length of time since scheme completion (approximately 20 years)."

23. As the works were completed in 2001 and the request was made in 2018, any deletion or destruction of information within the scope of parts 1-6 of the request would be in line with the Council's retention policy.
24. The Council advised that thorough searches had been conducted for both paper and digital records, and that whilst it accepted that further information might previously have existed, that information should no longer be held. Every effort has been made to locate any relevant information amongst that is still retained.
25. Whilst the Commissioner can rarely rule out the possibility that an old file has been put back in the wrong place, the Council is not required to carry out an exhaustive search of its records. The Council appears to have searched all the locations where the information could reasonably be expected to be and requiring it to carry out further searches seems disproportionate given the scale of searches that would be required and the very low probability (given the retention policy) that such searches will locate additional information.
26. Therefore, the Commissioner is satisfied that, on the balance of probabilities, the Council has identified all the information it holds within the scope of the request.

Regulation 5(2) - Time for compliance

27. Regulation 5(2) states that such information shall be made available "*as soon as possible and no later than 20 working days after the date of receipt of the request.*"
28. The Commissioner considers that the request in question constituted a valid request for information under the EIR.
29. In this case, the complainant made the request on 22 October 2018 and the request was only responded to on 31 January 2020. Therefore, the Council had taken over 15 months to provide a response that wasn't even complete, despite this being escalated to the leader of the Council and its Chief Executive Officer. This is entirely unacceptable to the Commissioner and although the Council has acknowledged and apologised for this, it should be stated in this notice. Even if the Council genuinely believed that the request would impose a manifestly

unreasonable burden, it should still have been able to have informed the complainant of this fact considerably sooner than it did.

30. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the Council has breached Regulation 5(2) of the EIR.

Regulation 11 - Reconsideration/Internal Review

31. Regulation 11 of the EIR states that:

- (1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.*
- (2) Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.*
- (3) The public authority shall on receipt of the representations and free of charge—*
 - (a) consider them and any supporting evidence produced by the applicant; and*
 - (b) decide if it has complied with the requirement.*
- (4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.*
- (5) Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of—*
 - (a) the failure to comply;*
 - (b) the action the authority has decided to take to comply with the requirement; and*
 - (c) the period within which that action is to be taken.*

32. Having taken an excessively long time to issue its first response, the Council compounded its error by failing to complete its internal review within the statutory timeframe - exceeding it by quite some margin. Given the inordinate amount of time taken to complete its original

response, the Commissioner considers that the Council could and should have been properly prepared to undertake a review and complete it within the statutory timeframe. It is extremely disappointing that the Council exceeded the statutory deadline by a considerable margin on both occasions.

33. From the evidence presented to the Commissioner in this case it is clear that, in failing to carry out an internal review within 40 working days the Council has breached Regulation 11 of the EIR.

Right of appeal

34. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

35. 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.
36. 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

Catherine Fletcher
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF