

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 21 June 2022

**Public Authority:** Cheshire East Council  
**Address:** Municipal Buildings  
Earle Street  
Crewe  
CW1 2BJ

#### **Decision (including any steps ordered)**

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1. The complainant has requested road maintenance information with regards to a specific road. Cheshire East Council (the council) provided some information and refused the remaining information under regulation 6(1)(b) of the EIR.
2. The Commissioner's decision is that the council has provided the information to part 1 of the request, but found that regulation 6(1)(b) of the EIR is not engaged to part 2 of the request.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
  - Provide a fresh response to Part 2 of the complainant's request without relying on regulation 6(1)(b) of the EIR to refuse it.
4. The council must take these steps 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 FOIA and may be dealt with as a contempt of court.

## Request and response

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5. On 14 September 2021 the complainant made the following information request to the council with regards to the B5087 (Macclesfield Road):

“1. A copy of your current road maintenance policy relating to that road. Please send me the full policy, but this should include details of the intended frequency of road safety inspections, how these inspections should be conducted and the maximum time between identification of a defect and repairs being carried out.

2. A copy of the road repair history for that road over the past year. Again, please send me the full road repair history, but this should include:

- dates of all safety inspections between 11th January 2021 and 12th March 2021.

- details of how safety inspections were undertaken (walked or driven, speed of inspection vehicle etc)

- details of all carriageway defects identified, with description, date and time

- details of how the authority handled these defects, what repairs were undertaken and the time between the identification of each defect and a repair being carried out.”

6. The council responded on 16 September 2021 refusing the request under regulation 6(1)(b) of the EIR as it determined that the information was easily accessible to the complainant through the Cheshire East Highways Insurance claims process.
7. On the 18 September 2021, the complainant requested an internal review with regards to the refusal of the request.
8. The council provided its internal review on the 1 October 2021. For part 1 of the request the council provided a link<sup>1</sup> on its website to the Code of Practice for Highway Safety Inspections.
9. For part 2 of the request, the council upheld its refusal.

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<sup>1</sup> <https://www.cheshireeast.gov.uk/pdf/highways/highway-asset-management/cec-highway-safety-inspection-cop-2021.pdf>

## Scope of the case

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10. The complainant contacted the Commissioner on the 18 September 2021 to complain about the refusal and link provided.
11. The scope of the case is for the Commissioner to determine whether the council has provided the information requested to part 1 of the request and whether it is able to rely on regulation 6(1)(b) of the EIR to refuse part 2 of the request.

## Reasons for decision

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### Regulation 5(1) of the EIR – Information held

12. Regulation 5(1) of the EIR states:

“Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.”

13. In this case, for part 1 of the request, the council provided the complainant with a link to its Code of Practice for Highway Safety Inspections (the Code).
14. The complainant has stated that the information he requested has not been provided.
15. He has stated that the information should include details of:
  - the intended frequency of road safety inspections,
  - how these inspections should be conducted and
  - the maximum time between identification of a defect and repairs being carried out.
16. The Commissioner has viewed the Code. The Commissioner’s understanding is that this is a generic Code of Practice relating to all types of roads, not just a specific road.
17. However, the Commissioner notes that at page 9 the Code details Safety Inspection Frequency for Carriageways and Footpaths. At page 10, it details how inspections will be carried out. At page 11 it details the response times for treating defects.

18. The Commissioner on view of this Code is satisfied that the council has provided the information requested in part 1 of the request and his decision is that the council has complied with Regulation 5(1) of the EIR in relation to this part of the request.

**Regulation (6)(1)(b) of the EIR – Form and format of information**

19. Regulation 6(1)(b) of the EIR states:

“(1) Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless-

(b) the information is already publicly available and easily accessible to the applicant in another form or format.

20. In this case, with regards to part 2 of the request, the council has told the complainant that:

“Cheshire East Highways have advised that you have an ongoing insurance claim and as such this information will be provided to you as part of that process. GBI - our claims handlers are still finalising their enquiries. A copy of the Pre-Street History Report will be provided as part of the claims process by GBI as per their normal custom and practice. This is why Regulation 6(1)(b) was applied to the information being requested - as it will be made available to you through the Cheshire East Highways related Insurance Claims process.”

21. Regulation 6(1)(b) clearly requires the information to already be publicly available.
22. Based on what the council has stated, that the information will be provided as part of a process, the Commissioner concludes that the information is not already publicly available.
23. The Commissioner’s decision is that regulation 6(1)(b) of the EIR is not engaged to part 2 of the request.
24. The Commissioner requires the council to comply with the steps at paragraph 3 of this decision notice.

## Right of appeal

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25. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

26. 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.
27. 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 .....**

**Ben Tomes**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**