

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

### **Decision notice**

**Date:** 16 November 2022

**Public Authority:** Cumbria County Council  
**Address:** Cumbria House  
117 Botchergate  
Carlisle  
CA1 1RD

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

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1. The complainant requested information with regards to a specific stretch of road. Cumbria County Council (the council) provided some information, but the Commissioner has found that the council has not fully searched all of its records and so on the balance of probabilities finds that further information may be held. The Commissioner's decision is that regulation 12(4)(a) of the EIR is not engaged.
2. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
  - Conduct a further search of its records and issue a fresh response to the complainant which confirms or denies whether further information is held. If held, that information should either be disclosed to the complainant or an adequate refusal notice should be provided.
3. 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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4. On 1 February 2022, the complainant made the following information request to the council:

"I would like information regarding a section of road. I am unable to attach anything to this page so I will describe it. It is a section of unnamed road which starts at [area redacted] (at the junction of what is called Lane redacted]) and the minor road goes in a south eastern direction. The section in question finishes at the next junction with [road redacted]. It is approximately 1 mile in length. I am happy to forward a screenshot/grid references etc if requested.

I would like to know the details of carriageway defects that were reported to the Council by members of the public during 2 year period including and prior to 23 June 2021. I would like to know:

1. the details of each defect reported
  2. the details of the councils assessment of these defects
  3. evidence and date of rectifying these defects"
5. The council responded on 28 February 2022 providing a document titled "Defects recorded on Section C5060 102 between 23/06/2019 and 23/06/2021" which contained several maps with details of the reported defects.
6. The complainant requested an internal review on 2 March 2022 stating that they had not been provided with a response to point 3 of the request.
7. The council provided its internal review on 17 March 2022. It stated that the previous response provided all of the requested information. However, it also simplified and broke this information down into a spreadsheet.

## Scope of the case

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8. The complainant contacted the Commissioner on 17 March 2022 to complain that the council had not provided him with all the information he had requested.
9. The scope of the case is for the Commissioner to determine whether the council has identified all of the information it holds that is within the scope of the complainant's information request.

## Reasons for decision

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### Regulation 12(4)(a) of the EIR – Information held/ not held

10. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
11. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide the requested information if it does not hold it at the time of the request being received.
12. Where there is some dispute between the amount of information identified 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 First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
13. The complainant has told the Commissioner that he does not consider that the council has provided the information falling within the scope of part 3 of his request – “evidence and date of rectifying these defects”. The complainant cited what he believed to be evidence of this failure.
14. The Commissioner has asked the council about this and what checks it has carried out to ensure whether it has provided all the information relevant to the complainant’s request.
15. Part of the council’s response to the Commissioner’s enquiries stated:  
  
*“The Networks Team have been contacted to provide any additional information they hold in relation to this request. Once this is received it will be reviewed and passed on to the applicant as appropriate.”*
16. The Commissioner asked the council to respond to him further on this, however, the Commissioner has not received any further update within the timeframe specified.
17. On this basis, it appears that the council may still hold further information and so on the balance of probabilities, the Commissioner finds that the council has not provided all the information it holds falling within the scope of the request and therefore regulation 12(4)(a) of the EIR is not engaged.
18. The Commissioner requires the council to conduct a further search of its records and issue a fresh response to the complainant which confirms or denies whether the further information is held. If held, that information

should either be disclosed to the complainant or an adequate refusal notice should be provided.

## Right of appeal

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19. 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)

20. 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.
21. 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**