

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 18 October 2022

Public Authority: Derbyshire County Council
Address: County Hall
Matlock
Derbyshire
DE4 3AG

Decision (including any steps ordered)

1. The complainant requested information with regards to a mapping portal. Derbyshire County Council (the council) responded that the information requested was not held.
2. The Commissioner's decision is that the request falls under the EIR and that the information is not held. Therefore the exception at regulation 12(4)(a) applies.
3. The Commissioner does not require any steps.

Request and response

4. On 1 March 2021 the complainant made an information request to the council. Part 3) of that request was:

"At what time did the Council commission their traffic map from Buchanan Computing (the month/year will suffice)."

5. The council responded on 26 March 2021 to advise that the traffic map was commissioned in 2008, but it did not have a record of which month.

6. On 1 November 2021 the complainant made the following information request to the council:

"I refer to your previous information on my request for information under the FOIA 2000. My request was for the date of commissioning your mapping portal which you quoted as being in 2008. I now request a copy of that document in support of that information previously provided under the above act."

7. The council responded on 19 November 2021 stating that the information was not held as it was destroyed in accordance with its retention policy.
8. The complainant requested an internal review on 21 November 2021. The council provided its internal review on 10 January 2022 upholding its original response.

Scope of the case

9. The complainant contacted the Commissioner stating that the council must hold an invoice or similar document recording the date that the mapping portal was commissioned.
10. The scope of the case is for the Commissioner to firstly determine whether the requested information, if held, is environmental information and then go on to determine whether any information falling within the scope of the request is held or not.

Reasons for decision

Is the request for environmental information?

11. The Commissioner has first considered whether the requested information would constitute environmental information as defined by regulation 2(1) of the EIR.
12. The Commissioner is satisfied that a traffic map would fall under regulation 2(1)(c) of the EIR "measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the element and factors referred to in (a) and (b)..." and therefore the request falls under the EIR.

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

13. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
14. 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.
15. 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).
16. The complainant has told the Commissioner that the mapping portal would have been commissioned around 2016, rather than 2008.
17. The council has stated that it has spoken with the relevant department and it has advised and confirmed that the map, to which the request relates, was originally commissioned for a three year period from 2008.
18. However documents are destroyed in accordance with the council's retention schedule and the procurement of the map would fall within the remit of Procurement 2.0: Awarding of Contract (ordinary contract) on the retention schedule.

19. The council has advised that in 2008 the retention schedule provided for a destruction date of six years from expiration of the terms of contract. Therefore the documentation that was held relating to the contract was disposed of in accordance with the retention period in operation at that time.
20. The Commissioner has considered the above, and notes the council has checked and confirmed with the relevant department on the dates and retention period.
21. The Commissioner notes that the information would therefore, according to the retention schedule, have been deleted approximately four years before the request was made.
22. Based on the council's explanations above and confirmation from the relevant department on the retention policies, the Commissioner is satisfied that, on the balance of probabilities, the requested information is not held and therefore the exception at 12(4)(a) of the EIR applies.

Right of appeal

23. 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

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

24. 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.
25. 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
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Cheshire
SK9 5AF