

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 14 February 2022

Public Authority: City of York Council
Address: West Offices
Station Rise
York
YO1 6GA

Decision (including any steps ordered)

1. The complainant requested from City of York Council (“the Council”) various information relating to flooding, buses, and road signage. The Council stated that no relevant information was held for part 3 of the request, but seemingly failed to address parts 1 and 2.
2. The Commissioner’s decision is that the Council was correct to state that no information was held for part 3 of the request, but has failed to respond to parts 1 and 2.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a response to parts 1 and 2 of the request.
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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 27 December 2020 - with a missed sentence added on 31 December 2020 - the complainant wrote to the Council and requested information in the following terms (numbering in bold added by the Commissioner to reflect the parts of the request):

I wish to make the following request for information under the Freedom of Information Act:

[1] *In the Highways Emergency Officer Handbook Signs Redacted Aug20, in the River Ouse Flood Alerts & Warnings section, it states in the 'Known Areas of Impact' column that River Ouse levels 3.9 metres above normal under EA Warning Number 725 Naburn access roads & Naburn Lane no longer passable by buses.*

Also, later in that section it states that at 3.35 metres above normal, a known area of impact is that Naburn Lane flooding commences, passable by buses with care to 3.8m. There are many sizes of busses so I would like to know the smallest dimension of bus that this known area of impact applies to & how & why these known areas of impact are included in the handbook. Are there instances of passenger service vehicles becoming stranded at 3.35 & 3.9 metres above normal River Ouse levels?

I raised a formal complaint – City of York Council ref IGF/23279 - & as part of the council's response & in emails sent to me regarding flood signage the following statements were made:

[Redacted correspondence between the Council and complainant]

[2] *I would like to know under what law (Act of Parliament) City of York Council believes that a driver would legally put themselves at risk of litigation by ignoring a flood warning triangle. Indeed, legally exactly what action does City of York Council believe the deployment of a flood warning triangle compels a driver to take when confronted by such signage & again under what law (Act of Parliament).*

[3] *Under a formal complaint - City of York Council ref IGF/23279 – stage three, City of York Council admitted that a Road Closed sign was deployed at the request of the local flood group and was deployed as a specific response to the February flood event. I should like to know how that request was made & to see evidence of any written request, redacted to comply with GDPR if necessary. I should also like to know what the specific request was in the circumstance & why City of York Council acquiesced to that request by deploying a Road Closed Sign but why, on the same stretch of flood water on the same stretch of road,*

City of York Council did not deploy a Road Closed Sign at the other end of the hazard.

6. The Council responded on 15 March 2021. In respect of part 3 it stated that no information was held.
7. On 17 March 2021, the complainant asked the Council to provide an internal review, on the basis that parts 1 and 2 had not been answered, and that they considered the response to part 3 to be incorrect.
8. Following an internal review, the Council wrote to the complainant on 14 April 2021. In respect of parts 1 and 2 it appears to acknowledge that it has not responded, but does not then issue a clear response that the Commissioner considers to meet the requirements of the EIR. In respect of part 3, it maintains its position that no information is held.

Scope of the case

9. The complainant contacted the Commissioner on 14 April 2021 to complain about the way their request for information had been handled, and specifically that the Council had either not responded, or was likely to hold information.
10. The scope of this case and of the following analysis is whether the Council has complied with regulation 5(1).

Reasons for decision

Regulation 5(1) – Duty to make available environmental information on request

11. Regulation 5(1) states that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions that may apply.
12. In scenarios where there is some dispute between the amount of information located 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 (Information Rights) decisions, applies the civil standard of the balance of probabilities.
13. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

Parts 1 and 2 of the request

14. Parts 1 and 2 of the request seek details about flooding and buses, amongst other information.
15. The Commissioner has reviewed the Council's response to the request and does not believe that the Council has issued a clear response to parts 1 and 2.
16. The Commissioner considers that, for at least some of these two parts, the Council is unlikely to hold information. For example - for those parts asking the Council to specify what laws relate to certain scenarios, the Commissioner would note that unless the Council already has a list of such laws relating to a certain scenario, it is not required to create one in response to the request.
17. The Commissioner emphasises that the Council is not required to create bespoke answers to questions in order to comply with the EIR. The EIR relates only to the provision of recorded information. If no recorded information is held, this should be clearly stated.
18. As the Council has not clearly stated its position for these parts, the Commissioner cannot conclude that it has issued a valid response under the EIR.

Part 3 of the request

19. Part 3 of the request seeks details about the Council's action in deploying a 'road closed' sign following a request from a local flood group to do so.
20. The Council's response to the request stated that no information was held.
21. The Council explained that the request from the flood group was verbal, and that the Council's action in deploying a sign was done without any written justification to do so.
22. The Commissioner considers that the Council has stated a clear basis on which it does not consider the information to be held, namely that the request for the signage was verbal, and the Council's subsequent action in deploying a sign was done without there being any recorded analysis of the need to do so.
23. The complainant, in making this complaint, has not provided any clear argument for why they consider the Council is likely to hold the requested information.

24. On this basis the Commissioner has concluded that, on the balance of probabilities, the requested information is not held.

Other matters

25. The Commissioner reminds the Council of the importance of providing clear, structured, and unambiguous responses to information requests. This is particularly important in cases such as this, where the information requests are phrased as questions, and spread through a document.
26. By providing such responses (which may include either a simple statement confirming or denying that the information is held under regulation 5(1), or if relevant, stating if a request is not a valid request for information), this not only assists a requestor in understanding the authority's response under the legislation, but also ensures the authority's position is clear in the event of a complaint to the Commissioner.
27. The Commissioner also directs the complainant to the guidance for requestors, and notes that, in the event of making any further requests, the complainant may find it beneficial to have regard to that guidance. The guidance can be accessed at the following URL:

<https://ico.org.uk/your-data-matters/official-information/>

Right of appeal

28. 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

29. 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.
30. 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

Daniel Perry
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