

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004 (EIR)**

**Decision notice**

**Date:** 27 April 2023

**Public Authority:** Cumberland Council  
**Address:** Civic Centre  
Carlisle CA3 8QG

**Decision (including any steps ordered)**

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1. The complainant submitted a request for information about planning matters to Copeland Borough Council. As a result of a local government reorganisation, Copeland Borough Council ceased to exist on 1 April 2023. Its functions, including legacy information requests such as this one, have been transferred to a new unitary authority, Cumberland Council ('the Council').
2. The Commissioner's decision is that, on the balance of probabilities, the Council has made available all the relevant information it holds and has complied with regulation 5(1) of the EIR. It is not necessary for the Council to take any corrective steps.

**Request and response**

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3. The complainant made the following information request to the Council on 28 February 2022:

"Application 4/22/2051/0F1

ALTERATIONS TO EXISTING 18 HOLE GOLF COURSE Location Plan Rev  
1. 05-11-21

[1.1] Freedom of information request for a copy of the Definitive Map and the Definitive Statements for the PRow numbers FP431023, FP431022, FP431021 and FP431011

These PRowS are listed on a document with the Planning Application.

[1.2] Freedom of information request Please provide all the details of any documents you took into account for the PRowS when making this order."

4. The complainant provided the Commissioner with a copy of the letter in which the above two-part request is included. It is the only request in that correspondence.
5. The Council responded on 6 April 2022 – its reference FOI 12646. With regard to part 1 of the request, it said it had searched for the requested definitive map and confirmed that it does not hold it. The Council advised that Cumbria County Council is the "holding authority" for the area of work in question. The Council did not appear to have addressed part 2 of the request.
6. The complainant requested an internal review on 7 April 2022. They disputed that the Council does not hold the definitive map because, they said, there was a legal requirement for the Council to hold it.
7. The complainant then referred to a second request that they said they had submitted to the Council on 28 February 2022, in addition to the one above, as follows:

"Application 4/21/2195/OR1 Harras Dyke Farm

Application 4/21/2196/OR1 Harras Road Harass Moor

[2.1] Freedom of information request for a copy of the Definitive Map and the Definitive Statements for any of the PRow affected by this development

[2.2] Freedom of information request Please provide all the details of any documents you took into account for the PRowS when making this order."

8. As noted above, this second request does not appear to be included in the copy of the complainant's letter to the Council of 28 February 2022 that they provided to the Commissioner.
9. The Council provided an internal review on 13 May 2022 and at this point disclosed relevant information it had identified that it holds. The Council advised that footpaths 417018 to 417021 would not show on the

1976 definitive map it was sending as those paths are newly created. Finally, the Council told the complainant that it had requested "the remaining documents" (about footpaths 417018, 417019 and 417020) from Cumbria County Council and that it would email these to the complainant as soon as possible.

10. In correspondence to the Commissioner on 26 February 2023 the complainant confirmed that the Council had not provided them with copies of documents "417018, 417019 and 417020 (417021-417015)". They also said that FP431023, FP431022, FP431021 and FP431011 are listed in the planning application in question as these paths are adjacent to the golf course. The complainant considers that Borough Councils (such as the former Copeland Borough Council) are obliged to retain such materials for public inspection.
11. In this correspondence the complainant discusses other requests they submitted to the Council and wider planning concerns. The requests in scope of this investigation are the requests about which the complainant submitted a complaint to the Commissioner ie those submitted on 28 February 2022. And the Commissioner's focus is solely on whether the Council complied with the relevant information legislation; he cannot consider general planning matters.

## **Reasons for decision**

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12. This reasoning first considers which is the appropriate information legislation under which to handle the complainant's requests. The Commissioner will then consider whether, on the balance of probabilities, the Council holds any other information within scope of the complainant's requests of 28 February 2022.
13. The Commissioner is satisfied that the request should be considered under the EIR and not FOIA. This is because the requested information concerns planning applications and footpaths and can be categorised as environmental information under regulation 2(1)(c)<sup>1</sup> of the EIR.
14. Under regulation 5(1) of the EIR a public authority that holds environmental information shall make it available on request.

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<sup>1</sup> <https://www.legislation.gov.uk/uksi/2004/3391/regulation/2/made>

15. In a submission to the Commissioner, provided by Copeland Borough Council before it ceased to exist, the Council first discussed the 1976 definitive map (DM) that is in scope of the request reference FOI 12646. It said that it only held a copy of what Cumbria County Council sends to it and it is the County Council that is obliged to make the DM for each district available for inspection. The Council only holds what the County Council sends to it.
16. The Council said that what is being requested in FOI 12646 relates to newly created paths and at the time of the request these would not show on the 1976 DM that the Council holds. It said it had encouraged the County Council to bring the map and supporting documents up to date. The Council also said online versions of the map were already available on the County Council's website although these did not appear to be as definitive as the statutory map. However online availability of the DM was a matter for the County Council. The Council said that following the Council merger, that might be something for the new authority to consider.
17. The Council's submission then goes on to discuss its handling of FOI 12646. It notes it had requested the information from the County Council so that it could send the information to the complainant. The Council says it had not been obliged to do this, it could simply have stated that it did not hold the information.
18. The Council noted that it had advised the complainant that it would email the remaining documents to them. However, the Council had then checked with its legal team who advised that the information it had sent to the complainant was, in fact, all the information it held within scope of that request.
19. The Council said that it had a telephone conversation with the complainant in mid-August 2022 in which they confirmed that they had received everything they needed. The issue appeared to be that the complainant considered that hard copies of the documents should be made available in the Council's reception offices. The Council confirmed in its submission that that is the County Council's responsibility. It is also the County Council's responsibility to maintain the 1976 DM and associated file.
20. With regard to FOI 12646 the Council confirmed that it has not withheld any information from the complainant, moreover it actively liaised with the County Council in order to provide the complainant with the information they requested. This meant that the complainant did not need to contact the County Council themselves.

21. The Council's submission concludes by discussing another request the complainant submitted to it in October 2022. But, as above, the focus of this investigation are the requests of 28 February 2022.
22. It was not clear to the Commissioner that the Council's submission addressed the second request of 28 February 2022 which, from its internal review response, the Council appeared to have given the reference FOI 12645.
23. The Commissioner contacted the Council again and asked it to confirm whether it had provided the complainant with all the information it holds that is within scope of **both** parts of that request. He also asked it to confirm that it has disclosed all the information it holds that is within scope of **both** parts of FOI 12646. Finally the Commissioner asked the Council to address the points the complainant had raised at paragraph 10.
24. The Council confirmed that it had given the second request of 28 February 2022 the reference FOI 12645 and that the internal review it had provided to the complainant covered both requests.
25. The Council next addressed the matter of whether its correspondence to the complainant had covered both parts of both requests; each request was for the definitive map and statement AND for details of any documents the Council took into account for the public rights of way when it made the orders in question.
26. The Council has told the Commissioner that the member of staff who conducted the internal review has now left the organisation. However having reviewed the Council's records and spoken to staff, the Council says it is clear that the reviewing officer made every effort to check for anything held on the subject matters stated in the initial requests, "and internal review request." The Council understands from having discussed the matter further with staff, that the officer located some more relevant information and sent to the complainant in the Council's internal review response all the information that was held that was relevant to both requests.
27. The reviewing officer also informed the complainant that if any third-party organisations (such as the County Council) shared anything else with it, the Council would update the complainant as such. The officer had regular contact via telephone with the complainant on this matter and previous requests for maps and path data. The officer also informed the complainant that they would be available to speak at any time should the complainant need clarification or further assistance.

28. The reviewing officer, and information governance team, have regular contact with staff in the Council's legal department who receive, store, and manage the information being requested. The Council has regular conversations when the complainant submits requests, to check if any information is held.
29. Finally, regarding the complainant's points at paragraph 10, the Council says that this is very much a matter of whether or not Copeland Borough Council held any information at the time of the request. At that time, February 2022, Copeland Borough Council was not obliged to hold the data in question and at that time it could only rely on the County Council and other local authorities providing it with that data and any supporting documents. The Council noted that on a number of occasions the complainant has been advised that Cumbria County Council is responsible for maintaining the definitive map, not Copeland Borough Council (or Cumberland Council at this point). The Council only holds a copy of what is sent to it by Cumbria County Council as it is the County Council that is under an obligation to make available for inspection the definitive map within each district.

### **The Commissioner's conclusion**

30. The Commissioner is aware that the situation has become somewhat more difficult through the local government reorganisation. A new body – Cumberland Council – is now dealing with this legacy request and a key officer no longer works at the Council.
31. However, the Commissioner has taken account of the Council's long-standing relationship with the complainant who appears to submit requests for information about planning matters to it regularly. As such, he considers the Council would have a sound understanding of the type of information the complainant is seeking in the current requests. Despite what the complainant may think, if held, much of the information the complainant has requested – such as a definitive map – would be held by the County Council and the Council says it has advised the complainant of this on a number of occasions. The Commissioner notes that the Council endeavoured to obtain information from the Council itself so that it could send the information to the complainant. The Council was not obliged to do this and could, instead, have advised it does not hold the information and simply directed the complainant to the County Council.

32. The Commissioner considers that the Council has consulted relevant teams – including its information governance team and legal department - and given adequate thought to the complainant's two requests – when it was dealing with the requests originally and as a result of the Commissioner's investigation. On the balance of probabilities, the Commissioner is therefore satisfied that the Council holds no further information within scope of the complainant's two requests of 28 February 2022 and has complied with regulation 5(1) of the EIR.

## Right of appeal

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

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

34. 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.
35. 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

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**