



NCN: [2025] UKFTT 111 (GRC)

Case Reference: FT/EA/2024/0144

**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

**Decided without a hearing
Decision given on: 6 February 2025**

Before

**JUDGE SOPHIE BUCKLEY
MEMBER EMMA YATES
MEMBER MIRIAM SCOTT**

Between

STEPHEN ROBERTS

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Decision: The appeal is Allowed

Substituted Decision Notice:

Organisation: City and Council of Swansea

Complainant: Stephen Roberts

The Substitute Decision - IC-265495-P9W2

1. For the reasons set out below:
 - a. The City and Council of Swansea held the requested information.
2. The Council is required to take the following steps within 35 calendar days of the date that this decision is sent by the parties by the tribunal:

- a. The Council is required to issue a fresh response to the request of 22 August 2023, confirming that it holds the information **and** must either
 - i. supply the information sought, or
 - ii. serve a refusal notice under regulation 14(1) of the Environmental Information Regulations 2004 (EIR) including the grounds relied on.
3. Any failure to abide by the terms of the tribunal's substituted decision notice may amount to contempt which may, on application, be certified to the Upper Tribunal.

REASONS

Introduction

1. This is an appeal against the Commissioner's decision notice IC-265495-P9W2 of 14 March 2024 which held, on the balance of probabilities, that the City and Council of Swansea (the Council) held no recorded information within the scope of the request.
2. All parties consented and the panel was satisfied that it was in the interests of justice and in accordance with the overriding objective to determine the appeal without a hearing.

Background to the appeal

3. The Restricted Roads (20mph Speed Limit) (Wales) Order 2022 changed the default speed limit for areas with street lighting in Wales from 30mph to 20mph. Before this Order came into force the default speed limit on a road with street lighting was 30mph under the Road Traffic Regulation Act 1984.
4. DataMapWales describes itself as a source for public sector data in Wales, providing a shared data platform to members of the public and public authorities. It consists of a data catalogue and a map on which members of the public can select particular layers of data to display. One of those layers is '20mph' which includes a sublayer of 'Roads that will become 20mph by virtue of legislation (restricted roads)'.
5. There are other related layers or sublayers including, for example, '30mph roads'; 'Roads which could retain a 30mph speed limit ('exceptions')'; and 'Roads that are currently 30mph by Order and will stay 30mph'.
6. If the map on DataMapWales is set to display only the sublayer 'Roads that will become 20mph by virtue of legislation (restricted roads)' there is no data displayed for the Swansea Council area, although data in that sublayer is displayed for other areas. The Welsh Government's explanation for this is as follows:

"It is the responsibility of each Highway Authority to provide this information to DataMapWales, so the information is accurately maintained. In this instance, the data in question belongs to Swansea Council and they provided it to the DataMapWales team.

DataMapWales primary purpose was to show the restricted roads which were to remain at 30mph and every highway authority in Wales supplied this data. Some highway authorities also wanted to show the restricted roads defaulting to 20mph, although others such as Swansea decided not to do."

The request

7. This appeal concerns the following request made to Swansea Council (the Council) on 22 August 2023:

"<https://datamap.gov.wales/maps/roads-affected-by-changes-to-the-speed-limit-on-re-view#/> does not show roads in Swansea that will be subject to a 20mph limit by virtue of legislation (restricted roads) from 17th September 2023.

Please can you provide me with either a map of roads that will be subject to a 20mph limit by virtue of legislation (restricted roads), or provide a list of roads that will be subject to a 20mph limit by virtue of legislation (restricted roads) from 17th September 2023.

If this information is to be uploaded to

<https://datamap.gov.wales/maps/roads-affected-by-changes-to-the-speed-limit-on-re/view#/>

please confirm this, as this would satisfy this request in full."

The response

8. The Council responded to the request under the Environmental Information Regulations 2004 (EIR) stating that it did not hold the information and that it was likely to be uploaded to the link referred to by the appellant in due course.
9. On internal review the Council stated that the information requested was now held by the Council. The letter to the appellant stated:

"The information that you have requested is now available on the link below, please accept our apologies for the delay in this information.

<https://datamap.gov.wales/maps/roads-affected-by-changes-to-the-speed-limit-on-re/>"

10. The appellant complained to the Commissioner on 11 October 2023, stating that the information was not available on the link provided. The appellant provided a screenshot of the website showing that in relation to other areas the relevant type of road was marked in yellow on the online map, but there were no equivalent markings in the Swansea area.
11. After the decision notice was issued, the Council stated that the internal review response was phrased 'clumsily' and said that this has caused confusion. The Council

does not now assert that the information on the requested sublayer is available on the DataMapWales website.

The Decision Notice

12. The Commissioner was satisfied that the online map which the complainant refers to within the request, was managed by the Welsh Government and was placed on a website that had no connection to the Council. The Council was therefore not responsible for the adequacy of the information available in that map, and any concerns or requests relating to the details of that map should be directed to the Welsh Government rather than the Council.
13. The Commissioner noted the conflicting positions put forward by the complainant and the Council regarding what information had been made available by other local authorities. Whilst such comparisons between public authorities can be a useful guide as to what information may be held by the public authority in question, the Commissioner did not consider that they should be taken as a benchmark or an expectation that sets out exactly what information that public authority should in fact hold. The Commissioner stated that each request is considered on its own merits, and in a held/not held scenario such as this one, on the arguments put forward by the public authority to demonstrate whether it has undertaken focused and thorough searches to provide the Commissioner with reassurance that if the requested information was held then it would have been located.
14. The Commissioner was satisfied that the Council had conducted appropriate and proportionate searches to determine whether or not it held the requested information in this case. He therefore concluded that, on the balance of probabilities, the Council was correct when it said that it did not hold either a map or a list of the roads that will be subject to a 20mph limit by virtue of legislation (restricted roads).

Notice of Appeal

15. The ground of appeal is that the Commissioner was wrong to conclude that the Council did not hold the data. In essence the appellant states that:
 - a. The Commissioner is incorrect to conclude that the Welsh Government is responsible for the data on the website. The Welsh Government have stated that "It is the responsibility of each Highway Authority to provide this information to DataMap Wales so the information is accurately maintained. In this instance, the data in question belongs to Swansea Council and they provided it to the DataMapWales team".
 - b. The Council would have needed the information to comply with The Traffic Signs (Amendment) (Wales) Regulations and General Directions 2023 (TSRGD 2023) which required Swansea Council to maintain, erect and remove signs accordingly, such as affixing signage where the speed limit transitions to and from 20mph speeds. It would therefore be essential for the council to know where every transition point to/from 20mph from other speed limits

would be - in essence, a list of all roads that would be 20mph by virtue of legislation (restricted roads).

- c. The Council received funding in relation to mapping and signs. It is not credible to suggest they did not have the resources to produce this information.

The Commissioner's response

Inaccurate response to the internal review

16. The Commissioner accepted that the Council's internal review response was inaccurate, because the requested information was not available on the website to which a link was provided. He submitted that the information provided by the Council following the decision notice solidifies the Council's position that it does not hold the requested information.
17. The Commissioner submitted that the tribunal will consider for itself whether or not, on the balance of probabilities, the Council holds (or at the time of the request held) the information the appellant requested. Whether or not the Council was or was not accurate in statements it made in the internal review is not, however, something which the Tribunal will consider as a freestanding point.

The Council would need the information to comply with TSRGD 2023

18. The Commissioner stated that he was unable to provide submissions in response to the appellant's argument on TSRGD 2023. He noted that this issue was not raised by the appellant or the Council during the Commissioner's investigation, and therefore the Council provided no submissions to the Commissioner on this point before his Decision Notice was issued.
19. The Commissioner stated that without any definitive evidence that showed that the Council specifically required the requested information to comply with TSRGD 2023 (and therefore must hold it), the Commissioner remained satisfied that the findings made in his Decision Notice have not been disturbed by this ground of appeal.

Given the funding that has been provided to the Council for 'mapping and signs' between 2021-2024, the Council should hold the requested information.

20. The Commissioner stated that he was unable to comment on the appellant's production of the funding received by the Council. The Commissioner noted that the information does not provide any kind of breakdown on what the money can be/was actually spent on, in relation to 'mapping and signs'.
21. The Commissioner submitted that it was important to remember that even if the Council had the funding available at the time of the request it would not have been expected to undertake work to record information so that it could create a map or list of 'roads that will be subject to a 20mph limit by virtue of legislation (restricted roads), to meet the Appellant's information request.

Further submissions by the Commissioner

22. The Commissioner submitted that the Council had conducted sufficiently rigorous searches for the requested information and that there has been no evidence that the Council has attempt to mislead the Commissioner, or of a motive for the Council to withhold information actually in its possession. The Commissioner remains satisfied that, on the balance of probabilities, the Council do not hold the requested information and that regulation 12(4)(a) EIR applies.

The appellant's reply

23. The appellant submitted that, on the balance of probabilities, the Council would need the information to comply with their legal responsibilities in the Highways Act, the Traffic Signs Regulations and General Directions, and the Restricted Roads (20 mph Speed Limit) (Wales) Order. He submitted that the council have claimed central funds which demonstrates that they know where signs needed changing.
24. He submitted that just because Swansea Council say they don't have the requested information, doesn't make that to be a true statement and noted that the Commissioner had problems establishing facts from the Council.

Legal Framework

25. A public authority may refuse to disclose information to the extent that it does not hold that information when the applicant's request is received (regulation 12(4)(a) EIR) and, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information (regulation 12(1)(b)).
26. We agree with the Commissioner that if the information is not held the public interest test is essentially redundant; it does not operate to require information to be recorded or collated from outside a public authority.
27. The question of whether information was held at the time of the request is determined on the balance of probabilities.

The role of the tribunal

28. The tribunal's remit is governed by section 58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved exercising discretion, whether he should have exercised it differently. The tribunal may receive evidence that was not before the Commissioner and may make different findings of fact from the Commissioner.

Issues

29. The issue for the tribunal to determine is whether the Council held the information. The tribunal must also apply the public interest test.

Evidence

30. The Council has provided relevant further information to the Commissioner following the decision notice. In its email of 10 May 2024 it stated as follows:

“Every highway authority was asked to submit a map of roads which remained at 30mph through Traffic Regulation Orders and these were submitted to Welsh Government by Swansea Council. This is what had gone live online in between the original request and the internal review and this is what the internal reviewer was referring to. The Council holds this data in the form of Traffic Regulation Orders that vary the default 20mph limit.

Local authorities were also invited to submit data to show 20mph roads on the Welsh Government map. Swansea Council (like its neighbouring authority of Neath Port Talbot) declined to contribute any data because it didn’t have such a map. The manager has confirmed that he does have a street lighting map of the local authority area (obviously created for other purposes than for speed regulation) which is the starting point for creating a map but he didn’t and doesn’t have the staff resources to analyse this lighting plan in order to create an accurate map of 20mph roads.”

31. In an email dated 13 May 2024 the Council stated as follows:

“The Traffic Manager has confirmed that the ‘roads that could become 20mph by order’ on the Data Wales map are roads which, although they did not have streetlighting, were considered to have 20mph as an appropriate speed limit because of other considerations. Because the 20mph default speed limit only applies on street-lit roads, applying a 20mph limit to these would require a Traffic Regulation Order. The map data in this category I understand was supplied by Swansea Council.”

32. Finally by email dated 24 May 2024 the Council stated as follows. I have added the Commissioner’s questions in italics:

“I have just spoken to the Traffic Safety Manager on this issue.

[Does the street lighting map show all street lighting and/ or all restricted roads?]

1. The map shows street lighting. It is a layer on the Council’s Geographical Information System. It was created so that the Council can inspect, maintain and repair the lamp standards and ensure that its roads are adequately lit at night and so help prevent accidents, theft and crime

[If the map shows all street lighting, what work would have to be done to identify the restricted roads (where we understand the ‘default’ 20mph applies)]?

2. The work involved in creating a definitive map of 20mph roads is to overlay on a map of all street-lit roads in the local authority area a map of all such roads which are subject to Traffic Regulation Orders (TROs) varying the speed limit. There are street-lit roads in the local authority area which are subject to speed limits of between 30 and 70mph by virtue of TROs. There are also roads which are not street-lit which are subject to a 20mph limit by virtue of a TRO which would need to be added.

When Welsh Government prepared for the change in the law, all local authorities were required to provide details of roads subject to other speed limits (and roads which are not street-lit which are subject to a 20mph limit by virtue of a TRO) to be added to the data map (the exceptions) but not those roads (the bulk, in an urban area like Swansea) which would by default change from 30 to 20mph. Supplying the latter data was made optional by Welsh Government.

Some Welsh local authorities have had the internal staff resource to create such a map: Swansea Council could however only hope to do this by employing an external consultant with sufficient expertise to create such a map with the required high degree of accuracy. Doing this work remains on the 'wish list' when financial resources allow, but it is not a requirement on the authority by Welsh Government."

Discussion and conclusions

33. We have the benefit of additional information provided by the Council since the Decision Notice, which the Information Commissioner has helpfully obtained through careful questioning. Because that information sheds light on the position at the date of the response to the request, we are entitled to take it into account.
34. On the basis of the evidence before us, we find that the Council would be able to create the requested map or compile the requested list using information that it holds. The Council has a map that shows all street-lit roads. It also holds information on which roads are subject to Traffic Regulation Orders (TROs) varying the speed limit. It therefore has the all the necessary information that it needs to compile the requested map or list. These are different formats for displaying information that is already held by the local authority. The requested underlying data is held in recorded form, but it is held in a different format.
35. In our view providing the information in the form of a list or a map does not involve creating new information.
36. Although this appeal relates to the Environmental Information Regulations, in our view it is right to apply a similar approach to the question of whether information is held, to that taken under the Freedom of Information Act 2000 (FOIA).
37. In our view the FTT took the correct approach in **Home Office v IC and Cobain** (EA/2012/0129), cited in Coppel, Information Rights Vol I – Commentary at para 20-007 as it explained in para 32:

Public authorities are frequently requested under FOIA for statistics. They may not previously have extracted the particular statistic from their records but may be able to do so easily. In that case, the authority would be regarded as holding the requested information. By contrast, where the requested statistic cannot be derived readily from the existing records (because, say, the request is for a level of detail which simply cannot be ascertained from existing records), then it would be regarded as a request, falling outside FOIA, for the public authority to create new information, and the authority would be entitled to respond that it did not hold the requested information. Determining whether a requested statistic is “held”, by virtue of the public authority holding the “building blocks” of raw data from which the statistic can be derived, turns therefore on the complexity of the operations which need to be performed on the building blocks and the degree of skill and judgement necessary to ascertain whether a particular building block should be regarded as contributing to the statistic.

38. This is consistent with the approach taken by the House of Lords in **Common Services Agency v Scottish Information Commissioner** [2008] 1 WLR 1550 in relation to the similarly worded provisions of the Freedom of Information (Scotland) Act 2002, which held that this part of the statutory regime should be construed in as liberal a manner as possible, and that information was still ‘held’ even if had to be processed (in that case, ‘barnadised’) where applying that process was no more than was reasonable in all the circumstances having regard to the form in which the information was disclosed, and where it did not amount to the creation of new information or involve the carrying out of research.
39. In our view, under FOIA and EIR, where the requested information can only be produced from ‘raw data’ or ‘building blocks’ through some processing, manipulation or other operation, the question of whether the information is held depends on the complexity of the operations that need to be performed and the degree of skill and judgment necessary to ascertain if a particular building block should be regarded as contributing to the requested information.
40. The creation of a list of roads, whilst it might not be the most accessible or convenient way to present the information held by the Council, would not require any particular skill or judgment. The criteria for which roads should be included appears relatively straightforward. It may take a lot of time, but the authority is likely to be able to rely on regulation 12(4)(b) (manifestly unreasonable requests) if the time it would take is excessive or disproportionate.
41. In relation to creating a map, the Council has the building blocks necessary. The method for creating such a map is to overlay on a map of all street-lit roads in the local authority area a map of all such roads which are subject to Traffic Regulation Orders (TROs) varying the speed limit. We note that some Welsh local authorities had the internal staff resources to create such a map and have done so, but that the Council does not have sufficient internal staff resources and would have to employ an external consultant with ‘sufficient expertise’.

42. Given that it could be created 'in-house' by a number of local authorities, we find that the level of skill or judgment necessary is that which might ordinarily be found within a local authority's staff and that the operation is not outside the normal level of complexity experienced by such staff. It appears that the issue is staff resources, rather than lack of skills and experience. If the matter is to be outsourced, then the tribunal understands that a suitably qualified consultant would have to be instructed, but that does not lead us to conclude that this is a particularly complex operation that would require a high degree of skill and judgment. The cost and the time of undertaking such an operation might trigger the application of regulation 12(4)(b), but it is not, in our view, an operation of such complexity that it means that the information is not held.
43. For those reasons, we find that the requested information was held by the Council and the appeal is allowed.
44. Under FOIA, an appeal in which the public authority has given a 'not held' response to a request for information (or, for example, a neither confirm nor deny response or where the public authority relies on section 12 or section 14) is sometimes referred to as a 'gateway' appeal because the public authority has not yet given a substantive response to the request. The public authority has not yet passed through the "gateway" of compliance with ss. 1, 2 and 17 of FOIA which, following the Upper Tribunal's Decision in Malnick v IC and ACOBA [2018] UKUT 72 (AAC), the Council would have to do before being entitled to raise a late exemption before the tribunal.
45. In our view a similar approach should apply in EIR appeals, where the public authority has refused a request on the basis that it does not hold the requested information. It has not yet passed through the 'gateway' of compliance with regulations 5(1) and 14(1) EIR.
46. In those circumstances, as we have concluded that the Council did hold the requested information, the correct course of action is for the Council to issue a fresh response and at that stage, it should disclose the information or claim any exemptions that it considers apply.

Signed

Sophie Buckley

Date:

30 January 2025