

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

Decision notice

Date: 30 January 2012

Public Authority: Cambridgeshire County Council
Address: Shire Hall
Castle Hill
Cambridge
CB3 0AP

Decision

1. The complainant has requested information about various specified locations in Ramsey, Cambridgeshire. Cambridgeshire County Council responded that it either does not hold the requested information, or does not hold additional information beyond that which has previously been disclosed to him.
2. The Commissioner's decision is that Cambridgeshire County Council has correctly responded to the complainant's request and, on the balance of probabilities, does not hold the requested information, or does not hold any information described in the request which has not previously been disclosed to the complainant.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 19 July 2010, the complainant wrote to Cambridgeshire County Council (the council) and requested information in the following terms:

"I rely on the following legislation, guidance and records for this request: -

The Highways Act 1980 in particular: - Section 36, Section 41, Section 42, Section 43 and Section 56

The New Roads and Street Works Act 1990

The Definitive Map and Statement

The Local Street Gazetteer or Street Works Register.

Enforcement, Consultation and Minutes recorded for the 3 UPRN sites listed below.

The Request

Please provide me with electronic copies of the Recorded Information your public authority holds in respect of the following elements: -

[1] *What is the legal status of the vehicle access and right of way from/to the former Territorial Army Drill Hall and Methodist Chapel site [UPRN 010000160854] over the "Sixth Private Carriage Road" over the privately owned Flag Holt Common [UPRN 010009225920] and privately owned Mugglestone Lane [UPRN 010012046145] from/to the Classified publicly maintained Public Carriage Road named the High Street, Ramsey.*

[2] *What is the legal status of the vehicle footway crossover and access way from/to the classified publicly maintained Public Carriage Road named the High Street, Ramsey that serves [3 house numbers], and the former Territorial Army Drill Hall and Chapel site [UPRN 010000160854]*

[3] *Who is the legal owner of Flag Holt Common [UPRN 010009225920]?*

[4] *Who is the legal owner of Mugglestone Lane [UPRN 010012046145]?"*

(The Commissioner has added the numbering of the four elements for convenience)

5. The council responded on 11 August 2010. It stated that:

[1] It does not hold any information on private rights of access. It referred the complainant to its website for relevant mapping which depicted public footpaths, and indicated that the information was also available to view at its offices at no cost;

[2] The complainant had previously been provided with all the information it holds on the subject and no further information is held by it.

[3] The council does not hold information on the ownership of Flag Holt Common, and the complainant had previously been provided with a copy of the Commons Register for this land.

[4] The council does not hold information about the ownership of Mugglestone Lane.

6. Following an internal review the council wrote to the complainant on 26 November 2010. It stated that:

- Information relating to private land ownership is not information which would be held by the council, and the information is held by the Land Registry. It confirmed that the exception at regulation 12(4)(a) should have been applied to this aspect of the complainant's request.
- The council does not hold information relating to private rights of way.
- Information held by the council in respect of public rights of way has been provided to the complainant, by way of a copy of the Commons Register. It directed him to its website and informed him that certified copies of the Definitive Map can be obtained via the publication scheme on its website.
- It informed the complainant that future requests for information relating to the land to the south and west of Ramsey may be refused as manifestly unreasonable, in line with the Commissioner's guidance on repeated requests.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The requested information is about the land, roads and built environment close to the complainant's home. The council has dealt with this as a request for environmental information under the EIR. The Commissioner agrees that the requested information is environmental information.
8. The complainant made various procedural points about the nature of the council's response but the substantive grounds which the Commissioner recognises are as follows:
- (a) the complainant requested information in electronic form.
 - (b) the complainant has evidence that the council holds information in respect of point 1 of his request which has been withheld;

- (c) he has evidence that the council holds information in respect of point 2 of his request which has been withheld;
 - (d) he has discovered that the council holds the information described in point 3 of his request, but has not disclosed it.
 - (e) he argues that information in respect of point 4 of his request must be held.
9. The Commissioner considers that the scope of the complaint is that information described in the four parts of the complainant's request for information is held by the council but has been withheld. The points above were summarised to the complainant, who agreed that these would form the scope of his complaint. The Commissioner's investigation has therefore been to determine, to the normal civil standard of 'the balance of probabilities', whether the council does hold information described in the request which has not been disclosed to the complainant.

Reasons for decision

10. Regulation 5 of EIR states that:

Regulation 5(1)

Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 5(2)

Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

11. Regulation 12 of EIR states that

Regulation 12(1)

Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

- (a) an exception to disclosure applies under paragraphs (4) or (5);
and

- (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Regulation 12(4)

For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

- (a) it does not hold that information when an applicant's request is received;
- (b) the request for information is manifestly unreasonable;
12. The Commissioner asked the complainant to submit his supporting evidence for his view that information is held by the council, and has been withheld. He firstly notes that, over a period of several years, the complainant has already been provided with a considerable amount of information about matters closely related to these particular requests, as a result of previous requests submitted to this council (see for example, case reference FS50317249, below). This information is not therefore considered to be 'withheld'.
13. He reviewed the material the complainant sent in, to see how it might support his argument that the council does hold the requested information, in the face of its statement that it does not hold it. Some of the material submitted bore no apparent relevance to the request and some of the information appeared to the Commissioner to support the council's position. Some of it is information which the Commissioner is aware has previously been sent to the complainant by the council.
14. The Commissioner also referred to the decision notice in case reference FS50317249¹, which also appears to make direct reference to the majority of the documents submitted by the complainant and referred to at paragraph 13 above. The Commissioner's conclusion in case FS50317249 was that, for the most part, the documents did not fall within the scope of the request. The Commissioner explained that this was the difficulty he had with the evidence the complainant had submitted for the present case. While it may have been of relevance to any underlying dispute he had with the council, it appears to be of only peripheral relevance to whether the council could be argued to hold the actual information which he has requested in this case.

¹ See http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs_50317249.ashx

15. The complainant provided further clarification in respect of the information he had provided as evidence. That clarification was, where relevant, put to the council. He also responded with a copy of a questionnaire completed by the council for the Highways Records Working Group. He argued that the council's response to question 22 *"proves, beyond any reasonable doubt that the Council does hold the information requested by me."* The relevant question and the council's response is reproduced below:

22 Which documentary sources do you consult in determining highway extent and status?

(please tick all that apply)

- adoption plans
- land registry
- council road plans (as built)
- ordnance survey maps
- aerial photos
- handover maps
- side roads orders
- inclosure maps and awards
- dedication agreements
- tithe maps and awards
- quarter sessions/other court records
- finance act maps
- railway and canal plans
- maintenance records
- other (please specify)

Under 'other' the council specified:

- Roads & Bridges Committee minutes;
- historic working files/other archived deeds;
- drainage boards

16. The council has clarified that, of this list, above, some of the documentary sources are external to the council and therefore the information is not 'held' by it, but is consulted as necessary. The records held internally are:

- Adoption plans;
- Council road plans (as built);
- Handover maps;
- Side Roads Orders;
- Maintenance records; and
- Historic working files/other archived deeds.

The remainder are either external (such as Land Registry data) or, for the most part, held at the Cambridgeshire Record Office.

17. The council also addressed the complainant's further clarification referred to at paragraph 15, above, and explains that the complainant has a long-standing and complicated dispute with it going back over a number of years. He has submitted a considerable number of requests to it, all of which have been responded to from the council's own records, or from other information which it held, but which had originated from these external sources. Due to the complex nature of these requests, it is unable to state definitively which records have, or have not been consulted for each request, but it is satisfied that each request has been responded to as far as it is able.
18. The Commissioner will deal with each of the four elements of the request, in order.

[1] "What is the legal status of the vehicle access and right of way [specified]"

19. The council explains that the complainant has already been provided with all the information which the council holds relating to his request and, moreover, has attended the council's offices and inspected the information it holds which relates to this matter. The complainant does not deny that he has attended and had access to information, but disputes that he has obtained everything the council holds.
20. Noting that Flag Holt Common and Mugglestone Lane are acknowledged to be privately owned, the council explains that there is no obligation to advise the council of the ownership of this land, and such information is held by the Land Registry. The Commissioner enquired what searches were done of the council's records to locate the requested information. The council explains that, in establishing the legal right of way it would have conducted a legal search to see what the legal record shows (eg, on its Definitive Map, Commons Register etc) but, unless it was actually undertaking a specific investigation into these legal rights of way, it would not necessarily have consulted every possible resource.
21. The Commissioner understands that there is no statutory requirement, and hence no clear 'business need' for the council to hold the information requested by the complainant, and it has already disclosed all the information it has located on the subject to the complainant, in the course of dealing with his extensive and protracted enquiries to it.
22. The complainant has drawn the Commissioner's attention to documents from 1982 which identify the ownership of Flag Holt Common at that time, and asserts that the council must hold a record of the freeholder

at the time of his request and must also hold a record of the private accommodation road over the common, described in this part of his request. He also asserts that the council must hold a record of the owner of the land over which a public footpath and a private road leads to Flag Holt Common.

23. The complainant appears to be of the view that, because the council is aware of who owned land in 1982, it will also know who owns it at present. He also seems to hold the view that knowledge of the ownership of property implies an associated knowledge of any private rights of way across that property, and that the existence of a public right of way over a property means that the council will need to know the owner of that property.
24. The Commissioner has been unable to identify any evidence from the complainant which would support that view. As the council has explained, there is no obligation for it to be informed of the ownership of private land, which is a matter for the Land Registry, nor is there a requirement for it to know the ownership of private land over which there is a public right of way. It may have acquired that information in specific cases, where there was a need to know for some purpose, but if there is an issue with a public right of way which required the owner of the land to be traced, appropriate enquiries would be made at the time. It is not the case that it would need to be aware of the ownership of such land in all cases at all times.
25. In short, if it has had reason to obtain the information, then it will be held, but if it has not, then it will not be held.
26. The complainant's arguments amount to little more than assertion extrapolated from information which is nearly 30 years old. The Commissioner therefore cannot conclude that, on the balance of probabilities, the council holds information in relation to part [1] of the complainant's request, other than that which has already been disclosed to him.

[2] "What is the legal status of the vehicle footway crossover and access way [specified]"

27. The complainant explains that this is the access to his property over the footpath which is maintained by the council, and that there is a long-running dispute over the legality of this access. The complainant asserts that he has been using the vehicle crossover since 1978 and that, at some point it was alleged that the use of this crossover was not in accordance with legislation.

28. The Commissioner refers to his decision notice for case reference FS50193203² which relates to closely-related information. The decision notice explains that in 1985, when the present crossover is understood to have been constructed, Huntingdonshire District Council (HDC) had responsibility for highways in Ramsey, but this was transferred to Cambridgeshire County Council in 2005. Given both councils' document retention and disposal policies the Commissioner concluded that the information had, either, been destroyed by HDC prior to the transfer of responsibilities, or, destroyed by Cambridgeshire County Council on receipt.
29. The complainant asserts that there was a Chancery Division case in the High Court in 2005 which would have required the council to obtain information about the legality of the vehicle crossing. This was put to the council, which explains that it has never instigated proceedings about the legality of the crossover, it is not aware of any such case as the complainant describes, and it has not had any need to consider any question of this legality.
30. The complainant has not provided details of the case he is referring to, and has not shown that the council was a party to any High Court proceedings he is alluding to. The Commissioner examined the list of 2005 England and Wales High Court (Chancery Division) Decisions³ and found one case in which the council was listed as a party⁴. The case is not related to the matter described by the complainant. The Commissioner therefore discounts this element of the complainant's argument.
31. The council further explains that, at the time, the highways authority for this particular matter was Huntingdon District Council and the subsequent transfer of the role to Cambridgeshire County Council caused much information to be destroyed under the retention schedules referred to above. Any discussions about the legality of this vehicle crossover which existed prior to the council assuming the role of highways agency will therefore have been destroyed. This has already been addressed in case reference FS50193203, as above.

² http://www.ico.gov.uk/~media/documents/decisionnotices/2009/FS_50193203.ashx

³ <http://www.bailii.org/ew/cases/EWHC/Ch/2005/>

⁴ <http://www.bailii.org/ew/cases/EWHC/Ch/2005/1627.html>

32. Again, the Commissioner notes that this is a long-running matter, for which the complainant has received information in the past. There is nothing in his evidence to suggest that further information is held by the council, other than that which he has previously obtained.

[3] "Who is the legal owner of Flag Holt Common"

33. The council confirms that the information it holds about the legal owner of Flag Holt Common has previously been disclosed to the complainant. He asserts that the present ownership is different, and that the council will be aware of the change of ownership but has failed to provide him with this information. This is similar to his stated position at paragraph 23, above.
34. Again, the council explains that it has not received information about the ownership of Flag Holt Common since 2007, when it disclosed the information to the complainant.

[4] "Who is the legal owner of Mugglestone Lane"

35. The complainant referred the Commissioner to the installation of a street sign and waste bin, at the entrance to Mugglestone Lane. He asserted that the council must have negotiated a wayleave with the owner of the private road known as Mugglestone Lane and therefore knows who the legal owner is, as requested at part [4] of his request.
36. A document provided by the complainant (a letter to him from the council on this subject of the sign at the start of Mugglestone Lane), appears to suggest that the council was not responsible for the installation of the sign. The complainant asserts that the document is untrue. Despite prompting by the Commissioner, the complainant has not submitted any evidence to show either that the council had installed the street sign or the waste bin attached to the sign, or that the location of the sign was private land and not public land at the start of the privately owned lane. The Commissioner is therefore unable to draw the conclusions from this evidence which the complainant asserts.

Summary and conclusions

37. The Commissioner observes that the council's response to question 22 in the document submitted by the complainant shows clearly that the council has access to a considerable number of sources of information in relation to highway extent and status. But this does not constitute evidence to support an assertion that the specific information requested by the complainant is held by the council in its records. Taken in conjunction with the evidence previously submitted and referred to at paragraphs 12-14, above, the Commissioner has been unable to locate any concrete evidence from the complainant to support his various

assertions about information which he believes is being withheld from him, summarised at paragraph 8, above.

38. Part of the complainant's argument relates to information which he has obtained from other sources, external to the council (eg DEFRA). He asserts that this information is also held by the council. The council's response is that, where the information is also held by it, he has previously been furnished with copies.
39. The normal standard of proof to apply in determining whether a public authority does hold any requested information is the civil standard of 'the balance of probabilities'. In other words, is it more likely than not that the requested information is held by the council?
40. In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider whether there is any evidence that further information *is* held, including for example, whether it is inherently unlikely that the information so far located represents the total information held.
41. The Commissioner asked the complainant for any evidence for his view that further information *is* held but, having reviewed the complainant's evidence, it does not show that the council does hold further information of the sort described in his request, which has not been disclosed to him. On the contrary, the complainant appears to be arguing, at least in part, that the information he submits as evidence that the council holds information, is itself the information that the council holds (and has previously disclosed to him). This is a circular argument which the Commissioner will not consider further.
42. For its part, the council explains that the complainant has had access to all the information it holds on the broader topics associated with his request. He has made several requests for information relating to the land close to his property, including Mugglestone Lane, Flag Holt Common and The Old Drill Hall. Each of these requests has resulted in the council providing him with information where possible. He has also inspected the council's records.
43. The council is therefore satisfied that, while it does not have detailed records of which resource has been consulted for each of his requests, each request has been responded to as fully as it is able. It further explains that, in establishing the legal right of way, it has conducted a first level search to see what the legal record shows (ie, what is recorded on its Definitive Map, Commons Register, etc) and that, over

the course of his various requests, the complainant has received information from the majority of the sources listed above.

44. At least some of the evidence submitted by the complainant in support of his assertion was provided to him by the council in 2007⁵. Information on a matter closely related to part [2] of the complainant's current request was requested from Huntingdonshire District Council (HDC) on 17 January 2008 and is the subject of a decision notice in case reference FS50193203. The Commissioner concluded, in that case, that the information was not held by HDC. Responsibility for the matters had been transferred to Cambridgeshire County Council in 2005. It was further concluded that, due to the age of the information, Cambridgeshire County Council would have, in all likelihood, disposed of this information at the time of the transfer, if it had received it.
45. It is abundantly clear to the Commissioner that the council is well aware of the nature of the information sought by the complainant, and has taken many opportunities to search for and locate this information. It has satisfied itself that it has already disclosed all the information it holds.
46. The complainant's assertions revisit old ground and, in several instances, his evidence amounts to a presumption that the council must hold information, because it has previously provided him with that very information. In other cases, he is arguing that, as the council has previously disclosed information to him, where that information is believed to have changed, the council will hold the updated information.
47. For reasons considered above, the Commissioner does not accept that the council has any need to update itself on the status of the various pieces of land in question, and the complainant has not advanced any persuasive arguments to show that it will have done so. He has submitted nothing to suggest that the council holds any information which has not been disclosed to him, and the Commissioner is satisfied that, on the balance of probabilities, the council does not hold information matching the description in the complainant's request, which it has not already disclosed to the complainant.

Public interest considerations.

48. Regulation 12(1)(b) of the EIR requires that, where an exception to disclosure is applied, a public authority must consider the public interest

⁵ Case reference FS50150205, for which no decision notice was served.

in maintaining the exception. However, in virtually all cases where the information is 'refused' under regulation 12(4)(a), the Commissioner recognises that it is not possible to consider the public interest in respect of information that is not held.

Other matters

49. The council has explained to the Commissioner that the complainant has raised these specific issues with it several times, and the Commissioner is aware of various cases which he has investigated, which are closely related to the matters raised in the present complaint.
50. The council has expressed its concerns that the matter is continuing to form a drain on its resources, and that the Commissioner's investigations, particularly where they revisit topics which have previously been investigated under different complaint references create, in effect, an additional drain on those resources.
51. The Commissioner notes that, in its internal review, the council has warned the complainant that further requests of this nature will be refused as manifestly unreasonable.
52. The Commissioner has already considered complaints brought by the complainant relating to the information requested in this case and would therefore like to remind the complainant of the provision of section 50(2) (c) of the Act which states that the Commissioner may decline to make a decision in the complaint if it appears to him that the application is a frivolous or vexatious complaint. .

Right of appeal

53. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

54. 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.
55. 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

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