

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

### **Decision notice**

**Date:** 4 August 2014

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

### **Decision (including any steps ordered)**

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1. The complainant has requested dataset information about public rights of way in an electronic re-usable form. The Commissioner's decision is that Cambridgeshire County Council was correct to refuse to provide the information under Regulation 6(1)(b) as the information is already publically available and accessible to the complainant in another form or format. He does not require any steps to be taken to comply with the legislation.

### **Request and response**

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2. On 6 January 2014, the complainant made the following request for information:

"At:

<http://my.cambridgeshire.gov.uk/?tab=maps>

Cambridgeshire County Council provides an interactive map that can be used to display the routes of its public rights of way.

Under the Freedom of Information Act, I would like to obtain information about each of these public rights of way (ROW). I would like the following details about ROW:

name, e.g., Benwick 6

type, i.e., Footpath, Bridleway, Restricted Byway or BOAT coordinates, i.e., location of each of the points that define the ROW.

For the coordinates, I do not mind whether each coordinate is an eastings-northings or a latitude-longitude.

I would like this information to be provided to me as an electronic copy, in a re-usable form, preferably as MapInfo files or as an ESRI shape file as I can process those kinds of files.”

3. The council responded on 31 January 2014 stating that the information requested is environmental and therefore covered by the EIR. It said that the Definitive Map and Statement is a collection of maps, registers and legal documents which together constitute the council's legal record of the public rights of way in Cambridgeshire. It informed the complainant that they are public documents and can be viewed during office hours at Castle Court, Shire Hall, Cambridge. It also provided a link to a searchable, electronic version of the Definitive Map showing public rights of way. It said that as the information is already publicly available and easily accessible, under Regulation 6(1)(b) it is not required to make the information available in another form or format, as specified by an individual requestor.
4. The complainant requested an internal review on 5 February 2014. He explained that his web application cannot get the requested information about the latitudes and longitudes of the point of a ROW from the council's online map. He specifically asked the council to release the dataset with the Ordnance Survey OpenData Licence and said that he'd be happy to receive the dataset in an ESRI shape file, MapInfo files or a KML file.
5. The council responded on 24 March 2014. It clarified that it does not hold the specific eastings-northings or latitude-longitude co-ordinates but that the 'data is defined as line segments between nodes' and it would either have to undertake work to convert the data into new file formats, or create new columns in its MapInfo table, to provide this information. In relation to the other ROW information, the council maintained its original position that the information was already publically available and easily accessible and therefore under Regulation 6 of the EIR it is not obliged to make it available in another specific form or format. It also said that it is assessing the factors that need to be considered in putting the underlying dataset in the public domain and had obtained an exemption from Ordnance Survey to facilitate the process if and when deemed appropriate, yet at this stage the factors are still under careful consideration and as a result, it does not feel it is in the wider public interest to go beyond its legal requirements under

the Regulations and make this dataset available in another form and format voluntarily.

## Scope of the case

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6. The complainant contacted the Commissioner on 27 March 2014 to complain about the way his request for information had been handled.
7. The Commissioner has considered whether the council appropriately applied the relevant access legislation and whether it was correct to refuse to provide the information in the specific form or format requested.

## Reasons for decision

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### The relevant legislation

8. The council acknowledged that it is an intrinsic part of the request that the complainant wishes to receive a reusable copy of the dataset so that it can be used on his website. It said that whilst applying the correct legislation is important in any case, it is particularly relevant here as the specific dataset provisions brought about by the Protection of Freedoms Act 2012 only apply to the FOIA, not to requests under EIR.
9. It said that information relating to the designation and classification of Public Rights of Way falls under the definition of a measure under regulation 2(1)(c) of the EIR;  
  
"2 (1)(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements",  
  
and it is therefore covered by the definition of 'environmental information' within the EIR. The council said that this interpretation is consistent with other decision notices relating to Rights of Way information and specifically referenced the decision notice in case reference FS50382240.
10. The Commissioner considers that the EIR, rather than the FOIA, is the relevant legislation in this case. He considers that information taken from the Definitive Map falls under the definition of a measure under regulation 2(1)(c) of the EIR. He therefore considers that the

information requested in this case falls under the definition of Environmental Information set out in the EIR.

## **Regulation 6 – Form and format of the information**

11. Regulation 6(1) states that;

“Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless –

(a) it is reasonable for it to make the information available in another form or format; or

(b) the information is already publicly available and easily accessible to the applicant in another form or format.”

12. The Commissioner considers that the use of the phrase ‘particular form or format’ means that a requester may specify not only the physical form but also how the information is configured or arranged within that form, ie the format. For example, in relation to electronic information the term ‘format’ is generally used to refer to a file type, such as PDF or Microsoft Excel or CSV, and so a requester may express a preference for one of these formats. In this instance, the complainant has asked for the information in an ESRI shape file, MapInfo files or a KML file.

13. The Commissioner’s guidance on Regulation 6<sup>1</sup> states that the EIR Code of Practice<sup>2</sup> explains why a preference for a particular format must be considered:

“A public authority should be flexible, as far as is reasonable, with respect to form and format, taking into account the fact, for example, that some IT users may not be able to read attachments in certain formats, and that some members of the public may prefer paper to electronic copies.” (Paragraph 22)

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~//media/documents/library/Environmental\\_info\\_reg/Detailed\\_specialist\\_guides/form-and-format-of-information-eir-guidance.pdf](http://ico.org.uk/for_organisations/guidance_index/~//media/documents/library/Environmental_info_reg/Detailed_specialist_guides/form-and-format-of-information-eir-guidance.pdf)

2

Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (SI 2004 no 3391) issued by DEFRA

14. However, the duty to make the requested information available in the preferred form or format is not an absolute one. It is qualified by regulations 6(1)(a) and 6(1)(b) in that a public authority does not have to meet the requester's preference if either it is reasonable for it to make the information available in another form or format or the information is already publicly available and easily accessible to the applicant.
15. In its internal review response the council said that both of the two conditions (regulations 6(1)(a) and 6(1)(b)) apply in this case but that the requirement to make the information available in another format is primarily disengaged under condition b.
16. The council explained that the requested information is available from the Definitive Map and Statement which can be viewed at a particular council office and is also available on its website and provided a link<sup>3</sup>. In response to the Commissioner's enquiries as to how the requested information is easily accessible, the council explained that, using the website link, the right of way data is displayed as a layer on the map, with different types of rights of way (Footpath, Bridleway, Byway, Restricted Byway) displayed using different formats as explained in the key on the map. It further explained that a user can then navigate to the relevant area they are interested in (either zooming and using the direction keys, or searching on a location) and click on the relevant right of way to produce a pop-up box that provides the following information:  
  
Name:  
Status: (e.g. Footpath)  
Pathno: [Path number]  
Parish
18. The council also reiterated that the coordinate details are not held within the rights of way data and it would have to undertake work to create it. It did point out that eastings and northings data is available on its website mapping when a user hovers the cursor over a particular point.

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<sup>3</sup> <http://my.cambridgeshire.gov.uk/mycambridgeshire.aspx?&tab=2&layers=Public%20Rights%20of%20Way&layers=Permissive%20Access%20Paths&layers=Permissive%20Access&layers=Public%20Rights%20of%20Way%20-%20PRoW>

19. The Commissioner has used the link provided by the council and was able to easily navigate to the requested right of way data. He notes that the coordinates are displayed and understands that these are generated by the mapping display as the cursor is moved and are not individually held by the council in relation to each specific right of way. He also notes that the complainant has not disputed that the council do not hold the coordinates and has confirmed that he does not want the council to do any work as the software he uses is able to produce latitude-longitude coordinates from MapInfo files.
20. The council confirmed that it has taken into account the particular circumstances of the complainant when deciding whether access is easily available. It said that it has directed the complainant to its online map and it knows that he is able to access this easily as he has referred to in correspondence. It also said that it has not been made aware of any specific requirements that mean the complainant cannot access the information.
21. The Commissioner is of the view that information is easily accessible if a public authority is able to direct the applicant to where they can locate the same information that has been requested. The public authority has to be able to be reasonably specific as to the location of the information to ensure that it is found without difficulty and not hidden within a mass of other information.
22. The Commissioner also notes that the council has included the Definitive Map and Statement in its publication scheme, along with information on how to view it. The Commissioner's general view is that information will be reasonably accessible to the applicant, irrespective of their individual circumstances, if it is included in the public authority's publication scheme.
23. Given the above, the Commissioner considers that the council's provision of the information on its website, and at its offices, and by virtue of it being included in its publication scheme means that it is publicly available and easily accessible to the applicant. He also notes that the council has explained to the complainant how he can access it.
24. The Commissioner therefore considers that regulation 6(1)(b) of the EIR applies and the council is not required to make the information available in the form and format requested.

### **Re-usable form under a licence permitting re-use**

25. As stated above, the complainant requested that the council release the dataset in a reusable form with an Ordnance Survey OpenData Licence.

26. Although the complainant acknowledged that the additional duties in the FOIA in relation to datasets (brought in by the Protection of Freedoms Act 2012) do not apply to the EIR, he pointed out that the Commissioner's guidance on Datasets<sup>4</sup> states the following at paragraph 97;

"if a public authority receives a request for an environmental dataset, and the requester has asked for it in a re-usable form, the authority should consider its duties under regulation 6 of the EIR relating to making information available in a particular form or format. The Information Commissioner considers that the term "a particular form or format" in regulation 6(1) of the EIR can encompass a re-usable form. Public authorities should make the environmental dataset available in a re-usable form, so far as reasonably practicable."

27. The council confirmed that it did consider the aforementioned Commissioner's guidance on datasets in relation to this request. It noted that the Commissioner recommends that the 'FOI dataset provisions' are applied but acknowledges that such provisions do not legally apply to requests under the EIR. It said that it would continue to bear the Commissioner's guidance in mind with requests for environmental information and will seek to meet the spirit of the FOI dataset provisions for environmental information where this is reasonably practicable in respect of the form and format provisions.

28. However, in relation to rights of way information it made the following points:

"Providing it in the requested format doesn't specifically add any further information and isn't being requested to meet a specific accessibility issue (as far as we are aware).

This is not a case where somebody wishes to receive a paper copy of something currently available digitally, for example. The format preference request is explicitly stated to allow their specific intention to re-use the information in a certain way. In this context, whether it is reasonable to provide the information in the specified format should take into account the considered reasons why the Council currently makes the information available in its current format and why it has decided at this point not to make the underlying dataset downloadable.

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/datasets-foi-guidance.pdf](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/datasets-foi-guidance.pdf)

There are many factors that need to be carefully considered in respect of making the dataset available for re-use, from factoring in our formal review of our Definitive Map project, to bring the legal record up to date and accurate, working through specific licensing issues, potential dataset updating processes (to reduce the risk of out-of-date versions of the dataset being referred to an relied upon) and any wider impacts of people using other versions of the dataset rather than the formal record held and maintained by the County Council.

We are continuing to assess these factors, including having obtained an exemption from Ordnance Survey to facilitate the process if and when deemed appropriate, yet at this stage they are still under careful consideration. The prospect of making the dataset available will continue to be considered and any developments in this regard will be published on our website.

It is important to reaffirm here that the implications of the intended re-use are not being used as part of the consideration as to what information can be disclosed under the Regulations. We are not denying them access to the information and nor would we wish to do so. We are asserting that we have made a considered decision as to why the information is currently made available in a specific form and format and that it is consequently reasonable for us to follow this course.

There is no statutory obligation for authorities to provide even the digital mapping that we currently make available on our website. Not all authorities are able to do this yet. We are only required to hold and provide free access to view in person the Definitive Map and Statement in paper form. We therefore already provide information beyond the statutory requirement...

...In our opinion we are responsible for the wider public interest which involves managing the data so as to minimise the risk of problems arising for landowners and users from misinformation, either due to errors in the data or from mis-application of the data. We understand that this public interest concern is widely shared amongst highway authorities and has been discussed with Ordnance Survey."

29. The Commissioner asked the council to take into consideration that the complainant has asserted that his website makes it clear, through a disclaimer, that the data that 78 other authorities had provided is not definitive and should not be used for legal purposes and that most of those councils have provided rights of way datasets with an Ordnance Survey OpenData Licence.



30. The council said that its decisions under the EIR have to be made on an 'applicant blind' basis and its concern is that if it decides to meet the 'ESRI shape file, MapInfo files or a KML file' format for one person, it would have to do so for anyone else who subsequently requested it, regardless of whether they had no intention of using a disclaimer or planned to use it for other purposes. It also said that whilst legally any applicant would be bound by the terms of re-use it applied (for example the OS Licence), from a practical point of view enforcing this requires a management process and currently could be time-consuming and expensive for the taxpayer (if, for example, its only recourse was to take legal action). Part of its strategy for managing this risk currently is to give citizens the benefit of accessing the information via its online map without making the underlying dataset available to be re-used, copied and exploited whilst it continues to assess the implications of making the dataset downloadable and the processes that might be needed to be put in place around this.
31. The Commissioner considers that the council has provided adequate reasons as to why it has not provided the information in a reusable form. More importantly, he fully acknowledges that the EIR, unlike the FOIA, does not impose a duty on public authorities to provide datasets in a reusable format and therefore the council in this case is not in breach of the legislation.

## Right of appeal

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32. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

33. 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.
34. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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