

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

**Decision notice**

**Date:** 13 February 2014

**Public Authority:** Halton Borough Council  
**Address:** Municipal Building  
Kingsway  
Widnes  
Cheshire  
WA8 7QF

**Decision (including any steps ordered)**

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1. The complainant has requested information on surveys and data held by the authority which led to it introducing changes to the highway on to a particular road.
2. The Commissioner's decision is that the authority has provided him with all of the information which it holds falling within the scope of his request.
3. He has also decided that the first series of questions asked by the complainant were not requests for the purposes of the Regulations.
4. The Commissioner does not require the public authority to take any steps.

**Request and response**

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5. The complainant made an initial request for information to the council through questions he asked of his local councillor. The councillor took up the questions and emailed the relevant department at the council on 21 June 2012 asking the department to answer the following questions to the complainant:

*"The pinch point on the bend is not in the appropriate place in his opinion.*

*Why is there no traffic calming further up the avenue (on the down slope approaching the pinch point, there is only one set of traffic calming)?*

*Cars are parking on the pinch point (I have pictures he gave me)."*

Further correspondence followed with the council over this issue.

6. Following this, on 5 June 2013 the complainant wrote to Halton Borough Council and requested information in the following terms:

*"With reference to the Highway Works at Halton Brook Avenue I wish to apply, under the Freedom of Information Act, for the results of the survey that determined the placement of such works. I would also like the results of subsequent surveys since the introduction of this scheme."*

7. The council responded on 27 June 2013. It provided the complainant with a copy of the traffic count and vehicle speed surveys undertaken at two locations on the road in question and said that this was the information which was used to support the case for making changes to the road.
8. Following this the complainant wrote back to the council (in an email which appears to be dated incorrectly as 5 June 2013) stating that the information was '*somewhat flawed*', and that it was '*only a traffic census and could be applied to any road in the borough*'. He raised further concerns with the information which had been disclosed to him and said '*The information I require concerns the amount of collisions and near misses reported that determines this site to be an accident black spot and the placement of traffic calming measures*'.
9. On 2 August 2013 the council responded saying that the changes were based upon the survey of traffic speeds and pedestrian crossing activity on the section of road rather than accident records. Nevertheless it provided the complainant with a copy of road traffic accident data which it held dating between 2003 and 2012 (which it obtained from the police who had collected that information and provided it to the council).
10. On 3 August 2013 the complainant wrote to the councillor who had initially submitted questions he had asked about the traffic calming measures. He expressed his dissatisfaction with the information which had been disclosed to him and said that the changes which had been implemented were not correct for the road.
11. On 13 August 2013 the council responded to the complainant's request for internal review of 4 July 2013. It stated that the information which had been disclosed to him was correct and that it did not hold any other

relevant information. It did however acknowledge administrative errors in its overall response to the initial request and the correspondence which had followed that, but overall it concluded that he had now obtained the information he had asked for.

## **Scope of the case**

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12. The complainant contacted the Commissioner on 1 August 2013 to complain about the way his request for information had been handled. He considers that the council has not provided him with all of the information which he requested. He also complained that the council failed to respond to his earlier requests within the required time limit and that its response did not provide him with the information which he had requested.
13. The complainant's complaint therefore refers to 2 different requests he had made to the council. The first request 21 dated 2012, and the request dated 5 June 2013.

### The first request

14. The Commissioner has considered the complainant's first request and is satisfied that it is not a request for information which falls within the scope of the Regulations. The 'request' is essentially a statement of opinion and questions which the complainant expected the council to respond to by explaining its actions in respect of the measures it had introduced on to the road in question.
15. The Regulations provide a right to request information which is held by an authority. They do not provide a right to require an authority to respond to questions. The First-tier Tribunal has however stipulated that where information is held which can respond to a question then the authority should provide that in response.
16. In this case the council sought to respond to the questions, however, the complainant remains concerned about the responses he received. The Commissioner however has no powers to consider whether the reasons provided by the council for the introduction of the traffic calming measures are satisfactory or appropriate.
17. In any event, the Commissioner also notes that the complainant did not make his complaint about his request of 21 June 2012 until 1 August 2013. This falls outside of the time which the Commissioner considers is reasonable to make a complaint to him about a failure to respond to a request.

18. The Commissioner's decision is that these questions are not requests for the purposes of the Regulations.

#### The second request

19. The complainant indicated to the Commissioner that his central concern was expressed to a councillor who had initially forwarded the first request to the council. In that email he said:

*"The justification for the scheme was based upon the survey of traffic speeds and pedestrian crossing activity along this section of the Avenue, rather than accident records.*

*The data for the traffic speeds as mentioned before is flawed. Where is the data for **pedestrian crossing activity** and if reports were made of excessive speed incidents, who recorded these details and why was this data not made available."*

20. The Commissioner considers therefore that the complainant's complaint is that the council has failed to provide him with all of the information in response to his request dated 5 June 2013.

#### **Reasons for decision**

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##### Is the information environmental information?

21. The council did not claim any exemptions in response to the request and did not therefore specify whether it had responded under the Regulations or the Act. For the avoidance of doubt however the Commissioner has considered whether the information is environmental information as defined with the Regulations.
22. Regulation 2 of the EIR provides the definition of environmental information for the purposes of the Regulations.
23. The information is information on traffic surveys which were used by the council to consider whether, and where to place traffic calming measures and other changes onto a roadway.
24. The Commissioner considers that the information is information on the state of the elements of the environment. It describes the volume, approximate speed and weight of traffic which passes on the relevant section of the road, and has been used for the purposes of designing measures which would affect the elements of the landscape (by introducing traffic calming measures on to the roadway).

25. The Commissioner is therefore satisfied that the information is environmental information and that the council's response should have been under the EIR rather than the Act.
26. As stated however, as the council did not specify under which legislation it was responding because it did not withhold any information this does not specifically make a difference in this case.

Is there any further information held by the authority?

27. The council responded to the complainant's request by providing him with a number of datasets/surveys which it confirmed had been used to consider whether, and where to make the changes.
28. The complainant however has considered this information and does not believe that it justifies the measures which the council has introduced, or the area of the road where it has introduced those measures. He has highlighted a number of issues which have arisen as a result of the introduction of the measures.
29. The council has stated that the information it provided is all of the information which it holds which falls within the scope of the request. The complainant however highlighted the responses it has received from the authority which, he suggests, points to further information being held which has not been disclosed to him. Primarily he considered that if this was the information which the council relied upon to make its decision then its decision was flawed. He also said that the council had alluded to pedestrian crossing activity and excessive speed data as reasons for its decision but had not provided him with any data which it relied upon when making that decision.
30. The Commissioner therefore wrote to the council and asked it to reconsider the request and to carry out searches to confirm whether there is any further information falling within the scope of the request.
31. The Commissioner asked the council to confirm:
  - What searches were carried out for information falling within the scope of this request and why would these searches have been likely to retrieve any relevant information?
  - If searches included electronic data, please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.
  - If searches included electronic data, which search terms were used?

- If the information were held would it be held as manual or electronic records?
  - Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?
  - If recorded information was held but is no longer held, when did the council cease to retain this information?
  - Does the council have a record of the document's destruction?
  - What does the council's formal records management policy say about the retention and deletion of records of this type? If there is no relevant policy, can the council describe the way in which it has handled comparable records of a similar age?
  - If the information is electronic data which has been deleted, might copies have been made and held in other locations.
  - Is there a business purpose for which the requested information should be held? If so what is this purpose?
  - Are there any statutory requirements upon the council to retain the requested information?
  - Is there information held that is similar to that requested and has the council given appropriate advice and assistance to the applicant in line with the duty contained at Regulation 9?
32. The council's response was that it was sure that it had located all of the information which it holds relevant to the request. It said that

*"We are confident that the 'search' for this information within the scheme file would and did result in the retrieval of the relevant information – ie. "the results of the survey that determined the placement of the works." No surveys, subsequent to the introduction of the measures have been carried out. As the scheme was recently implemented, no 'searching' was necessary to determine that we did not hold this information..."*

*"On receipt of the information provided in respect of his initial request, [the complainant] queried the data provided and asked for additional information relating to Road Traffic Accident data. Again the information requested was accessible from the same scheme filing systems. An explanation of apparent discrepancies in the original data was prepared in response to [the complainant's] queries and this was provided to [the complainant] in an email dated 2<sup>nd</sup> August 2013."*

*"As explained above, the information requested was clear and straightforward and we were able to satisfy the request through the searches made..."*

33. The council therefore clarified that it had not carried out all of the searches above because it was clear what information had been used to facilitate its decision on the placement of the road traffic calming measure which were introduced onto the road.
34. The council did admit that one part of its response was ambiguous. It said that where it had indicated to the complainant that *"The justification for the scheme was based upon the survey of traffic speeds and pedestrian crossing activity..."* This may have led [the complainant] to assume that the Council held survey data relating to pedestrian crossing activity, which it does not. No pedestrian surveys have been carried out and the statement merely referenced the fact that uncontrolled pedestrian dropped-crossings had been provided at this pedestrian desire-line along Halton Brook Avenue, which naturally generates crossing activity.
35. Where there is a question surrounding whether further information is held by an authority the Tribunal has clarified that the burden of proof to apply is whether 'on a balance of probabilities' further information is held.
36. It should be noted that the wider concerns of the complainant, that the traffic measures were inappropriate or that the data on which they were decided is flawed are not a matter for the Commissioner to consider. He must solely consider whether the information which was requested has been disclosed to him or not.
37. Given the assurances by the authority that it was fully aware of where the relevant information was held, and that it has searched through these files and provided the relevant information to the complainant the Commissioner must consider that, on a balance of probabilities, no further information is held by the authority.

## Right of appeal

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38. 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)

39. 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.
40. 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**  
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