

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

Date: 19 September 2017

Public Authority: Lancashire County Council
Address: County Hall
Preston
Lancashire
PR1 8XJ

Decision (including any steps ordered)

1. The complainant has requested information relating to an application for a Definitive Map Modification Order (a 'DMMO'). The council provided some information however it applied section 12(4)(d) to other information, and Regulation 13 to details of the correspondence it holds (personal data). During the course of the investigation the council withdrew its reliance upon Regulation 12(4)(d) and provided further information to the complainant. The complainant however considers that further information must be held by the council falling within the scope of his request. The complainant also complained about the council's delay in providing the information and its delay in carrying out a review of its response to his request.
2. The Commissioner's decision is that the council was correct to apply Regulation 13 to the addresses and the identity of individuals who provided evidence for the DMMO consideration. She also considers that it was correct to apply Regulation 13 to the identities and contact details of officers other than a Director, a Principal Lawyer and a Public Rights of Way Manager.

3. She has also decided that on a balance of probabilities no further information is held by the council falling within the scope of this request.
4. However the Commissioner has decided that the council did not comply with the requirements of Regulation 5(2) and Regulation 11(4) and (5) in responding to the request for review.
5. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - The disclose copies of the correspondence disclosed to the complainant previously with the names of the Director, the Principal Lawyer and the Public Rights of Way Manager unredacted.
6. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

7. On 26 August 2016 the complainant wrote to the council and requested information in the following terms:

"Please provide me with all information regarding the above application:

- a) A copy of all recorded information held by Lancashire County Council (LCC). This shall include application documents and associated communications along with a copy of all related communications including any application to modify the application route received by and sent out by LCC along with drafts, emails, notes and recordings of telephone conversions.*
 - b) The name of the LCC officer in charge of the application and the progress of the application."*
8. The council responded on 14 September 2016. It provided some information however it withheld other information under Regulation 12(4)(d) (information in the course of completion). As regards part b) of the request the council provided a generic email address for the public rights of way team.

9. The complainant requested that the council review its position by email on 15 September 2016 but the council did not initially respond to this request.
10. During the course of the Commissioner's investigation the council wrote to the complainant in December 2016. It withdrew its reliance upon Regulation 12(4)(d) (although it did not specifically state this to the complainant) and provided further information to him in response to his complaint, stating that more information would be provided once he supplied his postal address. It provided further information to him on a CD on 26 January 2017. Although this was not specifically stated by the council to the complainant, the Commissioner has taken these further responses to be the council's review of its decision.
11. The council said that Regulation 13 was applicable to withhold the personal data of council officers and third parties. It said however that all of the information it holds had now been provided to him, other than the redacted sections of information under Regulation 13. It confirmed to the Commissioner that it was no longer seeking to rely upon Regulation 12(4)(d) to withhold any information. It also confirmed that it had carried out searches and that no further information was held.
12. In June 2017 the Commissioner provided evidence to the council that further information must have been held by the council at one point. The council subsequently carried out further searches and found a voluminous amount of further documentation which it provided to the complainant on 14 August 2017.

Scope of the case

13. The complainant contacted the Commissioner on 28 October 2016 to complain about the way his request for information had been handled. His main points of contention were that the council was withholding information under Regulation 12(4)(d) and Regulation 13 and that not all of the information which he had requested had been disclosed to him.
14. As the council disclosed further information to the complainant in December 2016, January 2017 and August 2017, and also confirmed to the Commissioner that it was no longer relying upon Regulation 12(4)(d) to withhold the information she has not considered the application Regulation 12(4)(d) further in this decision notice.

15. Following the disclosure in January the complainant wrote to the Commissioner on the 10 February 2017 and outlined the remaining areas of his complaint as:
 - He considers that further information should be held.
 - He asked the Commissioner to consider the council's delay in providing the information to him.
 - He asked the Commissioner to consider its failure to carry out a review.
 - He considers that the names of third parties and council officers should not have been redacted by the council under Regulation 13.
 - He asked the Commissioner to consider the redaction of some dates from the correspondence.
16. The complainant also complained that some information provided to him is illegible and that the council should therefore provide him with legible copies of the documents. During the course of the Commissioner's investigation the council said that it would revisit the information provided in response to the request and would try to obtain better copies of any documents which were illegible and provide these to the complainant. It re-sent this information to him as part of its disclosure in August 2017.
17. The complainant has also drawn attention to data protection issues which he personally has had with the council and compared this with its management of other third parties personal data. However the complainant's suggestion that the council has not handled data relating to the complainant in accordance with the Act does not, and cannot, place an obligation on the council to act in the same way with other parties personal data in order for him to obtain information under the EIR. For the avoidance of doubt, any data protection issues which the complainant has with the council are a matter for a separate complaint to the Commissioner, or for the courts, and are not an issue which she can consider in terms of a disclosure of information under the FOI Act or the EIR.
18. The Commissioner considers that the complaint is therefore that the council has failed to provide him with all of the information he has requested, and that it has incorrectly applied Regulation 13 to withhold information. She will also consider the complaint that the council was late providing the information to the complainant and late in carrying out a review of his request.

Reasons for decision

Regulation 5(3)

Personal data of the complainant

19. Regulation 5(3) of the EIR provides that to the extent that the information requested includes personal data of which the applicant is the data subject, there is no duty to provide the information to the complainant under the Regulations.
20. The complainant made a further request for updated information to the council on 13 April 2017. In its disclosure of August 2017 the council provided further information to the Commissioner to consider in light of this further request. Within this information the council included correspondence between the council and the complainant relating to his wider complaints relating to the DMMO and other matters.
21. Under Regulation 5(3) the personal data of the complainant is exempt from consideration for disclosure under the EIR. However the Commissioner expects public authorities to identify that the request includes a subject access request and consider that information for disclosure to the requestor personally under his rights under section 7 of The Data Protection Act 1998 (the DPA).
22. The council has not taken this step with this information.
23. Disclosures under the EIR or under the FOI Act are considered to be to the whole world. Should the council receive any further requests for this information from anyone other than the complainant the council will need to separate the complainant's personal data and consider the application of section 40(2) or Regulation 13 prior to disclosing it.

Regulation 13

24. Regulation 13 of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').
25. In order to rely on the exemption provided by Regulation 13, the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

"personal data" means data which relate to a living individual who can be identified –

- (a) *from those data, or*
- (b) *from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual."*
26. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The council's argument in this case is that a disclosure would breach the first data protection principle.
27. The Commissioner has therefore considered whether a disclosure of the redacted sections of the information would disclose personal data under conditions failing to comply with the requirements of the Data Protection Act 1998 (the DPA), and in particular any of the data protection principles.

Is the withheld information personal data?

The names of private individuals

28. Some of the redacted information relates to the names of third party individuals who are either affected by the DMMO, own property adjacent to it or provided evidence for or against the DMMO being allowed. The information has been provided to the council in the form of correspondence and in User Evidence Forms (UEF's) and other correspondence. The names, identities and some dates of birth provided to the council by the individuals are clearly personal data for the purposes of the Regulations.

The addresses of properties belonging to private individuals

29. As well as the identities of individuals, the council has also redacted a list of house numbers of certain properties, although it has provided the street names together with the post code of the properties. The complainant believes that this information should have been disclosed to him as he considers that it forms part of the public record of the application.
30. The Commissioner considers that following the Tribunal's decision in the case of *England & L B of Bexley v Information Commissioner (EA/2006/0060 & 0066)* the disclosure of addresses alone (i.e. without the associated details of the owner of a property) can amount to personal data.

31. This being the case the Commissioner considers that a disclosure of addresses would also be disclosure of personal data where individual properties can be identified from the redacted information.

The names and contact details of council officers

32. The council also withheld details of council officers from correspondence, including their identities and their contact email addresses. The Commissioner considers that this information is personal data belonging to these individuals.

Would a disclosure of the information contravene any of the data protection principles?

33. Having decided that the information which has been redacted under Regulation 13 is personal data the Commissioner has considered whether a disclosure of this information would contravene the first data protection principle.

34. The first data protection principle states that:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."

35. In deciding whether disclosure of this information would be unfair, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subjects, the consequences of disclosure on those data subjects.
36. She has also considered the requirements of schedule 2 DPA Schedule 2 condition 6 of The Data Protection Act 1998. This provides the conditions for a disclosure of personal data. The test in condition 6 is, broadly, whether a disclosure of the information is necessary for the purposes of legitimate interests pursued by the applicant or by the public as a whole, balanced against whether the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the individuals.
37. If those requirements are not met, disclosure would be unfair, regardless of other considerations, and would breach the first data protection principle, hence satisfying the requirements of Regulation 13.

Nature of the information and reasonable expectations

Council officer's information

38. The council has redacted information of council officers corresponding with the applicant and others over the issue. It did not initially provide any arguments for withholding this information under Regulation 13 but did so when the Commissioner asked specifically for these arguments. For this, and other reasons, the Commissioner has addressed a lack of engagement by the council in her investigation in the 'Other Matters' section below.
39. The council said it notes that officer's names which are included on documents are already publicly available. It said however that there is a difference between that and names being specifically provided in response to an FOI request. It said, for instance, that the complainant is quite likely to latch on to those names and contact them specifically regarding his complaints. Whilst the Commissioner recognises that public authorities must consider requests applicant blind, nevertheless it can take into account the likelihood of unwarranted contact from any member of the public should the information be disclosed, and the disruption this may cause individuals.
40. The council argued that whilst its officers are working on behalf of the council they are representing the council and are not acting in an individual personal capacity. The council argues that the redaction of officer names has no material effect upon the quality of the response or otherwise effect an understanding of the information it discloses. It said that if the applicant has further queries with regards to any of the disclosed information he or she can contact the department for clarification and does not need to contact a specific individual directly. It is not therefore necessary for the information to be disclosed when balanced against the rights and freedoms or legitimate interests of the individuals.
41. Furthermore, it argues that given the volume of information concerned (and the number of other requests the council must also deal with), ascertaining if certain personal details are already in the public domain or asking if officers are happy to consent to disclosure would add a considerable amount of time to the processing of the request. It argues therefore that this would be an unnecessary additional burden on the grounds that redaction of officer details has no effect on the quality of the information that is disclosed.
42. The Commissioner notes the council's arguments however she considers that the council is essentially seeking to apply a 'blanket ban' on the disclosure of council officers' information. The Commissioner has published guidance on requests for the personal data of public authority

employees at https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf . This states that information about an employee's actions or decisions in carrying out their job is personal data about that employee, but given the need for accountability and transparency about public authorities, there must be some expectation of disclosure. It says that it is reasonable to expect that a public authority would disclose more information relating to senior employees than more junior ones. Senior employees should expect their posts to carry a greater level of accountability, since they are likely to be responsible for major policy decisions and the expenditure of public funds.

43. The Commissioner also considers that it may also be fair to release more information about employees who are not senior managers but who have public facing roles and represent their authority to the outside world, such as a spokesperson, or at meetings with other bodies.
44. The Commissioner considers that in this case it would be reasonable for junior officers to have an expectation of privacy and consider that their names would not be disclosed to the public in response to a request.
45. A disclosure of information via either the FOI Act or the Regulations is considered to be to the whole world, and the level of expectation that personal information will be disclosed to that wide an extent is likely to be much lower other than in the case of senior officers or those with a public facing role at the council.

The consequences of disclosure

46. The names of the individuals together with their work contact details would be made public. This might result in unwanted direct contact from members of the public and others, whereas currently this is managed through the publication of the general email address for the relevant team. A disclosure of the information would also infringe upon their privacy to a certain degree.

Balancing the rights and freedoms of the data subjects with the legitimate interests in disclosure

47. The council has argued that a disclosure of council officer's information would be against their expectations and could lead to unwarranted contact from members of the public. There is no necessity for their contact details to be provided generally as a general contact address is provided to contact the relevant department at the council. In the case of more senior officers however they will be responsible for decisions taken by the department and for transparency purposes there is a greater expectation that that information might be disclosed.

48. The Commissioner notes that the individuals whose data has been redacted are generally not senior officers and falling in line with the guidance referred to above she considers that there is no requirement to disclose their information. However two senior council employees are identified within the information, namely a Director and a Principal Lawyer. The Commissioner accepts that these two individuals would have an expectation that their identities may be disclosed in response to requests. They are in positions where there is a strong expectation of accountability for their actions, and therefore would have an expectation that their details would need to be disclosed on the grounds of transparency.
49. Additionally as regards details of a Public Rights of Way Manager the Commissioner has found evidence that council officers in this role have previously made public statements to the press when representing the council regarding actions it has taken. Clearly therefore this individual would have an expectation that his information would be associated with the council and may be disclosed. The Commissioner therefore considers that a disclosure of the identity of this individual would be fair for the purposes of the first data protection principle.
50. As regards the requirement for a condition under schedule 2, condition 6 requires balancing the Commissioner to consider whether "*The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject*".
51. The Manager's details are redacted from many of the emails which have been provided to the complainant. In order to be able to understand the nature and content of the correspondence it is not necessary for his identity to be disclosed. However given the number of emails in which he is involved the Commissioner's decision is that as a representative of the council with a public facing role the information should be disclosed in order to provide a fuller picture of his involvement in the process.
52. As regards the Director and the Principal Lawyer a disclosure of their involvement in the process is necessary in order for the council to be transparent and accountable for the actions which it (and they) has taken in respect of the application.

Conclusion on the analysis of fairness

53. The Commissioner considers that, other than the three individuals identified above, individual council officers would not expect their details to be disclosed in response to the request. They are not senior and it is not necessary for their details to be disclosed in order to understand the nature of the DMMO application or their actions in relation to it.
54. The Commissioner is aware that the complainant will already know the identities of many of these individuals through his direct correspondence with the council on the wider matters relating to his complaints. As noted above, however, a disclosure under the Regulations or the FOIA is considered to be to the whole world and therefore the exception is still applicable to the documents disclosed under the EIR in response to his complaint.
55. In summary therefore the Commissioner considers that the council should disclose copies of the correspondence with the names of the Director, the Principal Lawyer and the Public Rights of Way Manager unredacted.

Third parties

Nature of the information and reasonable expectations

56. The council argues that the information is the identities of members of the public. It argues that disclosure would be against their legitimate expectations and therefore unfair in terms of the first data protection principle.
57. The information is personal data relating to members of the public and affected organisations who submitted information to the council in order to provide witness statements as to the use of the land which is the subject of the DMMO. Some information also relates to individuals affected because their properties have a boundary with the land in question and this is generally notified to the council by the applicant for the DMMO. The council also said that it had redacted dates of births of some members of the public who submitted evidence forms to the council.
58. The Commissioner notes that the witness statements provided in the 'Public Rights of Way, Evidence of Use of Foot' document (the UEF) opens with a statement that:

"Please note that information supplied will be used in accordance with the processes under Statute and will not be confidential. It may be disclosed to third parties"

59. The council has not made the Commissioner aware of any notices it has received from these third parties requesting that their information be retained privately. It did however say:

"We normally tell witnesses that their information, including identities, will not be confidential if the Regulatory Committee decides to make a Definitive Map Modification Order or if a refusal to accept the application is successfully appealed and the Council is subsequently directed to make a Definitive Map Modification Order. The phrase 'will not be confidential' is shorthand for that. There is no public interest in disclosing this information if there will be no definitive map modification order and the UEF form will therefore not be used. Furthermore there is a public interest in not disclosing the details in such an event because it is not unheard of that community or neighbourly relations can be damaged or recriminations or threats made. In this case the decision was not to make an order and this application is therefore closed. No order was made (which is, incidentally, what [the complainant] wanted)."

60. The council did not however provide any evidence that it qualified this notification or explain how it went about informing individuals of this qualification over and above providing the general terms provided in the UEF.
61. A number of individual's details are held in the UEF's and the council further considered that it would be impractical to try and contact all of them to try to obtain their consent to a disclosure of their details to the complainant. Consent is however only one of a number of factors to be considered when considering the application of the first data protection principle.
62. Even with the council's arguments in this respect, the notification could be considered to be a fair processing notification for the purposes of the first data protection principle, informing individuals as to how their personal data may be used. The Commissioner notes however that the notification is ambiguous. It explains clearly to individuals filling in the UEF that the 'information' they are submitting may be disclosed to third parties and that it will not be held in confidence. The Commissioner therefore considers that the individuals would have an expectation that the information they have provided could be disclosed to the public in respect of the application. It does not however make clear that the individuals' personal information (their name and address) will also be disclosed, and it would be open for individuals to consider that only the evidence they were submitting would be disclosed in the first instance.

63. The evidence submitted in the forms is confirming the submitters understanding and usage of the path in question. Effectively the evidence will be that the individual has used the path, give details about how often, and give an indication of how long the person considers that the pathway has been used by members of the public. It may also outline any blockages to the pathway that they remember or have come across when using the path. In this way the council is able to build up a picture of the general public usage of the pathway over the relevant period of time. This will facilitate its decision as to whether a right of way exists over the land.
64. The Commissioner notes that there is a general expectation in planning matters that decisions will be taken transparently and that information provided by third parties in support or in objection to planning applications are made public. Whilst there is a similar public consideration in the case of DMMO orders, and similar issues might arise, it does not appear that the council recognises any specific principle that all information provided will be disclosed as a matter of course unless the information is appealed. This will affect the expectations of individuals submitting their personal information to the council for these purposes.
65. Individuals who submit that evidence would understand that their evidence is effectively a statement of fact which is used in the decision making process to determine whether there is a right of way along the relevant section of ground. As DMMO orders are of public concern they should have an expectation that their evidence may be used and disclosed publically when the DMMO decision is being made. They would not however expect that their personal details will be disclosed in response to an FOI request as there would generally be little need for this information to be disclosed in order to make the reasons for the decision taken by the council transparent.

The consequences of disclosure

66. As members of the public, a disclosure of their information would be considered to be an intrusion into their privacy, albeit that they were made aware that that might be the case when submitting their information to the council for consideration.
67. The council argued that there is a potential for disclosure to cause disruption and discontent within communities. Parties may have strong feelings regarding the application and a disclosure of evidence may give rise to discontent between neighbours should the information be disclosed, giving away statements they have made in support or in

objection to the proposal. This is particularly the case where individuals may find their land infringed upon if the DMMO application is successful.

Balancing the rights and freedoms of the data subjects with the legitimate interests in disclosure

68. The council argued that the legitimate interests of the public in accessing the requested information is not sufficient to outweigh the right to privacy of the data subjects, particularly given that they are members of the public who would not have expected that their information would be disclosed in response to an FOI request. The council also argued that the information relates to the private lives of members of the public.
69. The individuals whose information has been redacted provided the information for the purposes of providing witness to the use of the land in the past. The UEF notification shows that they were notified of a potential that their information may be disclosed to third parties prior to submitting their evidence. They must therefore have submitted the information with a degree of expectation that that information may be disclosed. It is not however made clear to individuals that that information may include details of their identity and/or their address, nor is it made clear exactly how that particular information may be used by the council.
70. The council argues that in the case of an appeal to a DMMO then the information is likely to be disclosed, however prior to this point there is no value in the information being disclosed. The evidence of usage itself is the important information required when determining whether the right of way exists. There will generally be no requirement for the names and addresses to be provided to the public in order to understand the council's decision.
71. The Commissioner considers that there is a limited value in disclosing their personal data in response to an FOI request, namely the potential to identify relationships or personal interests which might lead to false evidence being provided to persuade the council to reach a specific decision. No evidence has been noted that this has occurred in this case.

Conclusion on the analysis of fairness

72. The Commissioner is satisfied that in reading the notification of the potential uses of the information the council was clear with individuals that they should not treat the information they were providing as confidential and that that information may need to be disclosed to the public. However the notification is unclear as to what information would be disclosed, and in what circumstances, and the Commissioner

considers that it is unlikely that individuals would consider it appropriate that their names and addresses might be disclosed publically in response to an FOI request. She also takes into account the requirements of schedule 2 that a disclosure of personal data should only take place where it is necessary, balanced against an unwarranted intrusion into the rights of that individual.

73. The council has argued that that notification was subject to a qualification that the DMMO would be put forward for consideration. The council has not provided any evidence of the qualification on disclosure which it argues those submitting the forms would have been told. It has not demonstrated how these third parties would have understood that their information would only be disclosed in the limited circumstances it described. Nevertheless the Commissioner notes that on the council's website evidence is provided regarding the application but this does not include the names and addresses of third parties generally.
74. Although the Commissioner has concerns that the fair processing notification is ambiguous and would advise the council to reconsider the wording on the UEF's, she considers that the council was correct to apply Regulation 13 to the personal data of third party individuals at the time that the request for information was received.

Landowners

75. As regards land owners whose details have been provided because their property borders the prospective right of way she considers that there will be circumstances where some of this information is disclosed publically for the limited purpose of identifying the land subject to the DMMO application. The Commissioner considers that this level of disclosure is appropriate, would fall within their expectations generally and is necessary in order for the path of the prospective DMMO to be unambiguously identifiable and fully understood by interested parties.
76. However where information is provided to the council in order for it to determine the DMMO application, whilst there will be an expectation that that information may appear on relevant maps identifying the land under consideration for interested parties to consider their use of the path previously it would not be necessary for personal details such as the name and data of birth of the landowner to be disclosed in response to an EIR request.
77. The Commissioner's decision is therefore that the council was correct to apply Regulation 13 to this information.

Regulation 5

Is further information held?

78. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request.
79. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
80. The Commissioner made detailed enquiries to the council in order to assess whether further information is held.
81. The council initially said that all information it holds on public rights of way is held on a server. All DMMO files are arranged on the server in one file this includes emails. These are also stored on the path files and deleted from the mailbox. Therefore a search of the corresponding folder and its subsidiary folders can reasonably be expected to locate all of the information relevant to that particular application. It therefore said that it had carried out searches of laptops or personal computers as information would not be held on these.
82. The council said that it did not need to use search terms to locate relevant information. Essentially all of the relevant information would be in the relevant folder and its subsidiaries; any information within the appropriate folder would potentially be relevant to the request. Information would only be held in electronic form, in this manner.
83. The Commissioner asked whether any information was previously held and may have been deleted. The council confirmed that courtesy emails with no substantive contact may have been deleted but that no record would be made of this. It is not aware of any other records being deleted but confirmed that in effect information of no importance to the case may not be recorded.
84. The council said that it did not think that it has any statutory duty to retain information of the sort requested but confirmed that it does however have a statutory power to process applications of this sort.

85. It therefore confirmed to the Commissioner that it had provided the complainant with all of the information it holds falling within the scope of the request (other than the information redacted under Regulation 13).
86. However the Commissioner subsequently noted that evidence for the application which was published on the council's website after the decision had been made referred to evidence which the complainant had not been provided with. The Commissioner therefore wrote to the council on 7 June 2017 and asked the council to confirm whether it still retained that information. The council wrote back on 29 June 2017 stating that an error had been made and that a substantial amount of further information had been found within another department at the council which it would disclose to the complainant, subject to any necessary redactions being made. The council confirmed that it had disclosed the information to the complainant on 14 August 2017.

Conclusions

87. The Commissioner has considered the council's arguments above. The first point would appear to be that there appears to be little reason why the council would not disclose the information (albeit redacted) were it to have actually located further relevant information. The DMMO order has now been refused (subsequent to the request being made), although it is open to the applicant to submit further evidence of usage of the route in question in the future and make a further application.
88. The second point is that the council has described the searches which it has carried out, and based upon the electronic filing system it has described it appears to the Commissioner that if further information were held then it would be held within the file location described by the council. This is further strengthened by the fact that the council did subsequently find the file within its legal department which it had not initially located, and considered this information for disclosure also. It has therefore carried out significant searches for information on a number of occasions in order to respond to the complainant's request.
89. The Commissioner must decide on a balance of probabilities whether further information is held based upon the arguments of the two parties. If an authority can demonstrate that it has carried out appropriate searches of the appropriate filing systems and there is no other evidence to the contrary then the Commissioner will accept that on a balance of probabilities no further information is held by it.
90. Based upon the fact that the council has now carried out a number of searches for the information and had described both how, and where the information would generally be held, and confirmed that all of the information within the files it has discovered has now been considered

for disclosure, the Commissioner's decision is that on a balance of probabilities no further information is held by the council.

Regulation 5(2)

91. Regulation 5(2) provides that:

"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."

92. The complainant made his request for information to the council on 28 August 2016.

93. The council initially withheld information under Regulation 12(4)(d) and Regulation 13. It subsequently withdrew its reliance on Regulation 12(4)(d) and provided further information to the complainant on 22 December 2016. It provided some information by attachment and later sent a CD containing further information which was too large to send by email attachment. This was provided to the complainant by letter dated 26 January 2017.

94. It subsequently confirmed to the Commissioner that the council was no longer relying upon Regulation 12(4)(d) for any of the relevant information and had only relied on Regulation 13 to withhold the remaining redacted sections of information.

95. As described above the council subsequently disclosed further information to the complainant on 14 August 2017.

96. The council's disclosure of the requested information therefore significantly falls outside of the time period of 20 days provided by Regulation 5(2).

97. The Commissioner's decision is therefore that the council did not comply with Regulation 5(2) in respect of this request.

Regulation 11

98. Regulation 11 of the EIR provides that:

(1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

- (2) *Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.*
- (3) *The public authority shall on receipt of the representations and free of charge –*
 - (a) *consider them and any supporting evidence produced by the applicant; and*
 - (b) *decide if it has complied with the requirement.*
- (4) *A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the receipt of the representations.*
- (5) *Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of –*
 - (a) *the failure to comply;*
 - (b) *the action the authority has decided to take to comply with the requirement; and*
 - (c) *the period within which that action is to be taken.”*

99. The complainant requested a review of the council's initial decision on 15 September 2016. The council did not respond to this until its letter to the complainant in December 2016. The council therefore failed to comply with the requirements of Regulation 11(4).

100. Further to this, in its letter of December 2016 the council did not include the statements required of it by Regulation 11(5) when providing its review to the complainant and amending its position by no longer relying upon Regulation 12(4)(d) to withhold information.

101. The Commissioner therefore considers that the council also failed to comply with the requirements of Regulation 11(5).

Other matters

102. The Commissioner has concerns about the engagement of Lancashire County Council with the ICO as regards its consideration of her questions regarding its response to this case.

103. She has concerns that the council's initial response to her inquiries was brief and did not provide adequate information for her to make a decision on this case.
104. Additionally, the initial failure to locate information following her inquiries indicates that the original searches for information were incomplete and did not fully address the request for information.
105. Following on from this she also has concerned about the patchwork nature of the disclosure of information to the complainant in this case. The complainant had significant concerns regarding the application for the DMMO in this instance, and the failure of the council to properly address the request within a timely manner would have significantly increased those concerns.
106. The Commissioner therefore wishes to put her concerns as regards the council's overall response to this case on record and may use this information as evidence in the future should any systematic issues be noted regarding the council's future response to FOI or EIR requests.

Right of appeal

107. 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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

108. 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.

109. 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
Cheshire
SK9 5AF