

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

Date: 14 June 2018

Public Authority: North Yorkshire County Council
Address: County Hall
Northallerton
North Yorkshire
DL7 8AD

Decision (including any steps ordered)

1. The complainant has requested information in relation to flood risk and a planning application.
2. The Commissioner's decision is that on the balance of probabilities, North Yorkshire County Council does not hold the requested information
3. The Commissioner does not require North Yorkshire County Council to take any steps.

Request and response

4. On 20 September 2017, the complainant wrote to North Yorkshire County Council ('the Council') and requested information in the following terms:

"Objection - 15/01083/DCN02 – Comment regarding the Environment Agency Flood Risk Map for Planning

In the last twenty years the Stone Cross Stell has flooded onto Northallerton Road several times. On one occasion the pipe backed up and the Stone Cross Stell flooded across the cycle path and continued safely across the surface of Hambleton District Council playing fields to North Beck.

Q1) If you know what the level of the cycle path is at that point in relation to Ordnance Survey mapping and their nearest bench mark, please could you let me know?

Q2) If you know how the spot heights given in the plans included in the above planning application relate to Ordnance Survey mapping and their nearest bench mark, please could you let me know?"

5. The Council responded on 13 October 2017 and denied holding information in relation to question 1. It refused to provide information in relation to question 2, citing the exemption at section 21 of the FOIA – information reasonably accessible by other means.
6. On 15 October 2017 the complainant accepted the answer to question 2 but requested a review of the response provided to question 1.
7. Following an internal review the Council wrote to the complainant on 9 November 2017 and upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 10 November 2017 to complain about the way his request for information had been handled, stating:

"I believe NYCC should have the remaining answer to my freedom of information act request, just that they have decided for some reason with this planning application to go the 'no comment route' and not provide the answer.

Please could you attempt to extract a full, accurate and relevant answer from North Yorkshire County Council to my question number 1.

9. The Commissioner considers that the scope of the case has been to consider whether the Council dealt with this request correctly in accordance with regulation 5 of the EIR.
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Reasons for decision

Is the information 'Environmental Information'?

10. Information is 'environmental information' if it meets the definition set out in regulation 2 of the EIR. If the information satisfies the definition in regulation 2 it must be considered for disclosure under the terms of the EIR rather than the FOIA.
11. Regulation 2(1) of the EIR defines environmental information as information on:
 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation or waste...emissions...and other releases into the environment, likely to affect the elements referred to in (a);
 - (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;..."
12. Information about the state of the elements of the environment, such as water, is environmental information. The information in this case relates to the *Environment Agency Flood Risk Map*, the purpose of which is for the identification of flood zones by location.
13. The Commissioner therefore finds that the request is for environmental information and should be considered under the EIR.

Regulation 5 – Duty to make environmental information available on Request

14. Regulation 5(1) of the EIR says that a public authority that holds environmental information shall make it available on request.

Regulation 12(4)(a) EIR

15. By virtue of regulation 12(4)(a), a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.

16. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner, in accordance with a number of First-Tier Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, the Commissioner will determine, on the balance of probabilities, whether the public authority holds additional information within the scope of the complainant's request.
17. In making her decision, the Commissioner will consider the complainant's evidence and arguments. She will consider the actions taken by the public 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 reasons 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.
18. The Council advised the complainant initially that the Council *"... do not know what the level of the cycle path is in relation to Ordnance Survey mapping"*. It went on to state in the internal review response *"The Freedom of Information Act gives applicants a right to information held in recorded form. It is my opinion that the above do not constitute a request for recorded information, but simply pose several questions to the Council"*
19. The Commissioner advised the Council that although the legislation does not require an authority to answer direct questions rather than requests for recorded information, the Tribunal has decided that if recorded information is held which can respond to a question then that information should be considered for disclosure to the requestor. On this basis the Commissioner asked whether the Council holds any recorded information relevant to Q1 of the request.
20. The Council informed the Commissioner that it does not hold any recorded information that would provide an answer the question posed in the complainant's request.
21. The Commissioner asked the Council what steps it had taken to determine whether any recorded information is held applicable to the scope of the request. The Council advised that it did not undertake any searches for the information because *"It was clear to the relevant officers that that specific item of data would not be held already and a degree of technical analysis of the plans submitted by the applicants would be required to answer this question."*

22. The Council confirmed that it had never held information relevant to the scope of the complainant's request. It advised that there is no business purpose or statutory reason for which the information should be held.
23. In terms of related or similar information which could provide an answer the Council advised *"The only such material was the documents relating to the planning application, found on the Hambleton DC website, and to which the applicant was directed"*.
24. The complainant's argument is that the Council should hold information within the scope of his request. Although the Commissioner is sympathetic, she has no firm evidence to that the Council does hold the relevant information.
25. The Commissioner considers that the EIR does not require public authorities to answer questions generally, only if the answers are held in recorded form. Nor does it require them to analyse held data in order to create new information.
26. In this case the Commissioner finds that, on the balance of probabilities, the Council does not hold recorded information in relation to the request that would enable it to answer the questions posed by the complainant. The Commissioner also accepts that the public authority is not obliged to create recorded information to provide to the complainant.
27. Accordingly, she does not consider that there was any evidence of a breach of regulation 5 in relation to such information.

Right of appeal

28. 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

29. 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.
30. 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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Cheshire
SK9 5AF