

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

Date: 13 August 2018

Public Authority: Sheffield City Council
Address: Town Hall
Pinstone Street
Sheffield
S1 2HH

Decision (including any steps ordered)

1. The complainant requested information about various engineering solutions used to maintain trees in accordance with a specified tree management plan. Sheffield City Council (the 'Council') refused the request on the grounds that it considered it to be manifestly unreasonable in accordance with Regulation 12(4)(b) of the EIR, due to the significant burden imposed on the Council by the request in terms of cost grounds.
2. The Commissioner's decision is that the Council has applied Regulation 12(4)(b) to the complainant's request correctly. She finds that the weight of the public interest lies in maintaining the Council's application of this exception.
3. However, she also finds that the Council breached regulation 11 of the EIR by failing to carry out an internal review within the statutory 40 working days' time limit.

Background

4. The Council has outsourced the maintenance and upgrading of all of its roads, pavements, street lights, bridges and trees under 'Streets Ahead', which is a huge city-wide highways maintenance contract.
5. Since 2012, the Council has contracted these works to Amey Hallam Highways Ltd ('Amey') under a 25 year PFI (private finance initiative) 'Streets Ahead' contract. This contract includes a requirement for a Five Year Tree Management Strategy as referenced by the complainant in his request.
6. The Commissioner understands that after Amey won the contract it proposed to remove a sizeable number of trees. There is local opposition to this and a number of individuals that are interested in learning more about any plans to remove local trees.¹

Request and response

7. On 11 November 2017 the complainant wrote to the Council and requested information in the following terms:

"Please could you give details of where the following fourteen funded engineering solutions from Streets Ahead's 5 Year Tree Management Plan have been used to retain damaging or discriminatory street trees. As "Approval to implement any of these options must be sought from the Council", I trust a comprehensive record is available. Note; with regard to solution 4, please do not supply the information recently given to the ICO as these 29 trees are not relevant to my request.

- 1. Installation of thinner profile kerbs.*
- 2. Excavation of footways for physical root examination prior to an ultimate decision being made on removal.*
- 3. Ramping / Re-profiling of footway levels over roots (within acceptable deviation levels).*
- 4. Flexible paving / surfacing solution.*

¹ See <https://www.economist.com/britain/2017/08/10/tree-fights-in-sheffield>

5. *Removal of displaced kerbs leaving a gap in the channel.*
6. *Filling in of pavement cracks.*
7. *Root pruning.*
8. *Root shaving.*
9. *Root barriers and root guidance panels.*
10. *Excavation beneath the roots damaging the footway.*
11. *Tree growth retardant.*
12. *Creation of larger tree pits around existing trees.*
13. *Heavy tree crown reduction / pollarding to stunt tree growth.*
14. *Retain dead, dying, dangerous and diseased trees for their habitat value."*

8. On 30 November 2017 the Council responded. It provided some detail by way of an explanation but refused the request citing Regulation 12(4)(b) – manifestly unreasonable on the basis of cost, stating that the balance of the public interest favoured maintaining the exception.
9. The complainant requested an internal review on 19 December 2017, which the Council did not provide until 26 April 2018, where it maintained its original position.

Scope of the case

10. The complainant contacted the Commissioner on 26 April 2018 to complain about the way his request for information had been handled. He contended that the Council must hold electronic records for the requested information and also raised further concerns which do not fall within the remit of the EIR and have instead been covered in the 'Other matters' section of this notice.
11. The Commissioner has determined whether the Council was correct to handle the request under the EIR. She has also considered whether it was entitled to rely on Regulation 12(4)(b) of the EIR in relation to the request and whether the balance of the public interest favours maintaining the exception.

Reasons for decision

12. The Commissioner has first considered whether the requested information constitutes environmental information.

Regulation 2 - Is any of the information environmental?

13. Information is environmental if it meets the definition set out in regulation 2 of the EIR. Regulation 2(1)(a) covers the state of the elements of the environment, including water, soil, land and landscape. Regulation 2(1)(c) provides that information is environmental where it is on:

"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 [2(1)](a) and (b) as well as measures or activities designed to protect those elements".

14. In both the Commissioner's and the Council's view, the information requested by the complainant constitutes environmental information as it concerns a plan to maintain and upgrade various aspects of the city's streets including trees and is likely to affect several of the elements of the environment referred to in 2(1)(a).
15. The Commissioner is therefore satisfied that the request asks for environmental information as per Regulation 2(1)(c) and so the EIR is the correct statutory instrument to apply to the request.

Regulation 12(4)(b) – Manifestly unreasonable

16. The Council has confirmed that it is relying on Regulation 12(4)(b) of the EIR to refuse to comply with the complainant's request.

17. Regulation 12(4)(b) states:

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

(b) the request for information is manifestly unreasonable;"

18. The Council's position is that the request is manifestly unreasonable on the grounds that to comply with it would impose a significant and detrimental burden on the Council's resources in terms of its officer time and cost.
19. Regulation 12(4)(b) of the EIR is designed to protect public authorities from exposure to a disproportionate burden or an unjustified level of distress, disruption or irritation, in handling information requests. In

effect, it works in similar regards to two exemptions within the Freedom of Information Act 2000 ('FOIA'): section 12, where the cost of complying with a request exceeds the appropriate limit and section 14, where a request is vexatious.

20. The EIR differ from the FOIA in that there is no specific limit set for the amount of work required by an authority to respond to a request, as that provided by section 12 of the FOIA.
21. Specifically, the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004² ('the Fees Regulations') which apply in relation to section 12 of the FOIA are not directly relevant to the EIR - the cost limit and hourly rate set by the fees regulations do not apply in relation to environmental information. However, the Commissioner accepts that the fees regulations provide a useful starting point where the reason for citing regulation 12(4)(b) is the time and cost of a request but they are not a determining factor in assessing whether the exception applies.
22. The Commissioner is satisfied that Regulation 12(4)(b) sets a fairly robust test for an authority to pass before it is no longer under a duty to respond. The test set by the EIR is that the request is 'manifestly' unreasonable, rather than simply being 'unreasonable' *per se*. The Commissioner considers that the term 'manifestly' means that there must be an obvious or clear quality to the identified unreasonableness.
23. It should also be noted that public authorities may be required to accept a greater burden in providing environmental information than other information. This was confirmed by the Information Tribunal in the DBERR case³ where the Tribunal considered the relevance of regulation 7(1) and commented as follows (paragraph 39):

"We surmise from this that Parliament intended to treat environmental information differently and to require its disclosure in circumstances where information may not have to be disclosed under FOIA. This is evident also in the fact that the EIR contains an express presumption in favour of disclosure, which FOIA does not. It may be that the public policy imperative underpinning the EIR is regarded as justifying a greater deployment of resources. We note that recital 9 of the Directive calls for disclosure of environmental information to be 'to the

² http://www.legislation.gov.uk/ukxi/2004/3244/pdfs/ukxi_20043244_en.pdf

³ Department for Business Enterprise and Regulatory reform v The Information Commissioner and Platform. Appeal no. EA/2008/0097

widest extent possible'. Whatever the reasons may be, the effect is that public authorities may be required to accept a greater burden in providing environmental information than other information."

24. Therefore, in assessing whether the cost or burden of dealing with a request is clearly or obviously unreasonable, the Commissioner will take the following factors into account:
- proportionality of the burden on the public authority's workload, taking into consideration the size of the public authority and the resources available to it, including the extent to which the public authority would be distracted from delivering other services;
 - the nature of the request and any wider value in the requested information being made publicly available;
 - the importance of any underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue;
 - the context in which the request is made, which may include the burden of responding to other requests on the same subject from the same requester;
 - the presumption in favour of disclosure under regulation 12(2);
 - the requirement to interpret the exceptions restrictively.
25. The Council has provided the Commissioner with its rationale for applying the exception to disclosure provided by Regulation 12(4)(b). It has informed the Commissioner that the Council has approximately 36,000 highway street tree assets and the engineering solutions identified by the request could potentially have been used on any asset across the network.
26. The Council also confirmed that to comply with the request would require it to manually search its records, held in both electronic and paper-based formats, as its systems do not allow searches using the criteria identified by the complainant. It confirmed that a search to locate the requested information could:

"...potentially cover the 36,000 trees within the street scene where some form of engineering solution may have been used to retain them".

27. With regard to its records, the Council has explained:

"By their very nature highway tree works and workers are diverse in regard to locations throughout the City. As a result paperwork could potentially be held in sites throughout the City and held by our contractors in regard to the works completed. Records could be held in any available field on the system or held in records used in the design and build stage for a road area where officers attend a location and review the works required on the wider highway. As part of that review the status of any street trees will be checked and consideration made whether engineering solutions would be relevant to retain those trees if they are causing damage or other harm to the build. Certainly the records may not ultimately lead to the use of the suggested engineering solution if, on attendance at site, engineers completing the works identified a better practical solution or there was an underlying issue which would not be previously evident ie disturbance to utilities."

28. The Commissioner asked the Council to clarify why it does not record individual tree decisions/engineering solutions electronically. In response, the Council said:

"...there is no requirement to record this information in a format which facilitates interrogation of this type. As per data minimisation standards the Council does try not to record information which is not relevant to its public task. Certainly as noted wider in this response the Council's asset management system is not specifically set up to maintain or record a maintenance record for individual tree assets or the specific engineering solutions used".

And

"Some information may be held electronically [by Amey] but to provide the extensive records requested by [the complainant] would require review of the all tree maintenance records retained on locations and extract relevant records [sic]."

29. For refusals under section 12(1) of FOIA there is an established 'appropriate limit' which sets an upper limit on how much time a public authority can spend complying with a request. This estimate must be considered against four specific activities. As stated, no such limit exists under the EIR, and the estimate does not need to be tied specifically to the four activities (determining whether information is held, locating the information, retrieving the information and extracting the information). Instead, the Council is permitted to suggest any activities it considers relevant.

30. In this case, the Council told the Commissioner that:

"Due to the sheer size of this operation I am not able to provide a fully scoped response to this request. The Council has approximately 36,000 highway street tree assets and the engineering solutions identified could potentially have been used on any asset across the network either as a result of tree audits, new planting (though likely out of scope for this request), reports from the public or the tree replacement programme element of the core investment period of the Streets Ahead contract."

31. Instead, and in support of its reliance on Regulation 12(4)(b), the Council highlighted a previously issued decision notice (FS50637180⁴) relating to a request about just one engineering solution (flexi-paving) utilised in relation to trees in Sheffield. In that case, the Commissioner found that the request was not manifestly unreasonable and ordered the Council to respond to it. The Council has informed the Commissioner as follows:

"...the Council exhausted a significant period of time responding to the investigation and the related decision notice detailing the complexities in the information held on one specific engineering solution (Flexi-paving) which is specifically excluded from this request. [The complainant's] request is by its nature far broader than this earlier request as it looks to obtain information on 14 different engineering solutions utilised under the Streets Ahead contract. The Council's attempt to provide a response to the previous decision notice exhausted over 300 hours of work which we would continue to maintain to be manifestly unreasonable and far in excess of any public interest in disclosure based on the time and cost at public expense to attempt to collate information".

32. In addition, the Council provided details of the breakdown of the activities and time it had spent in order to provide its response as ordered by FS50637180 as follows:

"As noted we completed extensive activity in order to attempt to identify trees where flexi-paving (just one of the engineering solutions) was used in the response to the Decision Notice for FS50637180. The work completed to identify just 29 locations

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2172504/fs50637180.pdf>

(which are not likely to be a complete list) included the following activities:

- a) *Spent 10 officer hours in various meetings exploring the functionality of the asset inventory, and attempting to write reporting tools to retrospectively install into the software to achieve this request - **this yielded no data or information of value to the enquiry***

This included using various search functions, using various terms (i.e. "flexi", "flexible", "trailflex", "flexipave") and reviewing the job notes and site notes for every job that these searches yielded.

This also included attempting to create a bespoke search functionality within the asset inventory especially for this task, and again utilising the same search criteria. Again this was not able to create the information requested.

- b) *Spent 18 officer hours checking and interrogating individual asset points (trees) click by click and reviewing all information held for each individual tree - **this yielded no data or information of value to the enquiry***

When the above attempt to "search" the asset inventory did not yield the required information, the next logical step in the process was to undertake a manual evaluation of each asset (tree).

This exercise in effect required 4 staff members to work in a collaborative GIS mapping document, load in all of Amey's asset inventory (both from the time of the request being made, historical data from August 2012, as well as the current asset inventory for trees).

After this data was loaded into the mapping space, we began clicking on each tree asset point on the map and reviewing the individual attributes of each tree, including historical inspection notes, any relevant notes from during the CIP construction or surveying or walk and build phases, as well as any customer interactions [sic] or notes referring to flexible paving which had been pinned to that asset.

- c) *Spent 15 hours undertaking data analysis of any typed or digitally stored job notes, site data and spreadsheets - **this yielded no data or information of value to the enquiry***

We employ a dedicated data analyst within Streets Ahead who manages all of our tree inventory information, all information

held from SCC inspections and verifications from site (including our consideration given to the walk and build process and designs).

This individual also has all relevant information from the Independent Tree Panel process and resident survey process, and interrogated all data sets at his disposal for a total of 15 hours in order to establish whether any useful information for this enquiry could be found.

This search was primarily undertaken in databases and a significant number of excel spreadsheets, using various terminology as well as filtering and data searching tools.

d) *Spent 4 hours checking handwritten notes for any pertinent information to this enquiry - **this yielded no data or information of value to the enquiry***

An Amey arboricultural officer who was involved in the walk and build process and myself spent time reviewing site information and notes to establish whether any information relevant to this enquiry could be found from the site notes that we had found from searching. No useful information was found.

33. The Council has explained that a physical search was also undertaken by its officers to try to identify what information was held in relation to the request considered under FS50637180, and that the majority of the 300 hours' expended actually relates to the time taken to physically attend and collate records of sites where flexi-paving may have been or had been used. It confirmed it had:

"Spent over 260 operative hours (5 x SCC highway inspectors @ 7.24 hours per day PLUS 4 x Amey inspectors @ 7.5 hours per day) for 4 days carrying out on-site inspections of trees on the highway network looking for examples of flexible paving in use around highway trees – this has yielded 29 locations which have been compiled into the attached document for [complainant's name redacted]... these 29 sites provided only a sample of tree sites as we were unable to physically review all 36,000 highway tree sites within the Council area" and

"We can extrapolate out this information to suggest that even this minimum level of review would be required to replicate the work over the 14 engineering solutions requested by [the complainant in the current case]. Certainly it may be thought that the limitation from [the complainant] that this request relates to solely the retention of "damaging or discriminatory street trees". We do not hold specific records in this regard as

any assets considered at risk or relevant for removal will be managed until the point of removal or engineering works to retain; but there will no retained record to suggest an individual was previously "damaging or discriminatory" and now retained and as a result we would need to check individual tree records which may not then hold any relevant information due to this not being a recording requirement. As a result any data which could be obtained from this process would likely be sporadic and of limited value as a record of the actual solutions used."

34. The Council has also confirmed to the Commissioner that the above estimate was based on the quickest method of locating and extracting relevant information.
35. The Commissioner considers that the complainant's request is clear and precise. On the face of it, the complainant's request is not manifestly unreasonable. It is only when the request is considered against the time needed to comply with the request that its effects can properly be judged.
36. The Commissioner has to recognise how complying with the request would affect the Council. She must therefore consider the Council's representations in terms of the resources required to comply with the request and its overall cost.
37. Based on the time taken for the Council to partially comply with an earlier request concerning only one engineering solution used for trees (flexi-paving), and given the 36,000 trees in scope of the current request, the Council said it is unable to provide a "fully scoped response" in this case. However, it has asked the Commissioner to consider that it would need to extrapolate the method used for the flexi-paving request in order to provide its response to the 14 engineering solutions listed by the complainant in the current request.
38. The Council's representations are certainly plausible and the Commissioner is mindful that having undertaken 300 hours of work to provide the information to a previous request for only one engineering solution, the Council was only able to provide a partial response in relation to 29 sites given that it was unable to visit 36,000 trees.
39. The Commissioner also accepts the Council's explanation about how its records are held and that all of the requested information is not required to be held electronically.
40. In assessing whether the cost, or the amount of staff time involved in responding to a request, is sufficient to render a request manifestly unreasonable the Commissioner has referred to the Fees Regulations as a useful starting point. They are not, however, determinative in any

way. 300 hours of work equates to a notional spend of £7,500. That is the amount of money needed to comply with the earlier request based on the £25 per hour set out in the FOIA Fees Regulations.

41. The Council's explanation of the cost of complying with the earlier request demonstrates that to do so would be so in excess of the cost limit provided by the Fees Regulations that the Commissioner is drawn to conclude that the Council is justified in considering the complainant's request to be manifestly unreasonable.
42. As the Council would have to replicate the work for one engineering solution (ie 300 hours) in relation to each of the 14 engineering solutions in the current request, the Commissioner considers that the burden imposed by this request is so markedly greater than that normally required to provide environmental information that she has decided that Regulation 12(4)(b) is properly engaged.
43. It now falls to the Commissioner to consider whether the public interest favours the maintenance of this exception to disclosure.

Public interest test

44. The public interest test in this case concerns whether the Council should be required to carry out activities to locate and retrieve the information described by the complainant's request where to do so would be time consuming and costly.
45. It is clear there is substantial interest in regard to the topic of highways tree in Sheffield, including high profile campaigns around the issue in the city.
46. The Council acknowledges the public interest inherent in environmental information. It recognises that the dissemination of environmental information promotes accountability and transparency and increased greater public awareness and understanding of environmental matters. It also recognises that making available environmental information to the public is likely to promote the exchange of views and be of interest to a wide group of individuals within Sheffield and outside the city.
47. The Council said it:

"...has provided through information requests and a range of publically available information, transparency in regard its management of Highway trees. In respect to this particular request we are aware that the disclosure of sites where engineering solutions have been used may be useful for understanding of the number of trees saved and efforts to retain trees. However, how this would assist public debate is not clear, as the information once collated would solely highlight efforts to

save trees when the protests appear to be mainly focused on the removal of trees”.

48. Weighed against these factors is the burden imposed on the Council by this particular request, particularly in terms of officer time and cost to the Council. The burden imposed on the Council by this request constitutes a significant diversion of resources away from the Council's core business which would have a proportionally detrimental impact on its provision of services to the public.
49. The Commissioner has also considered the nature of the information which the complainant has asked for. That information is not trivial nor is it without interest to the public generally.
50. Notwithstanding the provision of Regulation 12(2), which requires a public authority to apply presumption in favour of disclosure, the Commissioner cannot disregard the overwhelming burden that is imposed by the complainant's request.
51. In the Commissioner's opinion the burden imposed on the Council by this request is so great as to outweigh the public interest favouring disclosure by a significantly large margin. In consequence of this, the Commissioner has decided the public interest must favour the Council's application of Regulation 12(4)(b) of the EIR and to render item 4 of his request as being manifestly unreasonable.

Regulation 9 – Advice and assistance

52. Regulation 9(1) of the EIR states that a public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.
53. In this case, the Council advised the Commissioner as follows:

“Further to your email I can confirm that we haven't formally referenced Regulation 9 in responses or correspondence with [the complainant]; however, we have in our initial response provided a wider commentary and link to the Councils Independent Tree Panel information online. I consider that this was provided in order to clarify the response but also to highlight wider information available to [the complainant] under our Regulation 9 requirements.

It is the nature of the information we do hold and the limitations to those records that mean to provide a method for receipt of a sample of information which [the complainant] has requested, or limiting the request to a proportionate level is not really possible. Therefore I'm not sure we could provide reasonable advice to him

in a manner to provide him access to partial records which might satisfy his request.

I know this is likely not that helpful but it is sometimes really challenging to provide advice and assistance when a request appears vastly manifestly unreasonable in terms of costs."

54. The Commissioner accepts that the Council has considered its Regulation 9 obligations, and that in this case, it is difficult to identify how the request could be refined to ensure that responding to it would not be manifestly unreasonable.

Regulation 11 – Representations and reconsideration

55. Under regulation 11 of the EIR, "*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*". In other words, the EIR includes a statutory right for applicants to request an internal review, so long as they submit it within 40 working days of receiving the response. The public authority then has 40 working days in which to carry out its internal review.
56. In this case, the complainant requested an internal review on 19 December 2017; the Council did not complete it until 26 April 2018.
57. By failing to carry out an internal review within the statutory time limit of 40 working days, the Commissioner therefore finds that the Council breached regulation 11 of the EIR.

Other matters

58. As well as finding above that the Council is in breach of the EIR, the Commissioner has also made a record of the delay in carrying out an internal review in this case. This may form evidence in future enforcement action against the Council should evidence from other cases suggest that there are systemic issues within this public authority that are causing delays with internal reviews.
59. In his grounds of complaint submitted to the Commissioner, the complainant raised a concern, which he described as his first key point of contention, that *"Details of the work undertaken around such trees is not recorded in an electronically searchable format."* With regard to this, he highlighted the Council's FOI response made to another requester in 2014. Taking this response into account, the complainant's view is that he finds it very hard to believe that tree retention through the employment of engineering solutions would be ignored in the requirement to continually survey all of the highway trees in Sheffield (all GPS plotted and mapped).
60. As part of her investigation, the Commissioner asked the Council to consider the above. In reply, the Council advised:
- "...where [the complainant] identifies an FOI from over four years ago, we do not share his view that this response highlights that all engineering solution works would be recorded electronically. The response highlights efforts to improve the asset register of tree assets including plotting their locations correctly; this was not specifically linked to the use of engineering solutions so records are not maintained in this manner."*
61. In addition the complainant told the Commissioner that the Council's response to his request guided him towards the Managing Street Trees part of the Streets Ahead website where he sifted through the Council Decision files. He identified 38 instances of engineering solutions approved for implementation by [name redacted] (SCC Director of Culture & Environment). The complainant commented that if this director requested an update on the tree-retaining engineering work he had approved, the complainant would imagine he would *"expect an easily deliverable answer from a database rather than someone rummaging around for the right notebooks"*.
62. In response, the Council said:

"I believe the commentary re: [the named director] is irrelevant as he is a senior member of staff who could of course task individuals to review records or specific sites but this would be outside the EIR process. I believe that [the named director] is aware that our recording system is an asset management system and it is therefore not designed to record maintenance records in a manner to provide a response to [the complainant's] request. As noted in our refusal notice the records held are not consistently populated onto the system and there is no requirement under the contract for information to be recorded in a manner which facilitates interrogation of this type across multiple assets. The Council needs to know a tree is in place and maintained; we do not need to know the specific engineering solution utilised to retain it."

63. The complainant also raised the following issue which the Commissioner relayed to the Council:

"The second key point of contention concerns the claim made in the FOI reply that, "Amey do not need the Council's approval to implement all of the options outlined below." In my response I pointed out that the first paragraph of section 3.2 in the Streets Ahead 5 Year Tree Management Strategy, clearly states with reference to all 25 funded and unfunded engineering solutions listed beneath; "Approval to implement any of these options must be sought from the Council." I asked for an explanation as to why their claim contradicts the Streets Ahead plan.

[Name redacted] (Information Management Officer, SCC [ie the Council]) answered, "Please note that Streets Ahead Contract is the contractual documentation and the Tree Maintenance is ancillary to the requirements of the contract." [Name redacted] clearly wants to place some distance between the content of the 5 Year Tree Management Strategy (5YTMS) and the Streets Ahead contract when, in fact, they should be compatible according to 6.34 of Schedule 2 of the Streets Ahead contract:

The Service Provider shall prepare and, following the first Contract Year, update the Five Year Tree Management Strategy, in accordance with Annexure 3 to this Service Standards 6, and submit the same to the Authority by 1st December in each Contract Year pursuant to the Review Procedure.

ANNEXURE 3 TO SERVICE STANDARD 6

Five Year Tree Management Strategy

The Five Year Tree Management Strategy shall set out all details of the actions to be carried out (or procured to be carried out) by

the Service Provider in each period of five (5) Contract Years for the duration of the Term in relation to the provision of the Grounds Maintenance Services as it relates to Highway Trees and Highway Tree Clusters and shall include without limitation:

(a) those items set out in Section 6 of Output Specification;

(b) details of any maintenance activities to Highway Trees and Highway Tree Clusters; and (c) criteria to be used to select Highway Trees for replacement; and

(d) details of the proposed Highway Tree replacement programme covering the following five Contract Years."

64. In reply, the Council advised:

"In reference to comments re: the 5 Year Tree Management Strategy (5YTMS); it remains my understanding that this document is not a contractual document per se. The contract remains the contract documentation; but the 5YTMS is a requirement of the contract as noted in 6.34 of Sch 2, but the incarnations of the strategy do not make up part of the contract itself, as a result there is some distance between the documents as cited in our internal review response."

Right of appeal

65. 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

66. 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.
67. 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF