

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 17 October 2019

Public Authority: Cheshire East Council

Address: Municipal Building

Earle Street

Crewe

Cheshire

CW1 2BJ

Decision (including any steps ordered)

1. The complainant requested correspondence regarding the commissioning of the speed limit on a particular road from Cheshire East Council ("the Council"). The Council stated that it has provided everything it held within the scope of the request.
2. The Commissioner's decision is that the complainant's request had more than one objective reading and therefore the Council was under a duty to clarify what the requestor was seeking. The Commissioner therefore finds that the Council has breached regulation 9 of the EIR by not providing adequate advice and assistance.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response that is compliant with the EIR with reference to the clarified scope of the request.
4. The Council 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

5. On 30 November 2018, the complainant wrote to the Council using its online form and requested information in the following terms:

"All correspondence regarding the commissioning of the speed limit of the B5077"
6. The Council responded on 20 December 2018. It provided some information within the scope of the request but denied holding the rest of the requested information as it explained the rest of the information was held by a councillor, but not for council business and so was not held by the Council.
7. Following an internal review the Council wrote to the complainant on 23 January 2019 and upheld its original position.

Background

8. The Council advised that it had considered changing the speed limit on this particular road in both 2016 and 2018 and had carried out consultations. Each time there had been a consultation, the speed limit had remained the same.

Scope of the case

9. The complainant contacted the Commissioner on 24 January 2019 to complain about the way his request for information had been handled.
10. The Commissioner informed the Council that she considered that it likely that the Council did hold more information, as the remaining information the complainant had sought comprised of emails between the councillor and the highways department for the Council. Therefore if the Council held the versions that had been sent or received by its highways department, then the information would be "held" for the purposes of the EIR.
11. The Council agreed and released this information to the complainant after the Commissioner's initial intervention.
12. Upon reading the disclosed information, the complainant contacted the Council to advise that he did not believe it had disclosed all of the information because it had only disclosed information relating to the 2018 assessment and not the 2016 one.

13. The Council argued that, when read objectively, the complainant's request only related to the most recent assessment and therefore it had now discharged its obligation by providing all the information it held. However the complainant maintained that his request covered both assessments.
14. As both parties are adamant that their own interpretation of the request is the correct one, the Commissioner considers the scope of this case to be to determine whether the request was capable of more than one objective reading. If only one objective reading was possible, she will go on to consider whether the Council has provided all the information it holds within the scope of the request.

Reasons for decision

Regulation 9 – Advice and assistance

15. Regulation 9 of the EIR states:

(1) 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.

(2) Where a public authority decides that an applicant has formulated a request in too general a manner, it shall—

(a) ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request; and

(b) assist the applicant in providing those particulars.

(3) Where a code of practice has been made under regulation 16, and to the extent that a public authority conforms to that code in relation to the provision of advice and assistance in a particular case, it shall be taken to have complied with paragraph (1) in relation to that case.

16. The Commissioner understands that the Council has interpreted the request in one way and has confirmed this to the complainant upon providing some information within the scope of his request.
17. The Commissioner also understands that the complainant confirmed that he would be happy for the case to be closed if he received the correspondence between the councillor and the Council. However, upon

receipt, the complainant formed the view it was not the full amount of the information he requested.

18. To revisit the request, the complainant asked the Council for, "*All correspondence regarding the commissioning of the speed limit of the B5077*". This request does not explicitly say whether the request was for the information surrounding the most recent consultation period for the current speed limit, or whether the request was for all correspondence regarding all commissionings or consultations relating to the speed limit of the B5077.
19. The word "commissioning" appears to relate to a single process. However, this assumes that there was only one assessment relevant to the project subject to the request. It would be disadvantageous to the requestor if they were to be penalised by a limit to the scope of the request simply because they were unaware of the full scale or number of the commissioning exercises. To that end, regulation 9 should come to the aid of the requestor, whereby the Council should draw attention to the range of material held and allow the requestor to conclude the scope of interest.
20. Nonetheless, the Commissioner understands that the speed limit on the road has not changed so no speed limit has been "commissioned".
21. It would be useful to note that "commissioned" is not a synonym for "assessed" or "reconsidered", so it is not immediately clear what process the complainant is referring to.
22. It is not unreasonable for the Council to read the request as being for "All correspondence regarding the *most recent* commissioning of the speed limit of the B5077" but it is also not unreasonable for the complainant to say that it is for "All correspondence regarding the *ongoing* commissioning of the speed limit of the B5077"
23. Although the Commissioner can see that the Council has taken a logical interpretation of the request, as explained before, there is more than one reasonable interpretation of the request.
24. In this case, as the Council has not obtained the correct interpretation of the request, the Commissioner cannot reach a view as to whether it has identified all the information within scope.
25. Because of this, the Commissioner finds that the Council should have provided the correct advice and assistance and clarified the request at the point of receiving it.
26. As the complainant has clarified his request during the course of the Commissioner's involvement, she finds that the Council will not need to

do this and should now be able to provide a fresh response to the request.

Regulation 5 – Duty to make information available on request

Has the Council provided the information requested?

27. Regulation 5(1) states that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions that may apply.
28. The complainant is sure that there must be more information held, other than what the Council has provided to him.
29. Because there is more than one objective reading of the request, the Commissioner is unable to determine whether the Council does or does not hold further information within the scope of the request other than what was provided. However, as previously mentioned, the Council is now clear of the request, therefore it should provide a fresh response to the complainant.

Right of appeal

30. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

31. 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.
32. 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
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Cheshire
SK9 5AF