

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 8 December 2021

**Public Authority:** National Highways  
**Address:** Piccadilly Gate  
Store Street  
Manchester  
M1 2WD

#### **Decision (including any steps ordered)**

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1. The complainant requested information relating to Horspath Bridge.
2. The Commissioner's decision is that National Highways (NH) failed to disclose all information within the scope of the request within twenty working days of receipt of the request. Therefore NH breached regulation 5(2) of the EIR.
3. The Commissioner is satisfied that NH has now disclosed all information within the scope of the request. Therefore the Commissioner does not require NH to take any further steps.

#### **Request and response**

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4. On 27 February 2021 the complainant wrote to NH and requested information in the following terms:

*"With respect to Cuddesdon Road bridge, Horspath (THA/21), please provide me with:*

- 1. all visual inspection and detailed examination/principal inspection reports carried out since September 2013*
- 2. all structural assessments carried out since September 2013*
- 3. all records of repairs carried out since September 2013, including costings*

*4. all documentation/correspondence exchanged with local and county councils regarding repair or demolition of the bridge since September 2013."*

5. NH responded on 30 March 2021 and refused to comply with the request, citing regulation 12(4)(b) (manifestly unreasonable requests) of the EIR. NH explained that it considered the request to be vexatious.
6. Following an internal review NH wrote to the complainant on 28 June 2021. NH withdrew its position that the request was vexatious. It also confirmed that no information was held in response to parts 2 and 3 of the request.
7. NH also disclosed the most recent inspection report, undertaken in November 2020, for the bridge in question. However, it maintained its reliance on regulation 12(4)(b) in relation to the remainder of the information that falls within parts 1 and 4 of the request, stating that compliance would be manifestly unreasonable due to the 18 year scope of the request. NH advised the complainant to narrow the scope of the request to three years.
8. On 28 June 2021 the complainant raised concerns with NH. Firstly, that NH held information that would fall within the scope of part 3 of the request. Secondly, that NH had mistakenly interpreted the scope of the request to be 18 years and not eight and had therefore mistakenly calculated that compliance would be manifestly unreasonable. Despite this, the complainant confirmed to NH that they would revise the scope of the request *'as long as that is no later than 2015.'*
9. On 26 July 2021 NH confirmed to the complainant that the reference to 18 years was an administrative error. It disclosed a completion report, dated 22 February 2021, in relation to part 3 of the request. It also confirmed that the most recent inspection report undertaken in November 2020 contains details of the previous reports for 2015-2019. At this stage, NH appeared to be of the position that this satisfied part 1 of the complainant's request.
10. NH also explained to the complainant that it was disclosing information that fell within part 4 of the request, specifically *'correspondence about the protest, and that exchanged with local and county councils regarding repair or demolition of the bridge.'* However, despite saying it had done, NH failed to disclose any correspondence that fell within the scope of part 4 of the request.

## Scope of the case

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11. The complainant contacted the Commissioner on 26 May 2021 to complain about the way that their request for information had been handled, specifically, that an internal review had not yet been completed.
12. Once the internal review had been completed, the complainant had several concerns about the handling of their request.
13. To reiterate, since the information has now been disclosed the Commissioner considers the scope of his investigation to be to determine whether NH has complied with regulation 5(2) of the EIR.

## Reasons for decision

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### Would the requested information be environmental?

14. Regulation 2(1) of the EIR defines environmental information as information relating to:

*'(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, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment 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)...as well as measures or activities designed to protect those elements;'*

15. Horspath Bridge<sup>1</sup> is a Victorian bridge that is currently undergoing repair, funded by NH. The campaign to save the bridge is the focus of the complainant's request.

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<sup>1</sup> [Crumbling Horspath railway bridge repair work under way - BBC News](#)

16. Having considered the matter, and reviewed the information that has now been disclosed, the Commissioner is satisfied that the information relates to the 'measures' referred to in regulation 2(1)(c) as described above and therefore the request shall be dealt with under the EIR.
17. Regulation 5(2) of the EIR states:

*"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."*
18. On 5 November 2021 the Commissioner wrote to NH to outline the scope of his investigation.
19. On 11 November 2021 NH rang the Commissioner and provided further explanation relating to this case. Firstly, NH confirmed that a bundle relating to part 4 of the request, '*correspondence about the protest, and that exchanged with local and county councils regarding repair or demolition of the bridge*' had been prepared with a view to disclosure on 26 July 2021. However, the bundle was not attached to NH's email.
20. NH also explained that, in relation to any outstanding reports in relation to part 1 of the request, the inspection report undertaken in November 2020 contains details of the previous reports for 2015-2019. Therefore, NH did not consider it necessary to disclose the reports for 2015-2019.
21. The Commissioner explained to NH that, whilst it is good practice for a public authority to anticipate what a requestor is asking for, the 2015-2019 reports clearly fall within the scope of the request. Therefore this information will either need to be disclosed or withheld under a specific exception, bearing in mind that the complainant had already narrowed the scope of the request.
22. NH may find it useful to consult the Commissioner's guidance '*Interpreting and clarifying requests*'<sup>2</sup> which states '*The authority must answer a request based on what the requester has actually asked for, and not on what it thinks they would like, should have asked for or would be of most use to them.*'
23. Following its conversation with the Commissioner, on 3 December 2021 NH contacted the complainant and disclosed all outstanding information in relation to the request.

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<sup>2</sup> [interpreting-and-clarifying-a-request-foia-eir-guidance.pdf \(ico.org.uk\)](https://ico.org.uk/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf)

24. The Commissioner's decision therefore is that NH has failed to comply with regulation 5(2) of the EIR in its handling of the request as it failed to release all disclosable information to the complainant within twenty working days of receipt of the request.

### **Other matters**

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25. The Commissioner recognises that administrative errors, such as those referred to within paragraphs 9 and 10, occur. It is likely that, had these administrative errors not occurred, the complainant would have still brought this complaint to the Commissioner. This is because the complainant's concern originally was the timeliness of NH's internal review.
26. However, NH should be mindful that such mistakes can erode a requestor's confidence in the public authority's handling of their request and increase the chances that a complaint is referred to, or remains with the Commissioner, for longer.

## **Right of appeal**

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27. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. 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**

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**