

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

### **Decision notice**

**Date:** 6 October 2021

**Public Authority:** Cumbria County Council  
**Address:** Cumbria House  
117 Botchergate  
Carlisle  
Cumbria  
CA1 1RD

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

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1. The complainant has requested information relating to a school crossing patrol which is no longer in place. The council initially disclosed some information however the complainant said that this relates to a different crossing patrol. The council argues that no further information is held relating to the specific crossing patrol which the complainant is referring to.
2. During the Commissioner's investigation the council did find one document which falls within the scope of the complainant's request for information which the Commissioner requires it to disclose to the complainant. The Commissioner's decision is that, other than this document, on a balance of probabilities, the council was correct to apply Regulation 12(4)(a) on the basis that it does not hold any further information which falls within the scope of the complainant's request for information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - to disclose a copy of the School Crossing Patrol Guidance (2014) to the complainant.

4. 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

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5. Following earlier correspondence relating to a particular school crossing patrol, on 22 January 2020 the complainant wrote to the council and requested information in the following terms:

*"It was the criteria, and the factors that were applied, justifying the crossing patrol originally, that I was requesting.*

*I would also like to see the criteria, and the factors applied a few years later, which came to the conclusion that a zebra crossing, which has the identical criteria, was not justified."*

6. The request followed a previous request for similar information in relation to the site from 2018 in response to which the council provided some information and confirmed that no further information was held. However, the complainant then wrote again, clarifying that the council's response did not refer to the area which his request relates to. He said he was referring to an area a distance away from this where he considers that a crossing had been authorised previously, but after the former employee resigned from the crossing patrol post that vacancy had not been filled.
7. The complainant sent a further letter dated 22 January 2020 clarifying the position of the crossing which he was referring to.
8. The council responded on 20 April 2020. It said that the only information which it held had already been disclosed to the complainant in response to his previous request for information.
9. Following an internal review, the council wrote to the complainant on 15 June 2020. It upheld its original position. It said that whilst it appreciated that the information regarding the crossing provided in response to the complainant's previous request was not the crossing which the complainant wished to receive information about, there is no current crossing in the area that he had clarified.

## Scope of the case

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10. The complainant contacted the Commissioner on 15 July 2020 to complain about the way his request for information had been handled.
11. The scope of this case and of the following analysis is whether the Council is likely, on the balance of probabilities, to hold the requested information for the purposes of section 1.

## Reasons for decision

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### **Regulation 12(4)(a) - Information not held**

12. Regulation 12(4)(a) provides that a public authority may refuse to disclose information to the extent that –
  - (a) *it does not hold that information when an applicant's request is received;*
13. The council argues that it does not hold information about when the patrol began. It argues that it holds no further information falling within the scope of the complainant's request for information other than that which it disclosed in response to his previous request. The complainant has, however, already stated that this does not relate to the same crossing patrol he is referring to.
14. The complainant believes that the council does hold relevant information as he has evidence that a vacancy for the patrol was advertised a number of years ago that was not able to be filled.

### The Commissioner's analysis

15. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First Tier Tribunal decisions, applies the civil standard of the balance of probabilities.
16. 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.

17. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded.
18. She will also consider any other information or explanation offered by the public authority (and/or the complainant) which is relevant to her determination.
19. During the course of her investigation, the Commissioner asked the council to describe the searches it carried out for information falling within the scope of the request, and the search terms used. She also asked other questions, as is her usual practice, relating to how it established whether or not it held further information within the scope of the request.

#### The council's position

20. The council said that all traffic management paper records dating back to 2013 were searched. These include committee agendas and minutes, reports, and plans. Management Technicians were consulted as well as the Traffic Manager and the Senior Manager for Highways Assets and Strategy.
21. It said that searches had been carried out of both manual and electronic files, given that it considered that if information were held it would be held in either or both formats.
22. It said that electronic searches were carried out of its servers using the terms 'Victoria Academy', 'Victoria School', 'Devonshire Road', and 'School crossing patrols'.
23. It said that, insofar as it is aware, no relevant information has been deleted. Its position is that, insofar as it is aware, no further information falling within the specific terms of the request has ever been held by the council.
24. It confirmed that it does hold some information which would have been used to confirm the criteria used to establish the patrol – these include a copy of a School Crossing Patrol Guidance (2014), which it says has not previously been disclosed, and a Department of Transport document (1995) which it argued would have informed its assessments. It said that it also holds a speed survey report (dated 2017) for the location referred to in the request. It said that whilst these were not disclosed in response to the request, they were disclosed to the complainant in response to a request in 2018.

25. It confirmed that it does not hold any further information relating to the crossing patrol specifically referred to by the complainant.

The complainant's position

26. The complainant is sure that there was a crossing at the relevant point previously. He believes that he has evidence that a vacancy which arose for the post was not filled and therefore that the crossing was never re-introduced after the previous patrol officer left the role.
27. The complainant provided a letter from the council to the Local Government and Social Care Ombudsman (the LGSCO) as part of an investigation into the decision not to introduce a zebra crossing at the site. This shows that, in 2018, the council stated to the Ombudsman that:
- "Contact has been made with Orian who manage the School Crossing Patrol Service on behalf of Cumbria County Council. They have confirmed that there is a vacancy of a school crossing patrol officer at Victoria Academy School but they have been unable to fill the vacancy since 2016. It has been advised that this situation is not unusual and there are several vacancies across the county generally."*
28. He argues that this is evidence that a crossing was previously in place in the area he is referring to, and the council held information about this during the Ombudsman's investigation.
29. The complainant said that he is seeking details on the criteria which was in use, and the assessment information which led to the school crossing patrol being put in place initially. He said that a subsequent request for a zebra crossing at the site from the school was turned down by the council on the basis that it carried out a survey and an assessment which demonstrated that a zebra crossing was not required. He argues, however, that the assessment criteria for a crossing patrol is the same as that for a zebra crossing. His view is therefore that if the prior assessment for the crossing patrol was that this was needed, then this should pan across to the assessment for the zebra crossing.
30. He is concerned therefore that the council does not wish the information disclosed as this might undermine its more recent assessment over the zebra crossing. He also believes that its later assessment is inaccurate and provided details to the Commissioner outlining why he believes this to be the case.

31. The complainant has also suggested that if he obtained the information, he may make a complaint to the LGSCO. The Commissioner notes however that the Ombudsman has already considered the position regarding the zebra crossing using the newer assessment<sup>1</sup>. The Ombudsman's decision was that the council had carried out the zebra crossing survey and assessment as required, and he therefore did not find in favour of the complainant in that case.

The Commissioner analysis

32. The Commissioner has considered the arguments of both parties and the evidence which they have provided to him.
33. The question for the Commissioner is not whether information should be held, nor whether it would have been pertinent for the council to hold such information. The question which the Commissioner must consider is whether any information *is held* falling within the scope of the request.
34. The Commissioner considers that the council's description of its searches demonstrate that it has carried out appropriate and adequate searches necessary to locate, on a balance of probabilities, any information it holds which falls within the scope of the complainant's request for information.
35. The complainant's evidence relating to the council's submission to the Ombudsman raised concerns as to whether relevant information was held by the council at some point, but which was lost or deleted at some point. The Commissioner therefore contacted the council specifically highlighting this evidence to it and asking it to consider this. She asked the council to explain why this response had been provided to the Ombudsman if no information is now held relating to the crossing.
36. The council contacted Orian Solutions regarding this point. Orian Solutions manage the school crossing patrol service. Orian informed it that in 2007 the crossing on Devonshire Road was a private crossing funded by Victoria Junior School. The school ceased operating in March 2016, at which point it was replaced by the Academy.

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<sup>1</sup> [17 020 165 - Local Government and Social Care Ombudsman](#)

37. This evidence therefore suggests to the Commissioner that the council would not have held information regarding the crossing at any point as this was funded and administered by the school itself rather than by the council.
38. There is therefore no contradictory evidence available to the Commissioner that indicates that the council's position that no further information is held is wrong.
39. On this basis the Commissioner has concluded that, on the balance of probabilities, the requested information is not held.

## Right of appeal

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40. 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)

41. 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.
42. 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 .....**

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