

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 2 December 2022

Public Authority: Bolton Council
Address: Town Hall
Victoria Square
Bolton
BL1 1RU

Decision (including any steps ordered)

1. The complainant has requested information from Bolton Council in relation to a Traffic Regulation Order ("the TRO") proposed for the junction of Wigan Road/ Old Fold Road, Westhoughton. Bolton Council provided a response to the complainant's request, stating that they had disclosed all recorded information within scope.
2. The Commissioner's decision is that, on the balance of probabilities, Bolton Council has provided all the information it holds in relation to the request. The Commissioner also finds that Bolton Council failed to respond to the request within 20 working days and has therefore breached regulation 5(2) of the EIR.
3. The Commissioner does not require Bolton Council to take any steps as a result of this decision notice.

Request and response

4. On 11 March 2022, the complainant wrote to Bolton Council and requested information in the following terms:
"In relation to the TRO which was proposed for the junction of Wigan Road/ Old Fold Road, Westhoughton:
1. Details of complaints received by ward members from members of

the public which led them to add this scheme to the Westhoughton TRO, as referenced in an email from [REDACTED] on 18th February 2022; "This site was added by your area members (Councillors) to this scheme of Westhoughton TRO, following complaints received by them from members of the public."

2. Have there been incidents of injury/accidents etc within the last 5 years?

3. Details of any such incidents / complaints made within the last five years."

5. Bolton Council responded on 21 June 2022. It provided some information but stated that in relation to part 1 of the request, they did not hold information about complaints received by ward members and directed the complainant to the Councillors for this information. In regard to part 2 of the request, Bolton Council stated that there were no injury incidents but advised that they do not hold damage only collision data. Bolton Council disclosed information in regard to part 3 of the request.
6. On 2 July 2022, the complainant requested an internal review as they were not satisfied with the timeliness of the response and that they had not received the full information asked for in the original request.
7. Following an internal review, Bolton Council wrote to the complainant on 21 July 2022 apologising for the misplacement of the request which caused the delay in responding but still upheld their original response.
8. Upon contact from the Commissioner, on 2 August 2022, Bolton Council re-worded and provided more explanation to their responses.

Scope of the case

9. The complainant contacted the Commissioner on 28 June 2022, to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of the complaint is to determine, on the balance of probabilities, if Bolton Council holds further information in relation to the request and whether they complied with regulation 5(2) of the EIR.

Reasons for decision

Regulation 12(4)(a) – information not held

11. Regulation 12(4)(a) of the EIR states that 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".
12. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information is held.
13. Bolton Council confirmed they do not hold any complaints from Members in respect of the relevant TRO.
14. Bolton Council explained in their most recent internal review that they hold complaints directly received from members of the public.
15. They also confirmed in relation to part two of the request, that they had checked with their Highways and Insurance departments and that they do not hold any further information.
16. It is the Commissioner's view that part one of the complainant's request is very specific in that it only asks for emails received by ward members.
17. It is also the Commissioner's view that Bolton Council did all the necessary searches in relation to the complainant's request.
18. The Commissioner is satisfied in this case that, on the balance of probabilities, Bolton Council has provided the appropriate information to the complainant and no further recorded information is held in relation to the request in accordance with regulation 12(4)(a) of the EIR.

Regulation 5(2)

19. Regulation 5(1) of the EIR states that:

"a public authority that holds environmental information shall make it available on request."
20. Regulation 5(2) of the EIR states that:

"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."

21. Bolton Council explained in their letter of 2 August 2022, that they provided a delayed response because the officer in their Highways department did not pass the request to the Information Governance Team for it to be logged and actioned.
22. From the evidence provided to the Commissioner in this case, it is clear that Bolton Council did not deal with the request for information in accordance with the EIR. The Commissioner's decision is that Bolton Council has breached regulation 5(2) by failing to respond to the request within 20 working days.
23. Bolton Council has now provided a response so no further steps are required.

Right of appeal

24. 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

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

25. 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.
26. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF