

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

Date: 15 February 2023

Public Authority: North Somerset Council
Address: Town Hall
Weston-super-Mare
BS23 1UJ

Decision (including any steps ordered)

1. The complainant has requested information about the discharge of a planning condition. The above public authority ("the public authority") stated that it held no information beyond that available on its Planning Portal.
2. The Commissioner's decision is that the public authority holds no information, beyond that already published, that falls within the scope of the request. However it does appear to hold some similar information to that which was requested and was therefore under a duty to provide appropriate advice and assistance. The Commissioner therefore finds that the public authority breached regulation 9 of the EIR.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 3 November 2022, the complainant wrote to the public authority and requested information in the following terms:

"I understand from Churchill Parish Council that the highways department has decided that it is not necessary for Crest Nicholson to fulfil their planning application obligations and make improvements to the road crossing at Stock Lane Langford by the Veterinary University.

"It is very difficult to cross the road at this location and I would be grateful if you could provide me with the following information.

"Who made the decision not to make the crossing safe and when was the decision made?

"Please send me a copy of the risk assessment and Equality Impact Assessment undertaken before the decision was made.

"Please send me confirmation of the amended planning conditions confirming that the highway improvements are no longer required to satisfy the planning approval."

5. The public authority responded on 30 November 2022. It stated that it held no information beyond that already published on the planning portal.
6. The public authority does not appear to have triggered its formal internal review process, but it did issue further responses on 13 January and 26 January 2023 in which it, again, asserted that no further information was held.

Reasons for decision

7. The Commissioner considers that the information (if it existed) would be environmental as it is information on a measure (planning policies and development control) likely to affect the elements of the environment. It is not clear whether the public authority dealt with the request under FOIA or the EIR. The request should have been dealt with under the EIR – though the Commissioner notes that this does not make it any more or any less likely that information is held.
8. The Commissioner can rarely prove beyond doubt that a particular piece of information is or is not held. He is only required to determine whether it is more likely than not that the public authority has provided all the information it holds.
9. In this case, the complainant noted that he had been informed by an officer of the public authority that the developer of the site had previously been informed, by the public authority, that they no longer need to provide pedestrian access improvements to discharge a particular planning condition. That would suggest, he argued, that some sort of decision had been made. Furthermore, he argued, it followed logically that the public authority could not have informed him that the condition no longer need to be discharged unless it held some form of recorded information stating that this was the case.

10. The Commissioner notes that the request relates to the designation of the crossing. He has looked at the information the public authority has already published on its planning portal to try to establish a sequence of events.
11. Condition 9 of the original grant of permission required the developer to submit a detailed plan for a pedestrian improvement scheme which should include:

"details of the proposed crossing facility, the widening of Stock Lane and the provision of a new footway."
12. At some point prior to 16 July 2016, the developer submitted a proposal for a pedestrian improvement scheme. The Commissioner notes that this plan includes two "uncontrolled" pedestrian crossing points.¹ The reference to the crossings being uncontrolled is referred to again in the section 106 agreement.² In January 2018, the public authority wrote to the developer confirming that, in its view, the relevant condition had now been discharged.³
13. The overall pedestrian improvement scheme seems to have evolved since, but these changes only appear to have involved the route of a footpath between the two crossings. No amendment has been made to the nature of the crossings themselves.⁴
14. The public authority provided the Commissioner with copies of correspondence showing its information governance team searching for the information the complainant had requested. It does appear to have carried out appropriate searches which would have located any further relevant information that existed.
15. However, in the Commissioner's view, there was nothing in the wording of Condition 9 that specified that the crossings had to be ones of a

¹ https://planning.n-somerset.gov.uk/online-applications/files/B916CEF913841FFD554AEE4B2D9081B6/pdf/15_P_1414_O-VET_COLLEGE_FOOTWAY-2586391.pdf

² https://planning.n-somerset.gov.uk/online-applications/files/F5A574322D0FADB62E786172059A5C96/pdf/15_P_1414_O-UNILATERAL_UNDERTAKING-2635831.pdf

³ https://planning.n-somerset.gov.uk/online-applications/files/B6163C48A4B6D5FF8B45C2174D6C3645/15_P_1414_O-APPROVAL_OF_CONDITIONS_8_9_10_13-2670684.doc

⁴ https://planning.n-somerset.gov.uk/online-applications/files/6E6AF888B6BA3C08DBA7E8E331DDA0E1/pdf/15_P_1414_O-ALTERNATIVE_FOOTWAY_PROPOSAL_40485-2002-SK01-2866952.pdf

particular nature – only that plans for a pedestrian improvement scheme had to be submitted.

16. Presumably, had the public authority determined that a controlled pedestrian crossing was necessary in that location it would not have agreed that the condition had been discharged. Therefore in the Commissioner's view, the relevant recorded information the public authority holds is the approval of discharge of conditions letter dated 12 January 2018 – which is already published on the planning portal.
17. Nothing in the information available, would indicate that the developer has been told that they no longer need to implement a pedestrian improvement scheme – although the design has changed from the one the original plans envisaged. Indeed the most recent planning conditions have restated the pedestrian improvement scheme as a condition.⁵ If that is indeed the case, the public authority would not be expected to hold the information.
18. It is not clear whether there has been confusion between the nature of the crossing point itself (which, as far as the Commissioner can tell, has never been a condition of planning) and the pedestrian improvement scheme as a whole. However, he is satisfied that, on the balance of probabilities, no further information is held.

Procedural matters

19. The Commissioner is satisfied that, as no controlled road crossing was ever formally proposed, no risk assessment or equality impact assessment relating to its "removal" would exist. However, he notes, that Condition 10 of the original planning approval required the developer to complete and provide a road safety audit of its proposed scheme. Although this will not be either an equality impact or risk assessment, it is likely to cover some of the same or similar ground.
20. The Commissioner was unable to locate this document on the planning portal, but the letter confirming that Condition 9 had been discharged also confirmed Condition 10 as having been discharged – presumably because a satisfactory audit had been provided.

⁵ https://planning.n-somerset.gov.uk/online-applications/files/B25C70F071C1E8ACA7ACF419D9EB8352/pdf/20_P_0996_MMA-DECISION_MMA_APPROVE-2988945.pdf (see conditions 3, 4 and 5)

21. The public authority has not informed the complainant of the information it holds about the road safety audit – despite this having been flagged up by officers during its searches.
22. Regulation 9 of the EIR requires a public authority to provide reasonable advice and assistance to those making, or attempting to make, requests for information. The EIR Code of Practice covers various options for advice and assistance.
23. In the circumstances of this case, the Commissioner considers that it would have been reasonable for the public authority to have informed the complainant about the existence of the road safety audit so that he could have made a request for that information – should he have wished to do so. Whilst it was not what he originally asked for, it is clearly relevant to his underlying concern.
24. Although he has found a breach, the Commissioner does not consider it proportionate to order a remedial step. The complainant has now been alerted to the road safety audit and can make a request for it, should he wish to do so.

Right of appeal

25. 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

26. 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.
27. 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

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