

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 1 July 2024

Public Authority: Oxfordshire County Council
Address: County Hall
New Road
Oxford
OX1 1ND

Decision (including any steps ordered)

1. The complainant requested information from Oxfordshire County Council ("the Council") relating to highways maintenance records relating to a specific road. The Council disclosed some information within the scope of the request. The complainant believes the Council holds additional information within the scope of the request. The Council's position was that it had disclosed all of the information it held within the scope of the request, however, during the course of the Commissioner's investigation is has identified and disclosed some further information.
2. The Commissioner's decision is that, on the balance of probabilities, the Council has now identified all of the information it holds within the scope of the request. However, the Commissioner also finds that the Council failed to respond to the request in full within 20 working days and has therefore breached regulation 5(2) of the EIR.
3. The Commissioner does not require further steps.

Request and response

4. On 23 November 2023, the complainant wrote to the Council and requested information in the following terms:

"1) Any records concerning Highways maintenance for the road surface known as Huntercombe End, near Nuffield in Oxfordshire. This should include repairs, complaints, claims, queries, logs, site visits, inspections and any internal correspondence relating to

this road and its surface. Example post code is RG9 5RR and in particular, what3words is 'lived.broached.crumple'

2) 'InternalCorrespondence', should include email, verbal recordings, written notes and concerning a physical inspection, any video recordings that exist of the road space in question.

3) To narrow the request, the date range that I'm interested in, is between 23rd Nov 2022 & 23rd Nov 2023.

4) For third party and communications between Council staff, I will accept that names are redacted, this should reduce any requirement for the Data Controller to cite an exemption."

5. The Council responded on 15 December 2023. It provided some information within the scope of the request. It withheld some other information under regulation 13 of the EIR (personal data).
6. Following an internal review the Council wrote to the complainant on 2 January 2024. It disclosed some further information within the scope of the request.
7. On 3 January 2024 the complainant wrote to the Council, stating that they believe the Council holds further information within the scope of the request.

Scope of the case

8. Although the Council had stated that it had withheld some information within the scope of the request under regulation 13 of the EIR, during the course of the Commissioner's investigation it revised its position to state that all information held within the scope of the request had been disclosed and no information had been withheld under regulation 13.
9. At a later stage of the Commissioner's investigation the Council subsequently identified and disclosed some further information held within the scope of the request, specifically information about inspections recorded in "defect instructions".
10. The scope of this case is to consider whether, on the balance of probabilities, the Council has now disclosed all of the information it holds within the scope of the request.
11. This notice will also address the delay in the Council providing a full response to the request.

Reasons for decision

Regulation 5(1) – duty to make environmental information available on request

12. Under regulation 5(1) of the EIR, a public authority must make environmental information available on request if it holds the information and it is not subject to an exception.
13. 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 further 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.
14. The question for the Commissioner to consider in this case is, therefore, whether, on the balance of probabilities, the Council has now identified all of the information it holds within the scope of the request.
15. In the course of his investigation the Commissioner asked the Council to provide details of the searches it had carried out to ensure that all information within the scope of the request had now been identified.
16. The Council provided the following information about the searches it had carried out and the information that had been disclosed:

“The searches undertaken were via our customer reporting interface for reporting highway defect, i.e. www.fixmystreet.com. In addition, a search via the ‘highway enquiries’ email inbox was undertaken, however any enquiries via this inbox are then logged manually on to HIAMs which is our internal working model of www.fixmystreet.com. Enquiries were also made to the Highways Officer covering the Huntercombe area, but again in the main, officers undertake investigations resulting from the Fix My Street enquiries. We do not hold information of this nature elsewhere.”
17. The Council also confirmed that it had used “Huntercombe End”, the postcode “RG9 5RR” and the what3words address “lived.broached.crumple” as the search terms for these searches.
18. It also stated the following regarding the information which it had disclosed:

“For clarity, in total, three spreadsheets have been provided – all different. The one supplied as part of the initial response is the extract from HIAMs of reports made through Fix My Street, by members of the public. The two spreadsheets supplied as part of the internal review are 1) the extract from HIAMs to the contractors, Milestone, giving the instructions to carry out the repairs, and 2) the number of claims made to the insurance team. We have also provided a worksheet from the contractors, Milestone. We are satisfied that this is the extent of the information held by the Council that falls within the scope of the request.”

19. The Commissioner subsequently asked the Council specifically to confirm whether it held any information within the scope of the request about road inspections by Highways Officers (as opposed to issues logged by members of the public), to provide details of where such information would be likely to be held and to confirm whether the searches it had carried out would have identified this information. As a result, the Council disclosed a further spreadsheet which contained information about inspections recorded in “defect instructions”.
20. The Commissioner’s view is that the searches described by the Council are appropriate to identify the information it holds within the scope of the request.
21. The complainant had indicated that they were expecting to receive more information relating to formal road inspections. Further information relating to this was identified and disclosed during the course of the Commissioner’s investigation. The Commissioner is not aware of any evidence to indicate that any other further information within the scope of the request is likely to be held.
22. The Commissioner is therefore satisfied that, on the balance of probabilities, the Council has now identified all of the information it holds within the scope of the request. The Commissioner does not, therefore, require the Council to carry out further searches.

Regulation 5(2) - Time for compliance with request

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

“a public authority that holds environmental information shall make it available on request.”

24. 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.”

25. From the evidence provided to the Commissioner in this case, it is clear that the Council did not deal with the request for information in accordance with the EIR. The Council has failed to disclose the additional information it identified during the Commissioner’s investigation within 20 working days of the date of the request.
26. The Commissioner’s decision is that the Council breached regulation 5(2) by failing to disclose all of the requested information within 20 working days.

Right of appeal

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

Website: 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.

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