



**IN THE FIRST TIER TRIBUNAL (INFORMATION RIGHTS)**

**EA/2013/0083**

**BETWEEN:**

**COLIN PEEK**

**Appellant**

**and**

**THE INFORMATION COMMISSIONER**

**First Respondent**

**and**

**DEVON COUNTY COUNCIL**

**Second Respondent**

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**CONSENT ORDER**

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Pursuant to rule 37(1) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, upon reading the parties' agreed statement (in Annex A),

IT IS ORDERED BY CONSENT THAT:

1. The appeal is allowed.
2. The Decision Notice FS50459536 dated 26 March 2013 to be substituted in the terms set out in Annex B.
3. No further steps are required to be taken by the Second Respondent.
4. There is no order for costs.

Signed N.J. Warren  
Chamber President

Dated this 6<sup>th</sup> day of September 2013

## **ANNEX A**

### **Statement of reasons for consent order**

1. This appeal concerned the First Respondent's Decision Notice FS50459536. That Notice sets out the terms of the original information request at paragraph 5.
2. In its review of 25 May 2012, the Second Respondent Appellant confirmed that the dates that surveys had been carried out by its contractors and these were passed to another contractor to carry out remedial works. Information provided on remedial works has been shown to be incomplete through information supplied by the Appellant and subsequent documents provided by the Second Respondent. The Second Respondent provided further information in the form of outcomes for issues previously reported by members of the public
3. In the said Decision Notice, the First Respondent decided that no further information was held by the Second Respondent for the request. The Second Respondent had breached section 1(1)(a) and (b) FOIA as it had not provided the works orders at the time of the response to the Appellant. The First Respondent ordered the works orders to be disclosed.
4. The Second Respondent wrote to the appellant on 12<sup>th</sup> April 2013, providing information which it believed at the time, to constitute the information it was ordered to disclose in accordance with Decision Notice FS50459536.
5. The Appellant wrote to the Second Respondent on 15<sup>th</sup> April 2013 to confirm his view that the information provided was incomplete and that supplementary documents should be held by the Second Respondent. The Appellant outlined that this supplementary information formed part of the "works orders", that the Second Respondent was ordered to disclose in Decision Notice FS50459536.
6. The Appellant appealed against the Decision Notice.
7. The Second Respondent reviewed information provided to the Appellant in accordance with correspondence received on 12<sup>th</sup> April 2013. Following this

review the Second Respondent identified that it had failed to supply all supplementary information pursuant to the “works orders” it was ordered to disclose in Decision Notice FS50459536. This information was identified and then disclosed to the Appellant on 31<sup>st</sup> May 2013 along with additional information which fell within the scope of the Appellant’s original request. This additional information was subsequently identified as a result of searches conducted following the course of a separate internal review. This information was also disclosed to the Appellant on 31<sup>st</sup> May 2013.

8. The First Respondent now accepts that a further search was conducted by the Second Respondent following the issuing of the Decision Notice as a result of another information request by the Appellant and request for a review of that request. The Second Respondent located further information meeting the criteria of the original request, which it provided to the Appellant by way of an email dated 31 May 2013 stating, “additional documentation has been located within the RMS system which relates to these orders and which may fall within the scope of your original request.” The Highways & Traffic Management Team also conducted additional searches, and further documentation “which falls within the scope of your original request” was provided following the Second Respondent being joined as a respondent to these proceedings and prior to them providing a response.
9. The Second Respondent wishes to apologise to both the Appellant and to the First Respondent for failing to carry out adequate searches for the information requested by the Appellant and for failing to provide this information to the Appellant and to the First Respondent in a timely manner. The Second Respondent regrets these failings, which it acknowledges has inconvenienced both parties and has placed the First Respondent in a difficult position in respect of these proceedings. The Second Respondent would, however, like to assure the parties that it is taking steps to mitigate a repetition of these failings through the creation of specific guidance for its staff and by changes to its Freedom of Information Complaints handling procedures.
10. In view of all the circumstances and subject to the Tribunal’s views, the parties jointly submit that it is appropriate for these proceedings to be concluded by way

of consent order, and that it is appropriate for the Tribunal to consider their joint application without holding a hearing (as envisaged by rule 37(2)).

## **ANNEX B**

1. The Second Respondent was in breach of section 1(1)(a) and (b) FOIA in that it held further information within the scope of the request for information. That information has now been disclosed to the Appellant.
2. No further steps are required to be taken.