

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 13 October 2016

Public Authority: Warwickshire County Council
Address: Shire Hall
Warwick
CV34 4RL

Decision (including any steps ordered)

1. The complainant made a request for information to Warwickshire County Council for GIS data on its public Rights of Way Network. The Council refused the request under the exception in regulation 12(4)(d) (material still in the course of completion etc).
2. The Commissioner's decision is that regulation 12(4)(d) does apply to the requested information but that the public interest in maintaining the exception does not outweigh the public interest in disclosure.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - The Council shall disclose the requested information 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 (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 1 April 2015 the complainant made a request for information to the Council which read as follows:

I am interested in obtaining information about the Public Rights of Way recorded in your Definitive Map and Statement. Do you currently have a copies/versions of these documents in electronic form? If so, I'd be grateful if you could send me a copy of these files. (I don't mind if the electronic versions aren't official/authoritative, as long as they're good-faith working versions. If there are multiple electronic versions, I would prefer something as up to date as possible, but in a re-usable and ideally open format. For the Definitive Map data, I'd be looking for something like KML, MapInfo or ShapeFile files containing the GIS data, rather than rendered map images.)

6. The Council responded on 30 April 2015 when it explained that the Definitive Map and Statement were available for inspection and that there was not an electronic version.
7. On the same day the complainant contacted the Council again to clarify what information he was seeking. He explained that what he wanted was "any digitised / GIS data you may have describing your Public Rights of Way network". The complainant also asked the Council to confirm whether it held any unofficial electronic versions of the Definitive Map and Statement.
8. On 11 April 2015 the Council advised that public rights of way data was incorporated into the National Street Gazetteer (NSG) which it explained was available to view on the Council's website. The NSG is a private database of all the streets in England and Wales compiled from the responsible highway authorities.
9. In response the complainant explained that what he was seeking was the underlying GIS data rather than to just view the information on the map on the Council website. He also said that it appeared that the Council did indeed hold an electronic copy of the Definitive Map and Statement and that therefore the Council's original response to the request was incorrect.
10. On 12 May 2015 the Council explained that it was in the process of creating a set of digitised GIS data for the Public Rights of Way network to be included in the NSG. It said that once this work was complete and the data was ready for release it would be available to view as part of

the NSG data available via the Compass Interactive Viewer on its own website.

11. The complainant subsequently confirmed that it was this digitised GIS data that he was seeking and he said that if the Council was refusing to disclose the information then it would need to cite an exception under the EIR. The complainant also asked for information about the progress of this digitisation project although the Commissioner understands that the complainant is not challenging this part of his request.
12. This led to the Council issuing a fresh response on 29 May 2015 which considered the request under the Freedom of Information Act. The Council explained that the information was exempt under section 22 (information intended for future publication) and the public interest favoured withholding the information. It noted that the equivalent provision under the EIR was regulation 6 (form and format).
13. The complainant then asked the Council to carry out an internal review and in doing so suggested that this request should have been considered under the EIR rather than FOIA.
14. The Council presented the findings of its internal review on 15 July 2015. The review found that the EIR was the correct access regime to apply and that the digitised GIS data fell under the regulation 12(4)(d) exception (material still in the course of completion, etc.) and that the public interest favoured withholding the information. As regards the Definitive Map and Statement the Council explained that it was unable to disclose this in electronic form and that it was relying on regulation 6 as it was reasonable to make the information available in paper format only.

Scope of the case

15. On 23 October 2015 the complainant contacted the Commissioner to complain about the Council's decision to refuse to disclose the information he requested.
16. Following discussions with the complainant the Commissioner agreed that the scope of his investigation would be to consider whether the Council was right to withhold the GIS data on public rights of way under the regulation 12(4)(d) exception. The complainant is not challenging the Council's refusal to disclose an electronic version of the Definitive Map, and in any event, this information was subsequently disclosed during the course of the Commissioner's investigation.

Reasons for decision

Regulation 12(4)(d) – material still in the course of completion, etc.

17. The withheld information in this case comprises GIS data on the Council's Public right of way network. GIS is an acronym for geographic information system, and any digitised GIS data relating to the Council's public rights of way is effectively a digital map with layers of spatial and geographical data but not an official legal record. The definitive map is the Council's legal record of the county's public rights of way.
18. The Council explained that at the time of the request it was in the process of digitising its Rights of Way GIS data, i.e. its digitised lines showing the route of public rights of way on a digital map, and that it intended to make this publicly available. It said that once the work was complete it would be made available on the NSG through the Council's website. However, it said that the project was a work in progress and not yet ready to be made public.
19. Regulation 12(4)(d) provides that a public authority may refuse to disclose information to the extent that—

(d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data
20. The Council has explained that it is currently in the process of digitising its public rights of way but that this project was unfinished and incomplete and was so when the request was received. It said that the process of digitising the data is "cumbersome and complex" due to the significant volume of data that requires digitisation. Whilst the data has been digitised, the Council has said that a considerable amount of verification is required to ensure the data is accurate before it can be publicly available.
21. The Council has applied regulation 12(4)(d) but has said that it is unsure which specific limb of the exception is applicable in the circumstances. This is because, it said, the data had been digitised and so therefore was not incomplete except in so far as the verification process was concerned. However, it said that it considered that the project was an unfinished piece of work because the Council's Rights of Way Team were still working on it and the data was incomplete. Therefore it was not being relied upon at the time of the request due to the fact that it was still unverified and was susceptible to amendments due to the verification process. The Council suggested that "unfinished documents"

and/or "incomplete data" were the relevant parts of the exception that might apply in these circumstances.

22. Regulation 12(4)(d) is a class based exception which means that it not necessary to show that disclosure would lead to any kind of prejudice, only that the request falls under the class of information which the exception is designed to protect. The EIR does not define what is meant by "unfinished documents" or incomplete data" but the Commissioner's guidance suggests that information will be unfinished if a public authority is still working on it at the time of the request. It also suggests that data will be incomplete if a public authority is still collecting it but that if the authority is using or relying on that information in some way then the information cannot be classed as incomplete.
23. During the course of some further correspondence with the complainant following his request, the Council explained that it hoped to complete and publish the set of GIS data for the Rights of Way network by April 2016, although it said that this was dependent on the time and resources available and that if resources were not available then this deadline could slip. Indeed, it subsequently transpired that this estimate was somewhat optimistic. However, this does lead the Commissioner to conclude that at the time of the request the Council was engaged in an ongoing project and that there was a point when it envisaged finishing the project but that this had not been reached. The information was not being used by the Council for its purposes or otherwise relied upon, and further work was ongoing to validate the data. In the circumstances the Commissioner is satisfied that this is sufficient to engage the exception and the Commissioner has now gone on to consider the public interest test, balancing the public interest in maintaining the exception against the public interest in disclosure.

Public interest test

Public interest arguments in favour of maintaining the exception

24. In favour of maintaining the exception the Council explained that it had a statutory duty to maintain a legal record of public rights of way in the form of a Definitive Map and Statement, to keep these under review and up to date, and to ensure that such rights are maintained and free from obstruction. It said that in this context it was imperative that the data is accurate because this has implications for property values and planning or development applications. The Council argued that disclosure of the digitised data in its unfinished and incomplete form would give a misleading or inaccurate impression of public rights of way, and have implications for property values, and lead to misguided planning

applications or development works, including misinformed applications to change or modify rights of way.

25. The Council said that it was aware that the Commissioner did not usually give these kind of arguments much weight because it should usually be possible for a public authority to put a disclosure into context for example, by providing a disclaimer or an explanation that incomplete data contains errors. However, it said that it had considered this but that even with a disclaimer disclosure would still lead to queries about inaccuracies in the data which its Rights of Way Team, whom it said were considerably constrained, were not resourced to facilitate. In addition, it argued that whilst any disclaimer might limit the Council's liability resulting from any loss or damage suffered by any persons relying on the data, it would not prevent any aggrieved party from placing reliance on the data, or avail the Council from having to expend resources in responding to such claims. In particular, the Council is concerned about the complainant's intended use of the information as he has indicated that he wants to use the GIS data as part of a project to map public rights of way on OpenStreetMap – a free and openly licenced digital world map. The Council has said that it would have no control over this information once it has been disclosed and so no way of ensuring that any disclaimer is displayed with the data once it is published.
26. With this in mind the Council said that, on balance, it considered that to disclose the data in its current form would create a significant strain on its resources and would require a disproportionate effort to deal with, especially the Rights of Way Team, and ultimately hinder the completion of the project. Therefore, it concluded that the public interest in maintaining the exception was stronger, particularly because at the time of the request the anticipated completion date was April 2016, and in the interim the wider public interest was met, it said, by paper copies of the Definitive Map being made available for inspection or extracts could be requested in return for a fee. In addition it said that there was an intention to publish a scanned electronic version which was subsequently published during the course of the Commissioner's investigation.
27. The Commissioner had asked the Council to elaborate on its concerns about the consequences of disclosing potentially inaccurate information. In doing so, the Council also responded to suggestions that the GIS data should not necessarily be withheld due to inaccuracies because such inaccuracies were already in the public domain, i.e. on the Definitive Map but also Ordnance Survey Maps. It explained that the anomalies that have been identified in its Rights of Way GIS digitised line data would not be apparent on Ordnance Survey maps showing public rights

of way due to the scale at which they are published. OS Explorer Maps, for example, which are the OS maps most often used by walkers, are published at 1:25,000 scale. However, the Rights of Way GIS digitised line data can, it said, be displayed at any scale and against any base map, and therefore any anomalies can become much more apparent when the digitised lines are viewed at a closer scale.

28. It also said that the same applied to the Definitive Map, which is the legal record of public rights of way that is available to be viewed by the public. It explained that this is published at 1:10,000 and that the route of each public right of way is represented by a broad pen-drawn line that would be approximately 10 metres wide when measured at that scale. It said that the Rights of Way GIS digitised line data is based on the centreline of this drawn line on the Definitive Map and so when viewed at close scale any anomaly may become more apparent. In some cases there may be a mismatch, it said, between the route, as it appears on the Definitive Map, and the digitised line as it appears when viewed at close scale against a more modern and detailed base map.
29. The Council provided the Commissioner with an example to illustrate its point from which it is apparent that any anomalies or inaccuracies are indeed more apparent from the GIS data when viewed on a base map compared to the Definitive Map or an OS map.
30. The Council added that the burden of responsibility to ensure that public rights of way information is accurate is stronger for the Council than it is for the Ordnance Survey, given that the Council is the Highway Authority and responsible for keeping and providing legal information regarding public rights of way, whereas the Ordnance Survey is not the Highway Authority and the maps that they publish are not a legal record of public rights of way
31. Finally, the Council argued that it would have no way of ensuring that any disclaimer is displayed with the data when it has been disclosed, as once published it is uncontrollable.

Public interest arguments in favour of disclosure

32. As regards the public interest in disclosure, the Council said that it had considered a number of factors namely the promotion of openness, transparency and accountability of public authorities and the encouragement of public participation in environmental decision making and initiatives.
33. The complainant's arguments for disclosure focus on his intention to use the information as part of his open source mapping project and what he

says is the significant public interest in having an accurate representation of public rights of way in a freely available and re-usable map. He also suggested that disclosure would allow open street mappers to uncover any errors in the data which could also benefit the Council by allowing it to improve its own data.

Balance of the public interest arguments

34. The Commissioner has first considered the public authority's arguments for maintaining the exception. Whilst she appreciates the Council's concerns about inaccuracies in the data, the Commissioner is not persuaded that disclosure would have the adverse effects that it suggests due to residents, developers or other parties relying on potentially inaccurate data.
35. People already make decisions based on the definitive map. Whilst she accepts that any mistakes in the Rights of Way are likely to be more pronounced when using the GIS data, she is not convinced that disclosure would lead to any great burden on the Council's services. The Council has itself acknowledged that it could disclose the information with a suitable disclaimer although it considers that the damage would be caused by making the information available to the complainant who could then publish the information in a way which it would have no control over. In the Commissioner's view any responsible developers or other parties who might use the information would seek to get official confirmation from the Council before making any decisions based on information from an unofficial source. Therefore, if they were to incur any problems as a result of inaccurate data, it seems unlikely that they would seek to pursue the Council if they had not obtained the information directly from the Council and had not taken steps beforehand to ensure the data was correct. In the Commissioner's view the number of enquiries the Council would receive as a result of disclosure is also likely to be low or else not significant enough to seriously affect the Council's ability to carry out its functions. Therefore, the Commissioner has given the arguments around accuracy only limited weight.
36. The Commissioner has also given consideration to the length of time until the Council envisaged being able to make the requested information publicly available. The Council originally indicated that it would aim to publish the information in April 2016. During the course of the Commissioner's investigation it said that due to limited resources it would not be possible to meet this deadline and it could not say definitively when this would take place. It did say, however, that it was working towards an operational target of April 2017 to have the data available in the NSG. In balancing the public interest, the Commissioner

can only take into account the circumstances as they were at the time of the request and at that point the Council had suggested that it was aiming to publish the information by April 2016. However, the Commissioner has also taken into account the fact that the Council had itself acknowledged that it was quite possible that this deadline might be delayed and indeed this assessment turned out to be quite prescient. This also has a bearing on the public interest, because if the Council had been able to give a very definite assurance that the information would be published by a given deadline then this may weigh more in favour of maintaining the exception. The fact that there was a great deal of uncertainty about exactly when the information would be published increases the case for transparency.

37. The Commissioner has considered the arguments in favour of disclosure and accepts that there is a public interest in promoting transparency and improving public understanding about Rights of Way in the Council area. Disclosure would also allow for greater transparency and accountability in how well the Council is performing its duty in accurately recording the public rights of way and keeping this information up to date. That said, the Commissioner recognises that the public interest in disclosure is already met to a certain extent by the fact that the definitive map is already available to the public. The Council has also made a scanned electronic version available on its website, although this was only done during the course of the Commissioner's investigation. However, disclosure of the GIS data would provide additional information beyond what is available through the definitive map and would allow the public a greater understanding of the work the Council is doing to keep Rights of Way data accurate and how much work is still left to do.
38. In the Commissioner's view the public interest test is finely balanced. Nevertheless the Commissioner is mindful that the EIR apply a presumption in favour of disclosure. That is to say, the 'default' position should be to disclose environmental information unless there are compelling reasons why the information should be withheld. In this case the Commissioner is not satisfied that the Council has demonstrated a sufficiently strong case to withhold the information. Therefore, the Commissioner finds that on balance the public interest in maintaining the regulation 12(4)(d) exception does not outweigh the public interest in disclosure.

Right of appeal

39. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

40. 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.
41. 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

Paul Warbrick
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