

**Freedom of Information Act 2000 (Section 50)
and
The Environmental Information Regulations 2004.**

Decision Notice

Date: 10 June 2010

Public Authority: Bedford Borough Council
Address: Town Hall
St Paul's Square
Bedford
MK40 1SJ

Summary

The complainant submitted a request to the Bedford Borough Council for information about the maintenance of a particular road. A response to the request was not provided within twenty working days. Whilst the public authority dealt with the request under the Freedom of Information Act, the Commissioner is of the opinion that the information was of an environmental nature and that the request should therefore have been dealt with under the Environmental Information Regulations. Consequently the Commissioner finds that, in responding outside the statutory time, the public authority breached regulation 5(2) of the Environmental Information Regulations.

The Commissioner's Role

1. The Environmental Information Regulations (The Regulations) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that The Regulations shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into The Regulations.

The Request

2. On 5 November 2009 the complainant requested the following information:
 - 1) The dates of any major repairs carried out to this road in the past two years
 - 2) Provide the last date that the white lines to the side of the road were painted and particularly when it was painted at the bottom of the pothole
 - 3) Provide dates of the safety inspections carried out on this road for the past two years
 - 4) Provide details of all defects identified during the safety inspections over the last two years
 - 5) Provide details of the intended frequency of road safety inspections
 - 6) Provide details of all complaints and enquiries relating to this road over the past two years
 - 7) Provide details of the hierarchy clarification
 - 8) Provide details of the road / section number
 - 9) Provide details of the defect intervention criteria regarding pothole repairs
 - 10) Provide details of the time period adopted between identification and repair for all categories of carriageway repairs
 - 11) Confirm if the authority has formally adopted the standards all or in part of the national code for practice for highways management maintenance

These requests related to Roxton Road, Chawston, Bedford.

3. The Council responded to the complainant on 11 January 2010 and disclosed the requested information.

The Investigation

Scope of the case

4. On 5 December 2009 the complainant contacted the Commissioner to complain that he had received no response to his request for information from Bedford Borough Council.

Chronology

5. The complainant made the request on 5 November 2009.
6. On 5 December 2009, the complainant contacted the Information Commissioner's Officer to complain about the lack of response to his request.
7. On 23 December 2009, the Commissioner wrote to the Council and asked that it respond to the complainant within ten working days.
8. On 11 January 2010, the Council provided a response to the complainant.

Analysis

Substantive Procedural Matters

9. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
10. The Commissioner considers that the information requested falls within regulation 2(1)(c): "measures (including administrative measure), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect these elements". Information about a plan or a measure or an activity that affects or is likely to affect the elements of the environment is environmental information. The Commissioner therefore considers information on the Council's road maintenance programme to be environmental information.

Procedural Requirements

Regulation 5: duty to make information available on request

11. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that this information shall be made available as soon as possible and no later than 20 working days after the date of receipt of request.
12. The complainant submitted his request for information on 5 November 2009. The Council did not provide a response until 11 January 2010. As the information was not provided within 20 working days, the Commissioner finds that Bedford Borough Council breached regulation 5(2).

The Decision

13. The Commissioner's decision is that Bedford Borough Council has breached regulation 5(2) of the EIR in failing to comply with regulation 5(1) within twenty working days following receipt of the request.

Steps Required

14. The Commissioner requires no steps to be taken.

Right of Appeal

15. 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
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 10th day of June 2010

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Regulation 5 - Duty to make available environmental information on request

Regulation 5(1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 5(2) 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.

Regulation 5(3) To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.

Regulation 5(4) For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

Regulation 5(5) Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to the standardised procedure used.

Regulation 5(6) Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.