

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

**Decision notice**

**Date:** 4 April 2012

**Public Authority:** Bath & North East Somerset Council  
**Address:** The Guildhall  
High Street  
Bath  
BA1 5AW

**Decision (including any steps ordered)**

---

1. The complainant has requested legal guidance held by the council relating to its application of vehicle weight restrictions to parts of the A36 for an 18 month trial period. The council refused the information on the grounds that the information was subject to legal professional privilege under section 42 of the Freedom of Information Act 2000.
2. The Commissioner's decision is that the requested information is environmental information as defined under section 2 of the Environmental Information Regulations 2004. Bath & North East Somerset Council (BATHNESS) was therefore not correct to consider the information under the Freedom of information Act.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - to consider the request in accordance with the Environmental Information Regulations 2004 and either to disclose the information or to issue a valid refusal notice
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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

---

5. On 5 October 2011, the complainant wrote to BATHNESS council and requested information in the following terms:

*"I understand that BANES intends to implement a weight restriction on the A36 for an 18 month trial period. This would have the effect of shunting heavy traffic up the A350 running through my constituency and, in particular, the town of Westbury and villages of Yarnbrook and West Ashton.*

*Unilateral action of this sort is questionable given that the A36 is a trunk road and thus the responsibility of the Highways Agency and not BANES, However I am told that you have a legal opinion to the contrary. Since public funds will have been expended in obtaining any opinion it is right that it should be placed in the public domain. I would be grateful if you could either now do so or identify the provisions in the Freedom of Information Act that you are relying on. "*

6. The council responded on 4 November 2011. It stated that the information was held but that it was subject to legal professional privilege and therefore exempt under section 42 of the Act.
7. Following an internal review BATHNESS wrote to the complainant on 19 December 2011. It stated that its initial decision was correct and that the information was exempt under section 42.

## Scope of the case

---

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He stated that the public interest in this legal advice being published was such that the information should have been disclosed to him.

## Reasons for decision

---

9. Regulation 2 of the Environmental Information Regulations 2004 provides a definition of environmental information for the purposes of that legislation. It defines environmental information as any information on:
- (a) *the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites*

*including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*

*(c) measures (including administrative measures), 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 those elements;*

*(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);*

10. The Commissioner has considered the information falling with the scope of the request. The withheld information is legal advice relating to the councils abilities and duties as regards areas of the public highway.

11. The information relates to the council's intention to introduce weight restrictions to areas of the highway in order to restrict heavy good vehicles from travelling through the City of Bath. The intention is to protect air quality, to protect buildings from damage and to protect its people from the passage of heavy goods vehicles in the midst of the city. Bath is designated as a World Heritage City.

12. The council report which introduces and proposes the restriction states:

*"Heavy Goods Vehicles travelling through Bath has been a concern for many years, particularly along A4 London Road and A36 Bathwick Street. Local residents are concerned about the contribution made by HGVs to poor air quality, road safety issues and intimidation experienced by vulnerable road users within the Bath World Heritage Site.*

*An 18 tonne environmental weight restriction is proposed for vehicles turning between A36 Bathwick St and A36 Beckford Road, in both directions. This proposal will reduce the contribution that HGVs make towards poor air quality in an air quality management area, congestion and intimidation by traffic."*

It further notes that:

*"Within the Air Quality Management Area levels of NO2 exceed EU air quality standards. Introducing an 18 tonne weight restriction will help reduce congestion and air pollution in this area and also help to reduce HGV traffic travelling through the World Heritage Site, an important objective of the World Heritage Site Management Plan."*

Appendix A of that report (at paragraph 7) highlights

*"Air Quality Issues. Both the A4 London Road and A36 Bathwick St suffer from significant peak hour congestion and lie within an Air Quality Management Area where levels of NO2 exceed EU air quality standards."*

13. The Commissioner therefore considers that the information relates to a measure to restrict heavy goods vehicles from using sections of the highway and that this step is being taken to respond to the factors noted above.
14. The Commissioner therefore considers that the advice therefore falls within the definition of environmental information provided in Regulation 2 (c). It is information on a measure or measures designed to protect those elements of the landscape provided in Regulation 2(a). The withheld information is advice setting the legal basis upon which the council could take steps to protect areas of the city from damage caused by heavy good vehicles.
15. The Commissioner's decision is therefore that the withheld information is environmental information and that the council should have considered the request under the Regulations rather than under the Act. The council was not correct to consider the information under the Act therefore.

## Right of appeal

---

16. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

17. 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.
18. 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** .....

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**