

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

**Decision notice**

**Date:** 18 November 2013

**Public Authority:** Devon County Council  
**Address:** County Hall  
Topsham Road  
Exeter  
Devon  
EX2 4QD

**Decision (including any steps ordered)**

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1. The complainant requested details of the frequency and costs of clean-up operations following flooding at a named location. Devon County Council (the 'Council') responded with some dates but not costs and said it held no further information.
2. The Information Commissioner finds that the information requested constitutes environmental information and therefore should have been considered under the Environmental Information Regulations 2004 (EIR). He has concluded on the balance of probabilities that, with the exception of the information which was made available to the complainant, the remainder of the information requested was not held by the Council. It therefore complied with regulations 5(1) and 5(2) in making available the information it held within 20 working days of receipt of the request and in stating that no further information was held. The Commissioner does not require the Council to take any steps.

**Request and response**

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3. On 29 January 2013 the complainant wrote to the Council and requested information about flooding in the following terms:

*"Under the Freedom of Information Act I would like a breakdown of the cost of the clear up operations in [location redacted] since 2007. I would like to know the frequency and cost of each operation."*

4. The Council responded on 22 February 2013. It stated that its records indicated that since 1 January 2007 there had been 12 incidents requiring clear up work at the named location, and provided the dates which were for 2012 and one date in 2013. The Council explained that it does not hold site specific costings for operations such as these because the nature of these visits, in most cases, would have been as emergency reactive works to incidents which had happened in a number of locations, such that the works would have been continuous from site to site.
5. The complainant requested an internal review on 28 February 2013. The Council provided the internal review result on 27 March 2013. It stated that its business processes are not set up to record the cost of works for a particular geographic location. It explained that the 12 occasions which it had identified were for works ascribed to a particular 'storm event' and had been charged against a single cost code known as a 'storm code'. It said that it does not issue works orders for emergency works undertaken in a specific geographic location and therefore could not give any detailed cost information in relation to the named location.
6. The Council also confirmed that it does hold details of costs as a result of specific storm events, but these figures would also include the cost of works undertaken county-wide in response to a particular storm event. It said it did not, therefore, hold cost information specific to the named location.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 6 June 2013 to complain about the way her request for information had been handled. She specifically asked the Commissioner to consider that information had only been provided for 2012 and one date in 2013, although she was aware of other flooding incidents prior to 2012, and that no costs information had been supplied.
8. The Commissioner has considered whether, on the balance of probabilities, any further information was held by the Council at the time of the request than it has previously provided. Although the request was handled by the Council under FOIA, the Commissioner has also considered whether the requested information was environmental and so the request should instead have been handled under the EIR.

## Reasons for decision

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### Regulation 2 - Is the information environmental?

9. Information is environmental if it meets the definition set out in regulation 2 of the EIR. Regulation 2(1)(a) covers the state of the elements of the environment, including water, soil, land and landscape. Regulation 2(1)(c) provides that information is environmental where it is on:

*"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 [2(1)](a) and (b) as well as measures or activities designed to protect those elements"*

10. In the Commissioner's view the information requested by the complainant constitutes environmental information under regulation 2(1)(c) as it is on an activity – clear up operations following flooding - affecting or likely to affect several of the elements of the environment referred to in 2(1)(a).
11. The Commissioner has concluded that the correct regime under which to handle the request was the EIR and the remainder of this analysis covers whether the request was handled in accordance with the EIR.

### Regulation 5(1) – What recorded information was held?

12. Regulation 5(1) provides a general right of access to environmental information held by public authorities. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to locate information falling within the scope of the request, and its explanations as to why the information is not held. The Commissioner is not expected to prove categorically whether additional information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities"<sup>1</sup>.

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<sup>1</sup> This approach is supported by the Information Tribunal's findings in

13. The complainant lives at the location specified in the request. She told the Commissioner that her car had been written off in 2007 as a result of flooding from the culvert outside her property and that there had been a major problem in 2009, which had recurred in 2012, for which she and the Council's Highways Officers have photographic evidence. She therefore asked the Commissioner to consider why the Council had only provided dates of clear-up incidents for 2012 and 2013, and why it had not provided any cost details.
14. The Commissioner asked the Council to explain why it did not appear to hold information about clear-up operations as a result of incidents which had occurred prior to 2012. In response the Council said that it does have a record of clear up works being undertaken throughout the county prior to 2012 but that this work had been attributed to two specific storm codes which are assigned to the geographic area covered by the local Area Office responsible for East Devon. It said that it is not possible to identify whether these clear-up works involved works specifically undertaken in the named location as this is not recorded on any of the Council's systems, although it conceded that it is a possibility that some reactive works may have been carried out in the named location between 2007 to 2012.
15. The Council explained that the 12 specific incidents requiring clear-up work at the named location are recorded on its Routine Maintenance System ('RMS'), which is a works ordering system that records the date and geographic location within which certain works are to be undertaken by its contractor, Southwest Highways.
16. Whilst the Council accepted that it is possible that some reactive works were carried out at the named location during the specified period, it confirmed that it has no definitive record of clear up works being assigned to this specific geographic location on its RMS. It said the reason for this could be that clear up works were undertaken as part of works orders which related to storm events covering a much wider geographic area. It confirmed that it would not be possible to identify the full extent of works actually undertaken in the named location, because this information was not recorded.
17. In contrast, the Council has a specific record of works undertaken in the named location in 2012, which is said is most likely due to the exceptional nature of the problems identified in that area resulting from

the extreme weather experienced at that time. It explained that in 2012 the Council recorded clear-up works individually in its Customer Management System ('CMS') which then generated orders through its RMS system, but confirmed that this method of recording was not utilised prior to 2012.

18. The Commissioner asked the Council to explain how it records information about the costs of emergency works, noting that it does not issue works orders for such works. In reply, the Council said that where works are continuous over a large area and attending multiple sites, it does not hold site specific costs for clean-up operations. It confirmed, however, that works of a construction nature such as drainage, patching, reconstruction or erection of structures are site specific and are recorded accordingly.
19. In addition the Council explained that it is standard practice for emergency works following severe weather to be assigned to a particular storm event, which are given their own finance code called a 'storm code'. This allows the Council to identify the associated costs which relate to each storm event. It also stated that all clear up works associated against these storm codes are assigned to a particular geographic area. In most cases this will be the geographic area covered by each of the Council's local Highway Offices, which are much larger areas than that specified in the request.
20. The Council stated that the many storm events across the county in 2012 were exceptional, commenting that records show 2012 to be the wettest year since records began. It advised that if emergency clear ups were undertaken in the named location between 2007 and 2012 they may not have been specifically recorded against this location if they formed part of works which were in response to a storm event affecting a larger geographic area.
21. The Commissioner also asked the Council to provide details of the searches it had undertaken in order to respond to the request. In reply the Council said that all works orders raised for highway maintenance are recorded on its RMS system. It confirmed that its officers had searched RMS for details of any works orders that were issued for clear up works covering the named location, but that the search had not identified any works order values being specifically assigned to this location for clear up work.
22. The Council explained that searches of the RMS system involved search terms using the named location and the date range. It also carried out a search of its CMS system which records all customer contacts, explaining that there is a direct link between the two systems allowing

for works orders to be generated in RMS from enquiries recorded in CMS where appropriate.

23. The Council confirmed that any information held would be in an electronic format and that it has no record of any information falling in scope being held and subsequently deleted. It clarified that its Records Retention Schedule indicates that records relating to both planned and unplanned highways maintenance works should be retained for six years from the date of creation.
24. It said that there is no business purpose for holding this information and that, whilst information for accounting purposes is held, it does not allow for the cost of particular works to be broken down to specific locations. The Council advised that it is unaware of any statutory requirements upon it to retain this information.
25. The Commissioner considers that the Council has provided a reasonable explanation as to why it was able to provide details of clean up dates in 2012 and 2013 at the named location, but has not been able to identify any instances prior to this. He also finds the Council's explanation about why it was not able to provide location specific costs plausible.

### *Conclusion*

26. The Commissioner's decision is, on the balance of probabilities, that apart from the information disclosed to the complainant within 20 working days, no further information is held that is relevant to the request and therefore the Council complied with regulations 5(1) and 5(2) of the EIR in this case.
27. Under the EIR, where information is not held, this means that the exception to the duty to disclose provided regulation 12(4)(a) applies. In this case this exception was not cited by the Council as it did not deal with the request under the EIR. The Commissioner therefore also finds that the Council breached regulation 14(3) of the EIR, which requires a response specifying any exceptions that are relied upon, as a result of applying the FOIA to information which is environmental.

## Right of appeal

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28. 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)

29. 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.
30. 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 .....**

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