

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 24 June 2015

**Public Authority:** Hertfordshire County Council  
**Address:** County Hall  
Hertford  
Hertfordshire  
SG13 8DE

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to Hertfordshire County Council's temporary closure of twenty two roads in 2014 for road maintenance purposes.
2. In the Commissioner's opinion the information which the complainant seeks constitutes environmental information and falls to be considered under the provisions of the EIR.
3. The Commissioner's decision is that the Council has contravened Regulation 5(2) of the EIR by failing to disclose the requested information within the twenty working days compliance period.
4. The Commissioner does not require the Council to take any further action in this matter.

#### **Request and response**

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5. On 18 February 2015, the complainant wrote to Hertfordshire County Council ("the Council") and requested information in the following terms:

"Will you please, under the Freedom of Information Act, provide the following information in respect of highway maintenance.

In the Stevenage edition of the Comet newspaper of 31 July 2014, page 73, Hertfordshire County Council published a list of twenty two roads in the local area, which would be subject to temporary closure and waiting

restrictions, between 18<sup>th</sup> and 23<sup>rd</sup> August 2014, for highway maintenance works.

I wish to know, for each road, whether the work was undertaken, and if so what maintenance was carried out and when."

6. The Council acknowledge receipt of the complainant's request on 18 February.
7. The Council advised the complainant that his 'enquiry' had been passed to its Highways Department.
8. The Council acknowledged that the complainant had made his request under the Freedom of Information Act ("the FOIA"), but since he was not asking for copies of documents, the Highways Department would respond to his request under its normal business practice.
9. Having received no response from the Highways Department, the complainant wrote to the Council again on 16 March. The complainant advised the Council that he had heard nothing from the Highways Department and asked to be informed of the deadline for dealing with requests made under the FOIA.

### **Scope of the case**

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10. On 26 March, the complainant contacted the Information Commissioner to complain about the failure of the Council to respond to his request for information.
11. The Commissioner wrote to the Council on 30 April, asking it to make its response to the complainant's request within 10 working days. The Commissioner made clear that the Council's response should be to provide the information which the complainant seeks or to issue a refusal notice meeting the requirements of section 17 of the FOIA or Regulation 14 of the EIR.
12. The Council acknowledged the Commissioner's email on 30 April, confirming to him that it would investigate the matter and make its response to the complainant within the ten working days' time period.
13. In his complaint to the Commissioner, the complainant accepts that the Council has now responded to his information request within the additional ten working days which the Commissioner allowed.
14. The complainant's complaint is not about the information which the Council sent him: It is about the Council's apparent ignoring of his

requested his request by virtue of dealing with it under its normal business practice.

15. The complainant has provided the Commissioner with his reasons why the Council chose to 'ignore' his request. The 'reasons' given by the complainant have not substantiated.
16. The sole focus of this notice is the failure of the Council to meet the requirements of Regulations 5(1) and 5(2) of the EIR. For the purpose of this notice it is not necessary for the Commissioner to comment on the alleged 'reasons' given by the complainant.

## **Reasons for decision**

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### **Is the information 'Environmental Information'?**

17. Information is 'environmental information' if it meets the definition set out in regulation 2 of the EIR. If the information satisfies the definition in regulation 2 it must be considered for disclosure under the terms of the EIR rather than the FOIA.
18. Under regulation 2(1)(c) of the EIR, any information on activities affecting or likely to affect the elements or factors of the environment listed in regulation 2 will be environmental information. One of the elements listed is land.
19. The Commissioner has considered the nature of the information sought by the complainant. He has determined that the information is environmental information on the basis that it relates to the closure of 22 roads for maintenance purposes.

### **Regulation 5 – the duty to make environmental information available on request**

20. Under Regulation 5(1) of the EIR, a public authority holding environmental information is obliged to make that information available on request.
21. Under Regulation 5(2) the Council is required to provide the information as soon as possible and no later than twenty working days from the receipt of the request.
22. In this case the Council provided the information sought by the complainant after the compliance period had passed and only after the intervention of the Commissioner.

23. On the facts of the case, the Commissioner can only find that the Council has breached Regulation 5(2) of the EIR.
24. The Commissioner must point out to the Council that the complainant made his request under the Freedom of Information Act.
25. By making explicit reference to the FOIA, the complainant made clear that he was relying on the provisions of one of the information access regimes which have been provided by statute. The Council should have been alerted to this from the outset.
26. Whilst the option of dealing with the request under its normal business practices is open to the Council, the Council must ensure that where the request is for recorded information, and where it meets the statutory requirements for a request, the business practices must be compliant with the requirements of the appropriate information access regime – either the FOIA or the EIR.
27. In this case the Council should have considered the nature of the information sought by the complainant. It should have identified that the information, if it is held, constitutes environmental information, falling to be considered under the EIR and under the Council's established practice for dealing with such requests.
28. By choosing to follow its 'normal business practices', the Council opened the door to the breach of Regulation 5(2). This breach was compounded by the 'administrative error' which the Council's investigation identified had occurred in its Highways Department.

## Right of appeal

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29. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

30. 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.
31. 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**