

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

### **Decision notice**

**Date:** 23 October 2017

**Public Authority:** Cheshire East Council

**Address:** Municipal Buildings  
Earle Street  
Crewe  
CW1 2BJ

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

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1. The complainant has made two requests for information about a road defect. The complainant disputes that he has not received all held recorded information in response.
2. The Commissioner's decision is that Cheshire East Council ("the Council") has complied with regulation 5(1) in respect of Request 1, but has breached regulation 5(2). In respect of Request 2 (Parts 1 and 2), the Commissioner finds that the Council has breached regulation 9(1), and in respect of Request 2 (Part 3) the Commissioner finds that, on the balance of probabilities, further recorded information may be held by the Council.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - In respect of Request 2 (Part 1), provide advice and assistance to the complainant so as to enable him to submit a clarified request. Such advice and assistance to include the query of which specific repair the recorded information is sought for, and an explanation of what recorded information is held that may be relevant to the request.

- In respect of Request 2 (Part 2), provide advice and assistance to the complainant so as to enable him to submit a clarified request. Such advice and assistance to include the query of which specific repair the recorded information is sought for.
  - In respect of Request 2 (Part 3), undertake further searches for recorded information that would fall within the parameters of the request, and issue a fresh response to the complainant that complies with regulation 5(1).
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

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### Request 1

5. On 13 September 2016, the complainant wrote to the Council and requested information in the following terms:

*I am writing to request information under the Freedom of Information Act relating to a road your authority is responsible for maintaining.*

*Specifically, my query relates to the Bonnis Hall Lane.*

*Please can you send me:*

- 1) *A copy of your current road maintenance policy relating to that road. Please send me the full policy, but this should include details of the intended frequency of road safety inspections, how these inspections should be conducted and the maximum time between identification of a defect and repairs being carried out.*
- 2) *A copy of the road repair history for that road over the past year. Again, please send me the full road repair history, but this should include:*
  - *Dates for all safety inspections between 28<sup>th</sup> February and the 28<sup>th</sup> April – details of how safety inspections were undertaken (walked or driven, speed of inspection vehicle etc).*
  - *Details of all carriageway defects identified, with description, date and time.*

- *Details of all issues and risk assessments raised on defects identified.*
  - *Details of how the authority handled these defects, what repairs were undertaken and the time between the identification of each defect and a repair being carried out.*
- 3) *A complete copy of the file raised against the incident on 28 April 2016 to include:*
- *Details of the time the incident was first reported.*
  - *Who reported the incident, for example a motorist, police etc.*
  - *Details of the number of claims for compensation received.*
  - *Details of the total amount of compensation paid out.*
- 4) *Details of the name and address of the company who cut out the hole in the road:*
- *The reason for the hole.*
  - *When it was first cut.*
  - *When it was repaired.*
  - *How was it repaired.*
6. The Council responded on 17 October 2016. It disclosed various recorded information.
7. On 17 October 2016, the complainant requested an internal review. This was on the basis that recorded information had not been disclosed in respect of Parts 3 and 4.
8. Following an internal review the Council wrote to the complainant on 20 October 2017. It disclosed recorded information in respect of Part 4.
9. On 21 October 2016, the complainant wrote further to the Council to dispute that recorded information had not been disclosed in respect of Part 3.
10. The Council wrote further to the complainant on 28 October 2017. It disclosed recorded information in respect of Part 3 of the request.

### Request 2

11. On 17 November 2016, the complainant wrote to the Council and requested information in the following terms:

*I would also like this opportunity to request further information regarding the case being:*

- 1) Copies of the worksheets provided to the contractors and completed worksheets following completion of the work.*
  - 2) The number of men working on the repair and the length of time spent on the repair.*
  - 3) Details of the materials used to complete the temporary repair and details of the material specification that applies in permanent repairs.*
12. The Council responded on 25 November 2016. It stated that no recorded information was held for Part 1, and disclosed recorded information for Parts 2 and 3.
  13. On 9 January 2017, the complainant requested an internal review. This was on the basis that further recorded information was held in respect of Part 3.
  14. Following an internal review the Council wrote to the complainant on 11 January 2017. The Council appears to confirm that no further recorded information is held.

### **Scope of the case**

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15. The complainant contacted the Commissioner 25 January 2017 to complain about the way his requests for information had been handled. The complainant specifically disputed that the Council held further recorded information in respect of specific parts of the two requests.
16. The Commissioner considers the scope of this case to be the determination of whether the Council has complied with regulation 5(1), regulation 5(2), and regulation 9(1).

### **Reasons for decision**

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### **Context**

17. The complainant has submitted both requests in relation to a road defect on 'Bonnis Hall Lane'. The Commissioner understands that this road defect has been subject to two repairs by a contractor used by the Council.

18. The first repair was a temporary repair, and was undertaken on the morning of 28 April 2016. Following damage to this temporary repair, signage and traffic signals were put in place in the evening of 28 April 2016. The second repair was a permanent repair, and was undertaken on 29 April 2016.

### **Regulation 5(1) and regulation 9(1)**

19. Regulation 5(1) states that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions that may apply.
20. Regulation 9(1) states that a public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

### Request 1 (Part 1)

21. This part seeks the current road maintenance policy that relates to Bonnis Hall Lane, including details of the intended frequency of road safety inspections, how these inspections should be conducted and the maximum time between identification of a defect and repairs being carried out.
22. The complainant contests that the Council has not provided the current road maintenance policy.
23. The Council has informed the Commissioner that on 17 October 2016 it provided the complainant with a URL to the 'Code of Practice for Highway Safety Inspections'<sup>1</sup>. The Council has in particular referred to the Commissioner to page 10, which provides the timescales in which defects should be made safe, and page 13, which provides the frequencies of inspections. The Council contests that this is the recorded information sought by the request, which specifically seeks "*the current road maintenance policy relating to that road*".
24. The Commissioner has noted the information, which is publically available on the Council's webpages. The complainant has not provided any specific reason for why this part of the request is disputed, and having considered the Council's position the Commissioner considers it

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<http://www.cheshireeasthighways.org/Uploads/Files/CEC%20Highway%20Safety%20Inspection%20CoP%202013%20v2.1.pdf>

reasonable to conclude that this part of the request has been complied with.

#### Request 1 (Part 2)

25. This part seeks the road repair history for Bonnis Hall Lane in the past year, including any risk assessments of defects.
26. The complainant contests that the Council has not provided the risk assessments of defects.
27. The Council has informed the Commissioner that on that on 17 October 2016 it provided the complainant with a 'Full Street History Report'. The Council has further informed the Commissioner besides the recorded information contained with the report it has provided, it does not specifically record risk assessments against each defect reported.
28. The Commissioner has noted the Council's position that this type of information is not recorded, and there is no available evidence that suggests this is incorrect. The Commissioner therefore considers it reasonable to conclude that this part of the request has been complied with.

#### Request 2 (Part 1)

29. This part seeks the worksheets provided to the contractors, and the completed worksheets following completion of the work.
30. The complainant contests that the Council has not provided the worksheets.
31. The Council has informed the Commissioner that it is unsure what recorded information is sought by this part of the request, as there is no single document that might be termed as a 'worksheet'. The Council's original response assumed that the request sought the 'job pack records' (which the Council states were destroyed at the conclusion of the work). However the Council has now informed the Commissioner that it considers that other recorded information is held that may potentially address this part of the request, and has provided the Commissioner with documents that it considers relevant.
32. The Commissioner has considered the Council's submission. It is evident to the Commissioner that there is no single type of document that represents the 'worksheets' sought by the request, nor is it clear what specific recorded information is sought by the complainant, or to which of the two repairs (the temporary repair or the final repair, or both) it is sought for.

33. In circumstances where a request is ambiguous, regulation 9(1) requires a public authority to provide appropriate advice and assistance to the requestor to enable them to clarify their request.
34. The Commissioner considers that such advice and assistance would include querying which repair the request relates to (the temporary repair or the final repair, or both), and an explanation of what recorded information (or types of document) are held that may satisfy the request.
35. The Commissioner therefore finds that the Council has breached regulation 9(1).

#### Request 2 (Part 2)

36. This part seeks the number of employees working on the repair, and the length of time spent on the repair.
37. The complainant contests that the Council has not provided any recorded information about the number of engineers and time spent on the temporary repair of 28 April 2016.
38. The Commissioner has considered the submissions of the complainant and Council, and understands that the Council's response of 25 November 2017 refers to the final repair of 29 April 2016. However it is noted that the request did not specify which repair the recorded information was sought for, and that the Council did not seek to clarify this with the complainant. The Commissioner further notes that the Council has referred in its submissions to the potential of further recorded information being held on its behalf by its contractor. In addition to this, the Council has also informed the Commissioner that it considers that other recorded information is held that may potentially address this part of the request, and has provided the Commissioner with documents that it considers relevant.
39. In circumstances where a request is ambiguous, regulation 9(1) requires a public authority to provide appropriate advice and assistance to the requestor to enable them to clarify their request.
40. The Commissioner considers that such advice and assistance would include querying which repair the request relates to (the temporary repair or the final repair, or both).
41. The Commissioner therefore finds that the Council has breached regulation 9(1).

#### Request 2 (Part 3)

42. This part seeks details of the materials used to complete the temporary repair, and details of the material specification that applies in permanent repairs.
43. The complainant contests that the Council has not provided any recorded information about materials used to complete the temporary repair.
44. The Council has informed the Commissioner that, on that on 17 October 2016, it provided the complainant with relevant recorded information. However the Council has now informed the Commissioner that it considers that other recorded information is held that may potentially address this part of the request, and has provided the Commissioner with documents that it considers relevant.
45. Having considered the submissions of the Council, the Commissioner must conclude that further recorded information may be held by the Council.
46. The Commissioner therefore finds that the Council has not complied with regulation 5(1).

### **Regulation 5(2)**

47. Regulation 5(2) states that an information request should be responded to no later than twenty working days after the date of receipt.
48. In this case the Council did not respond to Request 1 within the time for compliance. On this basis the Commissioner must find a breach of regulation 5(2).

### **Other matters**

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49. The Commissioner reminds the Council of the importance of giving full and proper consideration to requests upon receipt. Doing so is likely to inform the Council what specific actions it should undertake in order to comply with the EIR. In the circumstances of this case, the Council's failure to properly consider both requests has led the breaches identified.
50. The Commissioner refers the Council to the following guidance:
  - '*Regulation 9 – Advice and Assistance*', available at: <https://ico.org.uk/media/for-organisations/documents/2013834/eir-advice-and-assistance-regulation-9.pdf>



- '*Interpreting and clarifying requests*', available at:  
<https://ico.org.uk/media/for-organisations/documents/1162/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf>

## Right of appeal

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51. 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)

52. 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.
53. 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**