

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 30 September 2019

Public Authority: Hampshire County Council
Address: The Castle
Castle Avenue
Winchester
Hampshire
SO23 8UJ

Decision (including any steps ordered)

1. The complainant has requested a map from Hampshire County Council ("the Council") showing the area covered by public highways in the Parish of Steep. The Council responded to advise that the information requested was already reasonably accessible and directed the complainant to where it could be found. Therefore it cited regulation 6(1)(b) of the EIR.
2. The Commissioner's decision is that the Council has incorrectly applied regulation 6(1)(b). However, based on the balance of probabilities, the Commissioner finds that the Council does not hold the requested information.
3. The Commissioner does not require any further steps from the public authority.

Request and response

4. On 31 October 2018, the complainant wrote to the Council and requested information in the following terms:

"Please provide me with a map of a suitable scale showing the area covered by public highways 76U212 BV 05 & 76T212 BX 05 (Kettlebrook Lane) in the Parish of Steep (East Hampshire Highways District).*

**I suggest a scale of 1:10,000 in order that the full length and width of the highways can be accurately conveyed."*
5. The Council responded on 6 November 2018. It stated that the information requested was reasonably accessible by other means and therefore cited regulation 6(1)(b).
6. The same day, on 6 November 2018, the complainant requested an internal review. He told the Council *"I do not wish to enter a contract with Hampshire County Council for the sale of information which I (and other local authorities) believe to fall within the scope of the Act."*
7. Following an internal review, the Council wrote to the complainant on 11 December 2018. It maintained its original position and further explained that as the scale was requested at 1:10,000, it did not hold that specific information but the Council offered an enhanced service at an additional fee. The Council also advised that should the complainant wish to use the enhanced service, it may need additional processing time to complete the request. It offered alternatives such as Google Street View, however the complainant reports that this is not what he has asked for.

Scope of the case

8. The complainant contacted the Commissioner on 27 December 2018 to complain about the way his request for information had been handled.
9. Whilst the request is for a specific scale of the map of a particular area, the Commissioner recognises that although the Council has directed the complainant to another source for the map requested, it may not hold the specific information that the complainant had requested.
10. The Commissioner therefore considers the scope of the case to be the determination of whether the Council has correctly refused to comply with the request under regulation 6(1)(b). The Commissioner will also

be determining whether or not the Council holds the requested information.

Reasons for decision

Regulation 6(1) – Form and format of information

11. Section 6(1) of the EIR states that:

Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless—

- (a) it is reasonable for it to make the information available in another form or format; or*
- (b) the information is already publicly available and easily accessible to the applicant in another form or format.*

12. Within the Council's response to the complainant, it advised that he would either need to pay the Council to create a map to a similar scale or visit the Hampshire Records Office ("HRO") to view the information that it would need to put together to fit within the scope of the request, therefore it was citing that it was easily accessible in another form or format.

13. The Commissioner asked the Council how the requested information is already publicly available and why the information is considered to be easily accessible. The Council answered to say that some of the information is publicly accessible in the HRO by appointment. Although it does explain the following:

"However, the County Council provides an enhanced service whereby the extent of the highway is provided for a fee. The fee covers the digitising of the highway in question if that highway has not been digitised, or where it has been digitised, the review of the existing digitising as referred to above. Not all of the records that would be researched to determine the status of the highway are publicly available. Many documents may have to be consulted and on occasion a site visit may be required."

14. Considering the Council has advised that it provides an enhanced service to provide a digitised version of the highway for a fee, but this is not at the scale requested by the complainant, the Commissioner questions how the information the complainant sought would *already* be publically available and easily accessible to the complainant.

15. This is due to the fact that the Council advised the information would need to be put together by consulting documents and perhaps visiting the particular site. The Commissioner is of the view that the information requested is not already publically available as it was only parts of the information that had been digitised.
16. The Commissioner will therefore need to consider whether the Council holds the requested information, by putting together the building blocks it already has to easily create the information that was sought.

Regulation 5(1) – Duty to make information available on request

17. 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.
18. 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. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
19. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
20. While the Council explained to the Commissioner that some of the information was publicly available, she made some enquiries about whether the Council held all the information within the scope of the request or was it the case that the Council would have to create the information that the complainant requested. The Council responded to say that while it did hold some information that was requested, the remainder of it would need to have been created to fulfil the request. It explains further as follows:

"Not all the records relating to the highway network that the County Council are responsible for are digitised. Kettlebrook Lane is approximately 600m long and only approximately 100m has been digitised.

The County Council will always review any previously digitised extents of highway because new highways become adopted, parts of the existing highway can be extinguished, the Ordnance Survey may amend the background mapping, new evidence comes to light etc.

In order to research the extent of the public highway that is not already digitised, the County Council would need to check the following publicly available sources of information that can be found in the Hampshire Record Office..."

21. The Commissioner notes that the Council has confirmed that the complainant may visit the records office and inspect the parts of the information that it does hold, without having to use the enhanced service. However, this is not a version of the map that the complainant requested as the Council has advised that it does not already hold it in that format.
22. Given that the complainant requested a map of a particular area, to a specific scale, the Council has confirmed to the Commissioner that it does not hold the information in that specific scale and would need to create it in order to fulfil the request. However, the EIR does not require public authorities to create information to release to the public.
23. The Commissioner's guidance¹ explains that "*requests which can only be satisfied if the public authority extracts information from the records it holds and compiles these building blocks into a list or schedule.*" Her approach, based on previous tribunal outcomes is that if answering the request involves exercising sophisticated judgement, the information will not be held. But if only a reasonable level of judgement is required to identify the relevant building blocks, or manipulate those blocks, the information will be held.
24. To clarify, the Commissioner would expect a level of sophisticated judgement would be from an expert or specialist. A reasonable level of judgement could be from an average person who does not need specialist knowledge to identify and manipulate the building blocks in order to satisfy the request.
25. The Commissioner notes within the Council's internal review response, it says it "*adds value*" to the information by applying professional knowledge and expertise in collating, interpreting, assessing and evaluating the documents available to it in order to provide a plan of the extent of the highway.
26. So, because the Council's consideration that it adds value to the information sought by using expertise, the Commissioner has

¹ https://ico.org.uk/media/for-organisations/documents/1169/determining_whether_information_is_held_foi_eir.pdf

determined that it would require exercising sophisticated judgement to put together and digitise the information at the scale the complainant requested.

27. Because of this and as explained in paragraph 25, the Commissioner is satisfied that on the balance of probabilities, the Council does not hold the information sought by the complainant.

Right of appeal

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: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

Andrew White
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