

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 28 January 2020

Public Authority: Cassington Parish Council
Address: c/o 25 Lilac Way
Carterton
Oxon
OX18 1JH

Decision (including any steps ordered)

1. The complainant requested information relating to a road closure held by the council. The council disclosed the information during the course of the Commissioner's investigation, arguing that the information had been provided to the complainant previously by email in June 2019. The complainant argues that he did not receive this email or any of the attached information but accepts that he has now received the information for this request following this disclosure. He also made a request for a copy of the email header which demonstrates that the information was provided to him in June 2019. The council did not however respond to this.
2. The Commissioner's decision is that the council has failed to comply with the requirements of Regulation 5(2) of the EIR in that it did not respond to the complainant's initial request within 20 working days.
3. She has also decided that the council has failed to comply with the requirements of Regulation 5(1) in that it failed to respond to the complainant's request for the email header.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To respond to the complainant's request for the email header as required by Regulation 5(2) of the EIR.

5. 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

6. On 11 March 2019, the complainant wrote to the council and requested information in the following terms:

"Copies of all correspondence relating to the proposed closure of Horsemere Lane

Copies of all minutes of all meetings which refer to the proposed closure of Horsemere Lane, January 2014 – March 2019

Copies of all traffic surveys and analysis conducted which relate to the proposed closure of Horsemere Lane

Copies of notices distributed to parishioners relating to the proposed closure of Horsemere Lane

Copies of referendum questions, responses, data and analysis relating to the proposed closure of Horsemere Lane

Copies of notices, the distribution group and the methods of advertising used to publicly disclose the meeting held in St Peters School Cassington, on 1st June 2018 to all road users who would have reason to object to said closure."

7. The council responded on 19 March 2019. It asked the complainant to clarify his request for information, which he did on 24 March 2019. It also clarified that it would provide minutes from January 2014- March 2019 in due course.
8. The council responded again on 26 March 2019 asking the complainant for further clarification as regards part one of the request. It argued that the complainant's clarification still left the request too vague to locate the requested information.
9. The complainant responded again on 1 April 2018 stating that his request was for *"Any and all correspondence, from or to the Parish Council on the matter of Horsemere Lane proposed closure."*
10. On 2 April 2019 he sent a further letter chasing a response to his request for information.
11. On 16 April 2019 the council responded stating that it had now provided all the information which is readily available to it. It said that it did not believe that it was likely to find any additional information, should it

exist, without allocating resources beyond those that could be considered reasonable. It said that it now considered the matter to be closed and suggested that the complainant contact the County Council for further information on the topic in the future as the County Council is the organisation responsible for road closures rather than the parish council.

12. Following a further letter from the complainant dated 17 April 2019 in which he asked the council to review its decision, the council wrote on 27 April 2019 stating that it had now provided copies of all information which it holds. It said that it was not going to carry out further searches on the grounds of cost arguing that it would exceed the appropriate limit set by section 12 of the Freedom of Information Act 2000. It also applied section 14 of the Act (vexatious requests).

Scope of the case

13. The complainant contacted the Commissioner 11 April 2019 to complain about the way his request for information had been handled. He argued that he had not received the information he had requested from the council and referred to the minutes of the meeting dated March 2019. He confirmed non receipt of a response to the Commissioner again in July 2019.
14. During the course of the Commissioner's investigation the council wrote to the complainant on 18 November 2019. It said that it noted that the Commissioner's investigation letter did not refer to an email it had sent the complainant dated 26 June 2019 containing the withheld information, and therefore provided a copy of this to the complainant. The email from June does not however contain the complainant's email address in the 'to' box, and the complainant argues that he did not receive that email.
15. On the same date of 18 November 2019, he asked the council to provide him with a copy of the header of the email in order that he investigate why he had not received the email of 26 June 2019. The council did not respond to this point.
16. In the council's email of 18 November 2019, the council contended that it had attached all the withheld information again. The Commissioner therefore wrote to the complainant asking him if he was now satisfied with the council's response to his request.
17. The complainant responded to the Commissioner on 23 December 2019 stating that he remained unhappy with the council's response because:

"The documents finally released were only released after an investigation by the ICO.

When asked for a copy of the header or date originally sent so I could check my records, the council ignored my request and didn't answer the email. (continued poor practice).

It is clear, as suspected, that the council was withholding information and had no intention of complying with a reasonable FOI request.

I had asked for the documents to fully research and prepare for a consultation that was being held by Oxfordshire County Council regarding possible road closure. By ignoring my request, the Parish council limited my ability to conduct research and construct a response to the consultation within the time allowed.

At a Parish Council meeting, it was admitted without prompt, that the council had issues with record keeping and process."

18. The Commissioner therefore considers that the remaining area of the complainant's complaint are as set out above. The complainant remains unhappy at the time which the council took to comply with his request for information. He also considers that the council has ignored his request for information of 18 November 2019 relating to the email it argues it sent to him on 26 June 2019.

Reasons for decision

Has the correct legislation been applied?

19. The council's initial response and its response to review were considered under the FOI Act. However, the Commissioner notes that the requested information relates to the closure of a road, and to traffic measures and analysis.
20. The Commissioner considers that information on these subjects is likely to fall within the definition of environmental information provided in Regulation 2(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'

21. The Commissioner notes however, that, on the facts of this case, this makes little significant difference in the outcome of her decision.

Regulation 5(1) - Duty to make environmental information available

22. Regulation 5(1) provides a general duty to make environmental information available. This should generally happen within 20 working days in accordance with regulation 5(2) unless a valid exception applies.

23. Regulation 5(2) of the EIR states that:

"Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."

24. The request for information was received on 11 March 2019. The council argues that it disclosed the remaining requested information on 26 June 2019, however the complainant argues that he did not receive the email containing that information.

25. The council only demonstrated that the complainant received the requested information with the council's disclosure of 18 November 2019. Its evidence of the email dated 26 June 2019 does not include the complainant's email address in the address box and it is not therefore evidence that the email was sent to the complainant, nor that it was received by him.

26. Nevertheless, the Commissioner notes that the date of 26 June 2019 also fails to comply with the requirements of Regulation 5(2) in that it also falls outside of the 20 working days to respond provided by Regulation 5(2).

27. The deadline for response to the initial request of 11 March 2019 was paused by the council's requests for additional clarification of 19 and 26 March 2019. Regulation 12(4)(c) provides that a public authority may refuse to disclose information to the extent that—the request for information is formulated in too general a manner and the public authority has complied with Regulation 9.

28. Regulation 9(2) stipulates that:

"Where a public authority decides that an applicant has formulated a request in too general a manner, it shall—

(a)ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request; and

(b)assist the applicant in providing those particulars.”

29. The council did write to the complainant and ask him to clarify his request within the time period required. However, the complainant provided final clarification of the scope of the request to the council on 1 April 2019. From that point the council was under an obligation to respond to the request within 20 working days of that date, but did not do so until 26 June 2019 if the email attaching the information had been received. This period exceeds the 20 working days required by Regulation 5(2).
30. The Commissioner's decision is therefore that the Council failed to comply with Regulation 5(2) of the EIR.

The request of 18 November 2019

31. The complainant has also raised a further issue in that he responded to the council's response of 18 November 2019 requesting the following:

"As I have no record of prior sight of any of the emails attached to your email in the 41 page bundled pdf - could you please confirm when they were first sent and enclose a copy of the email header so I can investigate at this end."

32. The email contains a request for information. As the council did not respond to this as a normal course of business request, it needed to consider the request as a request for information under the EIR.
33. The complainant argues that the council has not responded to this request. He confirmed that he had not received a response to this on 23 December 2019. After a discussion with the council on 10 January 2020 the Commissioner confirmed with it that the request had not been responded to.
34. The Commissioner therefore considers that the council's failure to respond is a failure to comply with the requirements of Regulation 5(1) of the EIR.

Right of appeal

35. 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

36. 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.
37. 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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