

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

Date: 28 April 2021

Public Authority: Somerset County Council
Address: County Hall
The Crescent
Taunton
Somerset
TA1 4DY

Decision (including any steps ordered)

1. The complainant requested information relating to a planning application.
2. Somerset County Council, (the Council), provided some information within the scope of the request but denied holding further information. The complainant considered that the Council held further information within the scope of his request.
3. The Commissioner's decision is that, on the balance of probabilities, the Council is correct when it says that it holds no further information within the scope of the request.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. On 10 July 2020, the complainant wrote to the Council and requested information in the following terms:

"I would be grateful if you could provide me with copies of the following information in all recorded forms which relates to Planning Application [details redacted] which is a South Somerset District

Council planning application but which Somerset County Council as Highways Authority has advised on:

The requested information:

- 1. Copies of all correspondence in all forms including notes of conversations between the applicant(s), the agent(s), South Somerset District Council (SSDC) or with SSDC's subcontractor highways consultant, and within SCC [Somerset County Council] which justify the statement 'the level of traffic associated with this proposal is acceptable in highway terms' which is contained in the SCC letter dated 11 June and published 23 June ...*
- 2. Copies of all correspondence in all forms including notes of discussions with the Highway Authority Safety Auditor concerning this application; and*
- 3. (a) Please provide copies of all correspondence in all forms from within SCC and/or between SCC and the applicant's consultant(s) which addresses the above increase in traffic of over one-third at the Park Lane/B3168 junction (where no highway improvements are to be undertaken despite the visibility splays being deficient); and*
(b) Please provide copies of all correspondence in all forms from within SCC and/or between SCC and the applicant's consultant(s) which demonstrates that the issue of traffic approaching the proposed site via the Seavingtons has been adequately and properly assessed...Please provide the evidence that the impact of this additional traffic was assessed; and
(c) Please provide copies of all correspondence in all forms from within SCC which demonstrates that spreading the trips across session periods ... is realistic and has been adequately verified...."
6. The Council responded on 11 August 2020. It provided information within the scope of the request.
7. Following an internal review, the Council wrote to the complainant on 14 August 2020. It maintained its original position, clarifying that where redactions had been applied, this was in order to comply with the provisions of the GDPR [General Data Protection Regulation].

Scope of the case

8. The complainant provided the Commissioner with the relevant documentation, on 15 August 2020, to complain about the way his

request for information had been handled. He disputed that the Council had provided all the recorded information within the scope of the request.

9. He also raised other matters in his correspondence with the Commissioner. However, it is not within the Commissioner's remit to consider, or comment on, how the Council undertakes its duty as the Highways Authority.
10. The analysis below considers whether, on the civil standard of the balance of probabilities, the Council held further information within the scope of the request.

Reasons for decision

Regulation 5 duty to make environmental information available on request

11. Regulation 5(1) of the EIR states that:

"Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request".

12. 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 searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, she will consider any other information or explanation offered by the public authority which is relevant to her determination.
13. For clarity, the Commissioner is not expected to prove categorically whether further information is held, she is only required to make a judgement on whether further information is held on the civil standard of the balance of probabilities.

The Council's position

14. During the course of her investigation, the Commissioner asked the Council to describe the searches it carried out for information falling within the scope of the request. She also asked questions relating to how it established whether or not it held further relevant information.
15. By way of background to the request in this case, the Council told the Commissioner:

"... Somerset is a two-tier local government area and the planning function sits with the district councils and not at County Level. However, as the Highway Authority, Somerset is a statutory consultee for applications which have potential impacts on the highway. It was in this capacity that SCC was involved in the matter".

16. In its submission, the Council explained that, in responding to planning consultations, it replies to South Somerset District Council through their planning portal. It told the Commissioner:

"The planning portal is public and holds the documents relating to the application, including our responses as consultee".

17. It stated that, in responding to the original request for information, searches had been conducted for any relevant information which was not available through the planning portal. It confirmed that as a result of those network drive, laptop and email searches, some information was located and provided to the complainant.

18. The Council also confirmed that a further search of the relevant network drives was conducted on receipt of the request for internal review. There was also a further search for emails, using the planning reference number and an appropriate keyword. No additional information within the scope of the request was found.

19. In its submission, the Council told the Commissioner:

"From discussions with the relevant manager, it is not felt that the relatively small amount of documentation held (outside of the planning portal) is unusual in this case and he has no grounds to suspect that any materials have been lost or destroyed. Processes in this regard are purely electronic and paper records are not therefore held".

20. The Commissioner recognises that the requested information is clearly of interest to the complainant. She acknowledges that he considers that, as the Highways Authority, the Council should hold information addressing such matters as the increase in traffic and the issue of traffic approaching the proposed site.

21. However, having considered the Council's response, and on the basis of the evidence provided to her, the Commissioner is satisfied that the Council conducted adequate searches that were necessary for identifying all the information it held within the scope of the request.

22. On the balance of probabilities, the Commissioner is satisfied that the Council did not hold further information within the scope of the request.

23. The Commissioner therefore considers that the Council complied with its obligation under Regulation 5(1) of the EIR.

Right of appeal

24. 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

25. 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.
26. 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

Laura Tomkinson
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF