

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 26 February 2024

Public Authority: Devon County Council
Address: County Hall
Topsham Road
Exeter
Devon
EX2 4QJ

Decision (including any steps ordered)

1. The complainant requested information from Devon County Council ("the Council") relating to the maintenance of a specific road. The Council disclosed some information within the scope of the request. The complainant believes the Council holds additional information within the scope of the request. The Council's position was that it had disclosed all of the information it held within the scope of the request, however, during the course of the Commissioner's investigation is has identified some further information which it had not disclosed.
2. The Commissioner's decision is that the Council did not comply with regulation 5(1) of the EIR as it did not disclose all of the information it held within the scope of the request. The Commissioner is, however, satisfied that, on the balance of probabilities, the Council has now identified all of the information it holds within the scope of the request. The Commissioner also finds that the Council failed to respond to the request within 20 working days and has therefore breached regulation 5(2) of the EIR.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose the information about the site assessments carried out as a result of public reports of potholes, as the Commissioner has determined that this information is within the scope of the request.

- Disclose any recorded information held that states inspections were driven.
4. The Council 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

5. On 18 July 2023, 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 Bishopsteignton, Teignmouth Road.

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 of all safety inspections between 1st January 2023 to 19th March 2023

- 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 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."

6. The Council responded on 24 August 2023. It provided a link to its disclosure log. In response to part 1 of the request it provided a link to its Highway Safety Policy. In response to part 2 of the request it

provided a link to a defects report for the specified road for the period stated in the request.

7. The complainant requested an internal review on 17 September 2023, on the grounds that the information provided was not what they had requested.
8. Following an internal review the Council wrote to the complainant on 18 October 2023. It stated that all of the information requested had been provided. It also provided some information to the complainant about where they could find the specific information they requested within the two documents disclosed.

Scope of the case

9. The Scope of the case is to consider whether the Council has disclosed all of the information it holds within the scope of the request.
10. This notice will also address the delay in the Council's response to the request.

Reasons for decision

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

11. Under regulation 5(1) of the EIR, a public authority must make environmental information available on request if it holds the information and it is not subject to an exception.
12. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any further information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information is held.
13. In this case, the complainant provided the following reasons as to why they believe further information may be held:

“Under the FOI request I asked for a copy of the road repair history for the previous year to 19/03/23 including dates of all safety inspections and details of how the safety inspections were undertaken (walked, driven, speed of inspection vehicle etc).

This detailed information was not provided to me. I was told to check their disclosure log which did not list the reported pothole in question and only stated very basic information not the detailed information requested."

14. In the course of his investigation the Commissioner asked the Council to provide details of the searches it has carried out to ensure that all information within the scope of the request has been identified.

15. He also asked the Council to specifically address:

- whether it holds information regarding any further inspection dates within the period specified in the request, beyond the two dates of inspection on the defect report that it had disclosed.
- whether it holds information about how specific safety inspections were undertaken (walked, driven, speed of inspection vehicle if applicable). At internal review it referred the complainant to Section 8 of the Highway Safety Policy that it had disclosed, which states that inspections of the carriageway can be carried out either on foot or from a vehicle travelling at a speed appropriate to the road being inspected. It has not disclosed any information regarding how specific inspections were carried out.
- the fact that it appears that the complainant expected the Council to hold information about a defect (specifically a pothole) that is not on the defects report disclosed.

16. Regarding whether it holds information regarding any further inspection dates, the Council provided the following response:

"In addition to information previously provided on planned highway safety inspections and defect repairs as originally requested, we also hold information regarding public reports of potholes as detailed in the attached Enquiry Report. (...)

This information was interpreted as not being part of the original request unless it resulted in a defect repair. Several were closed as a duplicate report or the works have been completed. Five of the reports required a site assessment, one of which resulted in a safety defect repair (which is included in the inspection and repair report previously provided) and the other four reports were assessed as "No Further Action Reason: Not classified as a safety defect.""

17. The Commissioner considers that the information about the site assessments carried out as a result of public reports of potholes is in scope of the request. The Commissioner considers the term "site

assessment" to be synonymous with "safety inspection" within this context. Information about all of the site assessments is therefore in scope of the request for information relating to "all safety inspections".

18. The Commissioner has therefore ordered disclosure of this information at paragraph three of this notice.
19. Regarding information about how specific safety inspections were undertaken, the Council stated, "those defects identified in the original report will have all been captured during driven inspections. We do not hold information on the speed of vehicles during inspections as this is not recorded". In the Commissioner's view it is not clear from the Council's response whether recorded information is held that states the inspections were driven or if it is simply answering now based on its usual practices. Any recorded information held that states the inspections were driven should be disclosed to the complainant as ordered at paragraph three of this notice.
20. Regarding the information the complainant expected the Council to hold about the pothole, the Council confirmed it is confident that all information within the scope of the request has now been identified. It stated:

"The reports provided have interrogated geographical/spatial data and associated digital records stored within our works management system for the periods specified. These are standard reports run and will contain all relevant information available within the required parameters. There are no known system issues associated with this time period that would have required paper recording and all information remains readily available in digital format."

21. The Commissioner's decision is that the Council did not comply with regulation 5(1) of the EIR as it did not disclose all of the information it held within the scope of the request. Specifically it did not disclose the information that related to the site assessments carried out as a result of public reports of potholes. It may also have held information about the fact that inspections were driven which it has not disclosed, although unfortunately this remains unclear in the Council's submissions to the Commissioner.
22. The Commissioner is, however, satisfied that, on the balance of probabilities, the Council has now identified all of the information it holds within the scope of the request. The Commissioner does not, therefore, require the Council to carry out further searches.

Regulation 5(2) - Time for compliance with request

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

“a public authority that holds environmental information shall make it available on request.”

24. 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.”

25. From the evidence provided to the Commissioner in this case, it is clear that the Council did not deal with the request for information in accordance with the EIR. The Council’s initial response to the request was also not issued within 20 working days of the request. The request was made on 18 July 2023 and the response was not issued until 24 August 2023. In addition, the Council has since identified further information within the scope of the request which it has not disclosed.

26. The Commissioner’s decision is that the Council breached regulation 5(2) by failing to disclose the requested information within 20 working days.

Right of appeal

27. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

28. 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.
29. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Victoria James
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF