

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

Date: 18 September 2024

Public Authority: Nottinghamshire County Council

Address: County Hall
Loughborough Road
West Bridgford
Nottingham
NG2 7QP

Decision (including any steps ordered)

1. The complainant requested road maintenance data from Nottinghamshire County Council ("the council"). The council initially provided some data, however in its internal review, it identified that further information was held by it in a separate database. It subsequently disclosed this to the complainant. The complainant, however, believes that further information is held by the council.
2. The Commissioner's decision is that the council does not hold any further information falling within the scope of the complainant's request for information. He has, however, decided that the council's response did not comply with the requirements of Regulation 5(2) of the EIR.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 4 March 2024, the complainant wrote to the council and requested information in the following terms:

"Specifically, my query relates to Middle Street, Beeston, Nottingham, NG9 2WJ. 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 12 October 2023 to 12 December 2023.
- details of how safety inspections were undertaken (walked or driven, speed of inspection vehicle etc)
- details of all 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.
- details of when the drain cover was last lifted for maintenance and/or checks, and how you know it was secured correctly."

5. The council responded on 21 March 2024. It disclosed information to the complainant in response to the request.
6. Further correspondence occurred wherein the complainant's argued that work had been carried out at the relevant section of road at the relevant time, but the disclosed information did not show this work occurring.
7. Subsequently, the complainant wrote back to the council on 10 April 2024 requesting that the council carry out a review of its decision.
8. Following its internal review, the council wrote to the complainant on 14 May 2024. It said that it had now located further information and disclosed this to the complainant.

Scope of the case

9. The complainant contacted the Commissioner on 14 May 2024 to complain about the way their request for information had been handled. Primarily his concerns related to matters which fall outside of section 50 of FOIA to consider. However, the complainant also argued that the information which the council provided did not meet the requirements of the request.
10. The following analysis therefore considers whether the council holds further information falling within the scope of the complainant's request for information. It will also consider the time which the council took to fully respond to the request.

Reasons for decision

Section 1(1) – is further information held by the council

11. Section 1(1) of FOIA requires that a public authority must inform a requestor, in writing, whether it holds information falling within the scope of the request. If it does hold relevant information, it also requires that it communicates the information to the requestor, subject to any exclusions or exemptions applying.
12. In scenarios where there is some dispute between the amount of information held which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
13. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any - or additional - 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/further information is held.
14. In such cases, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to search for relevant information, and will take into account any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.

The complainant's position

15. The complainant argues that further information will be held by the council.

The council's position

16. The council argues that all of the requested information has now been disclosed to the complainant in response to their request for information. It accepted, however, that not all of the requested information was provided to the complainant in its initial response.
17. It explained that all of the relevant information held on its highways asset management system ("Alloy"), was disclosed in response to the initial request. However, after carrying out further searches following further correspondence with the complainant, it located further relevant information on another system: the "out of hours incident response excel spreadsheet" which it did not have access to. This further information was subsequently disclosed to the complainant in response to their request for review.
18. The council further explained that it has now checked both of its relevant databases, and all of the relevant information has now been disclosed to the complainant.
19. It said that all records are held electronically on one of the two systems highlighted, and confirmed that searches were conducted using the street name as a key word.
20. It said that maintenance data is held for a period of 21 years and 9 months, to allow for all claims to be considered appropriately. It also confirmed that no information has been deleted.
21. It said that after identifying its error in this case, since July 2024, it now includes all information from its out of hours database on Alloy, and therefore this should not occur again.

The Commissioner's conclusion

22. The Commissioner has considered the council's position, in conjunction with the request.
23. The Commissioner recognises that the complainant has concerns about the council's response. It initially said that it had disclosed all of the information which it held, but following further correspondence it located additional information on another database which it did not initially search.

24. The council has confirmed that both databases have now been checked, and relevant information has now been disclosed to the complainant. It said that information on road maintenance would not be held on any other system, and therefore it has concluded that no further information is held by it.
25. There is no contradictory evidence available to the Commissioner that indicates the council's position is wrong.
26. On this basis the Commissioner has concluded that, on the balance of probabilities, no further information is held by it relevant to the request.

Regulation 5(2) – time for compliance

27. Broadly, Regulation 5(2) of the EIR requires that requested information shall be disclosed to the requestor as soon as possible and no later than 20 working days after the date of receipt of the request.
28. The complainant made his request for information on 4 March 2024. Whilst the council did provide its initial response on 21 March 2024, within the 20-day period, it did not provide the remaining information to the complainant until 14 May 2024.
29. The Commissioner therefore considers that the council failed to comply with the requirements of Regulation 5(2) of the EIR.

Other matters

30. The complainant's central concern was that the "out of hours incident response excel spreadsheet" was not searched in response to his initial request for information. It was only after the complainant questioned the council further that it searched the out of hours database and located additional information.
31. The Commissioner notes the complainant's argument that it is possible that the council may have previously failed to locate and disclose information to other requestors where the requested information was held in its out of hours database.
32. The Commissioner has made a record of the council's failure to locate all of the information falling within the scope of the complainant's request in its initial response for the purposes of his ongoing monitoring of public authorities' compliance with FOIA and the EIR.
33. He notes, however, the council's assurances that all such data is now included on its database, Alloy.

Right of appeal

34. 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

35. 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.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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