

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 22 June 2023

Public Authority: Westmorland and Furness Council
Address: South Lakeland House
Lowther Street
Kendal
Cumbria
LA9 4DQ

Decision (including any steps ordered)

1. The complainant has requested information about a track. Westmorland and Furness Council ("the Council") disclosed some information in response.
2. The Commissioner's decision is that, on the balance of probabilities, the Council holds no further information.
3. The Commissioner does not require further steps.

Request and response

4. On 3 November 2022, the complainant wrote to the Council and requested information in the following terms:

"Under the FREEDOM OF INFORMATION ACT, I would like to request the following information about this track which appears on Cumbria highways definitive map:

Section: U5217 104

Section Name: #The Hayloft to Opp Reading Room

Section Type: SINGLE 1-LANE CARRIAGEWAY

Class: Unsurfaced

Section Length: 93

Region: SOUTH LAKELAND

Owner: Cumbria CC

Inspection Frequency: 0

website <https://cumbria.highway-iams.uk/Live/PBLC/PIP/?cg=networks>

- 1) Please provide information on when this unsurfaced track was added to Cumbria Highways definitive map; in full date format xx/xx/xxxx. Please clarify why this was not on the definitive map between 2016 and 2021.**
- 2) If this track was under the ownership of a separate local authority, I request the name of the local authority this track was under during 2016-2021, with the precise dates it was removed and returned to Cumbria Highways Definitive Map.**
- 3) Please provide details [including meeting minutes, telephone calls, e-mails, names of all parties involved] of consultations about this track in the last 10 years, including change of use of this track.**
- 4) Please provide any information concerning details of traffic restrictions on this narrow track, which is steep 2/3 and unsurfaced, and has limited visibility to the main highway.**
- 5) Please provide details of maintenance of this track in the past 10 years.**
- 6) Please provide details of any works that have been authorised to a third party, on this track, and which authority authorised this, and to which third party.**
- 7) Please provide me with the contact details of the current Development Management Officer for South Lakes area.**
- 8) Please provide me with the location where the archives for this track are held; I note there is a statutory responsibility for Cumbria Highways/ any local authority to maintain archives."**

5. The Council responded on 2 December 2022. It disclosed information.
6. Following an internal review, the Council wrote to the complainant on 17 January 2023. It disclosed further information to clarify its position.

Reasons for decision

7. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information "to the extent that it does not hold that information when an applicant's request is received".
8. 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 (Information Rights) decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any, or further, information which falls within the scope of the request (or was held at the time of the request).
9. The complainant has stated that they do not consider the Council has provided information in respect of the following:
 - "When was the track added to the definitive map / network map (they have a statutory duty to archive this)"
 - "Why was the track not on the network map 2016-2021 [there are only 2 situations where this is allowed – either under consultation or under a different local authority]"
 - "No info on consultation details provided"
10. The Commissioner perceives that the complainant's concerns appear to relate to parts 1 and 3 of the request.

Part 1 of the request

11. In respect of part 1 of the request, the Council provided the following response:

"This is not shown on the "Definitive Map" as the definitive map relates to Public Rights of Way and this is an unclassified unclassified road. It is the U5217 and is shown on the Cumbria County Council (CCC) Highway records."

12. The Council provided additional information as part of its internal review response:

"We can confirm that this section of the U5217 is adopted highway and has been for many decades. Please see attached an old plan dated from the 1950's that does show this section of the U5217 as highway. Unfortunately we cannot provide the date this was added to the list. Some confusion may have arisen here, as on some records is shown as U5217 section 104, but it is shown on the Section 36 list of Publicly Maintained Roads as U5217/03. The grid references confirm this. This list is attached for your viewing and we for any confusion caused."

13. For this part the Commissioner understands that the Council has provided that known recorded information which falls within scope of the request, and has confirmed that it does not have a record of the date the track was added to the map.
14. The Commissioner notes, for the benefit of the complainant, that he cannot consider the validity or accuracy of the Council's held information. Any dispute about this should be raised with the Council outside the EIR request process.
15. Additionally, the Commissioner emphasises that the Council is not required to create information, such as an explanation or judgement, to comply with a request.
16. Having considered the above, there is no evidence available to the Commissioner that suggests that further recorded information is likely to be held by the Council.

Part 2 of the request

17. In respect of part 2 of the request, the Council provided the following response:

"There has not been a change of use. The road has vehicle rights. A meeting did occur with the owner of the new property that is accessed from the U5217. The concern related to the wall on the right hand side (going uphill) of the U5217. This was identified as being the responsibility of an adjacent landowner and CCC took no action. However the staff member who dealt with this retired from the Council in 2017 and the correspondence is not available."

18. The Council maintained its position at internal review.
19. In this case the Commissioner understands that the Council has confirmed that no recorded information is known, or expected to be held. In particular, the Commissioner notes that the previously involved officer left the Council in 2017, and that the earlier matter was found to

not be within the Council's authority. In such a situation it is reasonable for the Commissioner to accept the Council's stated position that no recorded information is held.

20. Having considered the above, there is no evidence available to the Commissioner that suggests that recorded information is likely to be held by the Council.

Right of appeal

21. 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

22. 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.
23. 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

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