

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** **11 September 2024**

**Public Authority:** **Durham County Council**  
**Address:** **County Hall**  
**Durham**  
**DH1 5UL**

#### **Decision (including any steps ordered)**

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1. The complainant requested information with regards to the status of specific footpaths.
2. The Commissioner's decision is that Durham County Council (the council) should have refused the request under regulation 12(4)(c) of the EIR (request formulated in too general a manner) and breached regulation 9 of the EIR as it did not provide the complainant with appropriate advice and assistance in order to clarify the request.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
  - In accordance with regulation 9 of the EIR, provide the complainant with appropriate advice and assistance as outlined in this decision notice.
4. The council must take these steps within 30 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 Freedom of Information Act 2000 and may be dealt with as a contempt of court.

## Request and response

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5. On 21 January 2024 the complainant made the following information request to the council:

“...all documents, since 2010, relating to the determination by Durham County Council as Highway Authority that the footpaths on North Green, Staindrop, are not public rights of way maintainable at the public expense, but private, permissive paths over which the public have no rights.”

6. The council responded on 1 March 2024 and applied regulation 12(4)(a) of the EIR to refuse the request – information not held.
7. The council upheld its position in its internal review dated 19 March 2024.

## Scope of the case

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8. The complainant contacted the Commissioner on 25 March 2024 as they considered that the council had incorrectly interpreted their request.
9. The scope of the following analysis is to determine whether the council has read the request objectively and if not, whether it should have provided relevant advice and assistance under regulation 9 of the EIR.

## Reasons for decision

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### Background information

10. For context, the council has explained to the Commissioner that the status and conditions of the footpaths at North Green, Staindrop have been disputed for many years.
11. The council holds historic highways and footpath records which it says shows these footpaths were not within the limits of the adopted highway from as far back as 1924. The first Definitive Footpath Map and Statement for County Durham, produced in 1952, also did not include these footpaths.
12. The complainant has submitted historical evidence to the council to support their argument that the paths should be treated as public rights of way maintainable at public expense.

## **Interpretation of the request**

13. The Commissioner has published guidance<sup>1</sup> on interpreting a request for information.
14. The guidance states that it is important to read the request objectively and that requests may have more than one possible interpretation.
15. In these situations, a public authority must go back to the requester to ask them to clarify which interpretation is correct rather than guess which meaning a requester actually intended.
16. Even if a public authority responds correctly to one possible meaning of the request, it may still find itself in breach of the legislation if it fails to identify an alternative interpretation which is equally valid and therefore clarification must be sought from the requestor.
17. In this case the council has told the Commissioner that it interpreted the request specifically for information with regards to the council making a formal 'determination' about the status of the footpaths. The complaint disputes this interpretation.
18. The complainant in their internal review, in what seems an attempt to highlight a broader meaning to their request, stated that the council expressed a 'view' that the footpath was a permissive right of way.
19. The complainant may have been asking for information only in relation to a formal determination, but in the Commissioner's view they may have been using the word 'determination' more generically.
20. Therefore, the request did not have a single objective reading and so the council was obliged to respond to the complainant by refusing the request under regulation 12(4)(c) of the EIR – request formulated in too general a manner. At the same time it should have also sought clarification of the request rather than just chosen one of several possible readings of the request.

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<sup>1</sup> [Interpreting and clarifying requests under the Freedom of Information Act 2000 \(FOIA\) and the Environmental Information Regulations 2004 \(EIR\) | ICO](#)

## **Regulation 9 of the EIR – advice and assistance**

21. Regulation 9 of the EIR places a duty on public authorities to provide advice and assistance to anyone making a request for information, “so far as it would be reasonable to do so”.
22. The EIR code of practice<sup>2</sup> (the code) gives examples of the types of appropriate advice and assistance a public authority may provide, such as (page 9, paragraph 10):
  - “providing an outline of different kinds of information that might meet the terms of the request”
  - “providing a general response to the request setting out options for further information that could be provided on request.
23. Paragraph 11 of the code goes on to state that the “...list is not exhaustive and public authorities should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant”.
24. In its submissions to the Commissioner the council has stated that, although not a ‘determination’ in its interpretation of the word, it does hold internal correspondence between the council’s Highways, Public Rights of Way and Legal teams relating to the status of the footpath in question.
25. The Commissioner therefore finds that the council has breached regulation 9 of the EIR as it did not provide the complainant with appropriate advice and assistance in order to help clarify the request.
26. The Commissioner requires the council to provide the complainant with appropriate advice assistance in order to clarify the request and when doing so it would be helpful for the council to identify the information it does hold in relation to the status of the footpath.

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<sup>2</sup> [https://ico.org.uk/media/for-organisations/documents/1644/environmental\\_information\\_regulations\\_code\\_of\\_practice.pdf](https://ico.org.uk/media/for-organisations/documents/1644/environmental_information_regulations_code_of_practice.pdf)

## **Right of appeal**

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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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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.

**Ben Tomes**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**