

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

Date: 3 October 2024

Public Authority: Lincolnshire County Council
Address: County Offices
Newland
Lincoln
Lincolnshire
LN1 1YL

Decision (including any steps ordered)

1. The complainant has requested information from Lincolnshire County Council ("the council") in relation to a plan to install a road crossing. The council provided information in response to the request, however the complainant argues that further information will be held by it.
2. The Commissioner's decision is that, on the balance of probabilities, the council holds no further information falling within the scope of the complainant's request for information.
3. The Commissioner does not require the council to take any steps.

Request and response

4. The complainant made the request for information under the EIR as outlined in the annex to this letter on 26 January 2024.
5. The council responded on 29 February 2024. It provided some information and answered the questions asked of it. It also suggested to the complainant that they remake parts 4 – 9 of their request to the District Council as this is the planning authority responsible for considering the road crossing.
6. The complainant requested an internal review of the council's decision. The Commissioner does not hold the date for this request.
7. Following its internal review, the council wrote to the complainant on 16 May 2024. It answered the further questions asked, disclosed further information, and again referred to the complainant to the District Council as regards parts 4-9 of the request. It also confirmed that it had now disclosed all of the recorded information which it holds falling within the scope of the complainant's request for information.

Scope of the case

8. The complainant contacted the Commissioner on 27 May 2024 to complain about the way their request for information had been handled.
9. The complainant believes that the council has not answered all of their questions, and that it has not provided all of the information which it holds falling within the scope their request for information.
10. Whilst the complainant expressed further, wider, concerns relating to the council's response, these primarily related to planning matters and are not issues which the Commissioner has the power to consider.
11. The EIR provides individuals with the right to request recorded information held by a public authority. An authority is not under a duty to respond to direct questions. However, following past Tribunal decisions, if the authority holds recorded information which responds to the question asked, then it should consider this for disclosure to the requestor in response to the request.

Reasons for decision

Regulation 5(1) – duty to provide information on request

12. Broadly, and subject to any exceptions or exclusions applying, Regulation 5(1) of the EIR requires that a public authority that holds environmental information shall make it available on request.
13. In scenarios where there is some dispute between the amount of information 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.
14. 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.
15. 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

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

The council's position

17. The council argued that if any further information were held, it would know where the information was created, and therefore where it would be located. It said that the Traffic section of the council commissions this type of work, and they prepare reports associated with the scrutiny of pedestrian crossing proposals in accordance with the council's policy. The information it holds, a copy of a survey, was retrieved and the requestor was provided with a copy. It said that this covers all the information expected at point 3 of the request.
18. It said that it does not hold a large number of records relating to the crossing. It confirmed that the information it does hold has been disclosed.

19. It said that most of its records are stored electronically, and that they are held electronically in this case. It confirmed that it had carried out searches of the relevant electronic files but that no further information had been located.
20. It said that paper records can be held as historic records which are archived, but none are held in relation to this crossing as it is a new project.
21. It confirmed that no relevant information has been deleted or destroyed.
22. It clarified that:

“Parts 4 to 9 of the request refers to the initial planning for the co-op build and is around the decisions being made by the planning authority at the time of its design. This is asking questions about the design criteria and decisions, how considerations were made and the effects of other processes upon the design.

LCC receives requests for comments on planning applications from the relevant Planning Authority, in this case West Lindsey District Council. The development management team will make comments but use the publicly available planning portal on the West Lindsey District Council website to access any applications and related information. Due to this process, no planning information or documents are held directly by Lincolnshire County Council.

The district council being the main planning authority is responsible for the final decision and we consider they are best placed to answer these questions and should hold information to assist the requestors understanding.”

23. The council therefore argues that it has carried out adequate and appropriate searches in order to locate any information held by it falling within the scope of the request for information. It says that it has not located any further relevant information.

The Commissioner's conclusion

24. The Commissioner has considered the arguments submitted by both parties to the complaint.
25. The complainant is concerned that further information may be held by the council. However, the council has confirmed that it has carried out proportionate and appropriate searches of its records in order to locate any relevant information which it holds falling within the scope of the request for information. Where it has located relevant information, it has disclosed this to the complainant. It has also sought to answer some of

the complainant's questions where it was able to do so. No further information was located by it.

26. It has also provided an explanation as to why it does not hold the amount of information which the complainant believes it should hold. West Lyndsey District Council is the planning authority responsible for considering the plan, and it uses its planning portal to access the relevant records where it needs to do so.
27. There is no contradictory evidence available to the Commissioner that indicates that the council's position is wrong.
28. On this basis, the Commissioner has concluded that, on the balance of probabilities, no further information is held by the council falling within the scope of the complainant's request for information.
29. Therefore, the Commissioner does not require the council to take any further steps.

Right of appeal

30. 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

31. 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.
32. 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

Annex – Copy of the request for information

Thank you for your response by email 26/01/2024, I apologise for referring to document TN2/95 and thank you for your update on document Traffic Signs Manual Chapter 6.

1) Can you please confirm if I've understood correctly that any surveys, studies, assessment studies/risk assessments and associated reports as per the process, requirement and recommendations as defined within Section II - Crossings of the Traffic Signs Manual Chapter 6 - Traffic Control 2019 are not able to be made available for Public Viewing?

2) Given your expertise in this area, please can you explain, with the relevant support evidence, how the latest puffin crossing design satisfies the requirements and recommendations of Section 15.5 visibility? Specifically, Table 15.1 and as defined in more detail within Section 2.15 and also Section 15.12 Proximity from Junctions?

I would like to request, as a matter of urgency, that you could please provide the following information:

1) Please confirm the process and schedule that can enable the relevant documents to be made available to me. Also, the contact details for the relevant person for such a specific request.

2) That until the assessment documents, reports and studies in accordance with Section II - Crossings of the Traffic Signs Manual and Chapter 6 - Traffic Control 2019 are received, that the consultation period be duly extended.

3) I would like to specifically request a list of information pursuant to Section II- Crossings of the Traffic Signs Manual Chapter 6 - Traffic Control 2019.

Included, but not limited to requested information as follows, with regards to the proposed crossing on the A1500

- a) A site survey
- b) A pedestrian survey
- c) A traffic survey, and
- d) Other relevant factors including crossing difficulty, crossing times and speeds, and road accident data
- e) Other reports, assessments and/or communications in relation to the consideration made in line with sections and associated subsections, including but not limited to:

(i) 13.1 General

(ii) 13.2 Site Survey

- (iii) 13.3 Pedestrian Survey
- (iv) 13.4 Traffic Survey
- (v) 13.5 Crossing Difficulty
- (vi) 13.7 Road Accidents
- (vii) 14.1 General
- (viii) 14.2 Crossing Options
- (ix) 15.1 General
- (x) 15.2 Accessibility
- (xi) 15.3 Uncontrolled or Informal crossings^{1/3}
- (xii) 15.4 Location
- (xiii) 15.5 Visibility

I would like to ask some questions regarding the Planning Application [information redacted by the ICO].

4) This application included a Transport Statement No. 18 on the application [information redacted by the ICO] dated June 2018. This assessment, I assume, lead to the 'Proposed Uncontrolled Pedestrian Crossings' on the site plan. The crossing for the A1500 positioned near the Plough, I've noticed was well away from the staggered junctions within this plan. Why was this if proximity to junctions poses NO material risk?

5) I would also like to ask why considering the design changes accepted Application [information redacted by the ICO], that the final design acceptance dated Oct 2018, Drawing No. [information redacted by the ICO], did not include the proposed A1500 crossing?

As in 2019 Section II-Crossings of the Traffic Signs Manual Chapter 6 - Traffic Control 2019 would have been in force. This drawing and other information is not included in Application Number [information redacted by the ICO], the initial first application which was open to public comments.

6) a) I questioned Councillor Butroid regarding the two crossings that should have been built by the Co-op prior to its' opening? He replied that he would look into this after they weren't built and that 'residents expected to see this happen' he was 'asked to take this up'

b) I have also questioned again why the wording was changed to 'Pedestrian Crossing Points', if you could explain why please?

c) Could this be a West Lindsey District Council issue for enforcement as Councillor Butroid says in his email response of 17th January 2024?

7) In relation to both these matters please could you provide information with the relevant references (if I can make my request specific) to enable me to see the relevant documents available in relation to the above decision

8) The crossings were never built, and only tactile paving was put in. According to an officers report [information redacted by the ICO] dated 23rd Oct 2017 {signed 23rd Oct 2018}' the site entrance does not offer appropriate surfaces for an uncontrolled crossing'. Why was this? Also the other officers report was removed and this one duplicated to read the same in both 46 + 47 on the application data base.

9) a) I would also like to ask why in such a short time that the public are now required to fund a now proposed Puffin Crossing on the A1500 especially if this scheme/project is part of the assessment criteria? The developers of a commercial property (Co-op) were aiming at the time of application to fund their crossings.

b) Taking this into account I am very interested to understand any material changes that have occurred in the last 4 years other than the Co-op development and in that time also any unrelated changes to this development.

10) a) I have been made aware by some customers/neighbouring properties that they have not been consulted again to be invited to resubmit their objections/comments. Can you please explain this as you say in your email that this is the case? b) Given that the timescales to comment/object are significantly shorter, how is this fair and justified that some people are still unaware of the new plan superseded?

11) On a notice, Sturton by Stow Primary School are sending out to parents/carers, they state 'Any comments unconfirmed will be discounted'. You state in your email that 'we will take into account a pragmatic view and take into account previous comments'- is this still correct please?

12) In your email you state that you 'want to work with the whole community and provide something beneficial for all' The Co-op was built despite many objections for reasons stated on the detrimental effect it could have on the Village Store, despite this it went ahead. Use Class F2 states 'a store selling similar goods should not be built within 1 km. of an existing'?

13) There were also concerns for road safety and extra traffic. Please explain how, if this proposed crossing is built, Sturton General Stores is supposed to facilitate parking for delivery vehicles?... [information redacted by the ICO].

14)a) It is for this reason I request the relevant information so that I can fully understand the need and the reasoning for a puffin crossing, the result of which will close down the longstanding Village Store.

b) I also request this to obtain further knowledge prior to the possible instruction of legal representation regarding this matter.

15) I was informed by Councillor Butroid that he would discuss with the Design Engineers if the zig-zag lines could be shortened but on the new plan they are the same. ...

[information redacted by the ICO]

...It has now been confirmed by email from Councillor Butroid that this request is denied by the Design Engineers.