

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

Decision notice

Date: 29 May 2018

Public Authority: Essex County Council
Address: County Hall
Chelmsford
Essex
CM1 1QH

Decision (including any steps ordered)

1. The complainant has requested information with regards to a Traffic Regulation Order. Essex County Council (the council) provided the information however, the complainant considered that more information was held by the council.
2. The Commissioner's decision is that the council has provided all the information it holds within the scope of the request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 19 June 2017 the complainant made the following request for information:
 1. *"Provide the legal power ECC has relied upon to '**not apply**' **Section 3(1)** of the Road Traffic Regulation Act 1984 when it 'made' the Traffic Regulation Order (TRO) dated 08/02/06 for A1114 Essex Yeomanry Way, Chelmsford (bus lane) Order 2006.*

Be minded of the following when you fulfil this request:

S.3(1) of the Road Traffic Regulation Act 1984 that states - ...a traffic regulation order shall not be made with respect to any road which would have the effect –

(a) of preventing at any time access for pedestrians, ..

(b) of preventing for more than eight hours in any period of 24 hours access for vehicles of any class.

S.3(2) Subsection (1) above, so far as it relates to vehicles, shall not have effect in so far as the authority making the order are satisfied ...

*Section 5 of the Essex Yeomanry Way bus lane TRO states that – 'The Council are satisfied that for avoiding danger to persons or other traffic using the road to which the order relates and for preventing the likelihood of Any such danger arising, **it is requisite that Section 3(1) of the Act should not apply in relation to this Order.***

*The 1984 Act uses the words **S.3(1)**..so far as it relates to vehicles '**shall not have effect**',..*

*ECC's TRO s.5 uses the words **S.3(1)** '**should not apply**' in relation to this order..*

ECC prohibited pedestrian use of Essex Yeomanry Way – it did not prevent the access of vehicles.

- 2. Provide the documentation concerned with ECC having provided an alternative route for the public to use on foot (a) prior to, (b) during and (c) subsequent to the delivery of the Essex Yeomanry Way bus lane bus lane – and what that pedestrian route was 31/08/16.*
- 3. Provide the statutory empowerment ECC has relied upon to (a) prohibit (b) inconvenience - pedestrian users' of public highway flowing from - 'large volumes of high speed traffic', using public highway.*
- 4. Provide the legal empowerment ECC relies upon to accommodate/facilitate 'high speed traffic' on public highway that results in ECC, and/or Road Safety GB judging some sections as 'not available to use by walking, in particular by children even when accompanied by an adult, due to the risk of being collided with by a vehicle'.*
- 5. Provide legal precedents that support ECC's presumption that public highway that is 'not available to use by walking, in particular by children even when accompanied by an adult due to the risk of being collided with by a vehicle', is (a) prescribed by,*

and in accordance with law (b) the rule providing for the interference to the public is accessible to the public (c) the interference is ascertainable/certain so that the public can know and accommodate it (d) fulfils a legitimate aim (e) necessary in a democratic society (f) the interference with the public's right is proportionate to the legitimate aim pursued.

- 6. Provide ECC's empowerment, and/or the right for 'motorised vehicular traffic to generally take precedence over pedestrian users on public highway.*
 - 7. Provide a list of complaints of common law public nuisance on public highway that have been 'recorded' by ECC since 01 January 2016.*
 - 8. Provide the list of complaints of common law public nuisance on public highway that have been 'considered' by ECC since 01 January 2016.*
 - 9. Provide three examples of ECC abating circumstances that obstruct/endorse the public when using public highway on foot – being circumstances where ECC/Road Safety GB judge the public highway to be unavailable to use by walking, in particular by children even when accompanied by an adult, due to the risk of being collided with by a vehicle*
 - 10. Provide the 'recorded' complaints made to ECC concerning Essex Yeomanry Way Bus Lane with respect to*
 - i) Public/pedestrians right to use that section of public highway, and*
 - ii) the lawfulness of the Traffic Regulation Order dated 08/02/06, and*
 - iii) ECC 'not applying' S.3(1) of the Road Traffic Regulation Act 1984*
 - 11. Provide a copy of the Traffic Regulation Order for Essex Regiment Way wherein ECC does 'not apply' S.3(1) of the Road Traffic Regulation Act 1984."*
5. The council responded on 17 July 2017 under the EIR. It provided the information it held to parts 7, 8, 10 and 11 of the request and for the remaining it advised the information is not held.

6. The complainant requested an internal review on the 13 August 2017 as he was not satisfied with the council's response to parts 1, 3, 7 and 8 of his request.
7. The council provided its internal review response on the 25 August offering further comments to its original response and advised that raised concerns about things such as Human Rights and alleged conflict are not issues that can be addressed through the EIR.

Scope of the case

8. The complainant contacted the Commissioner on the 13 September 2017 stating that he is not satisfied with the council's responses to parts 7 and 8 of his request in that he has not been provided with what he had requested. He has only been provided with correspondence that the complainant himself had sent to the council.
9. The Commissioner considers the scope of the case is to determine whether the council holds any further information other than what it has already provided him in respect of parts 7 and 8 of his request.

Reasons for decision

Regulation 5(1) of the EIR – Information held/ not held

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

"Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these regulations, a public authority that holds environmental information shall make it available on request."

11. 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, applies the civil standard of the balance of probabilities. The Commissioner must decide whether on 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).
12. In this case, the complainant considers that the council holds a list of other 'recorded' and 'considered' complaints about common law public nuisance on public highways since 01 January 2016. Not just the ones he has submitted.

13. The Commissioner has asked the council to explain the searches it has carried out to ensure that no further information is held falling within the scope of the request.
14. The council has told the Commissioner that it has contacted its Head of Department for Legal Services, its Network Management Manager for Traffic Management and Senior Customer Services Officer if that are any other complaints held.
15. It has explained to the Commissioner that a complaint of this nature would have been considered by its Highways, Legal Services and Customers Services departments and each service searched its electronic records as this is how the information would be held, if held.
16. The council has advised the Commissioner that it searched its electronic system under the following search parameters:
 - 'Common Law Public Nuisance' No records found
 - 'Common Law' No records found
 - 'Public Nuisance' – One record found. The council state that this record is unrelated to the request and has provided the Commissioner with a screen shot to show this.
17. The council has explained to the Commissioner that it has not searched individual personal computers for the requested information as it maintains central records of complaints, highways and legal matters.
18. The council has told the Commissioner that any information it does hold would be held in either its Confirm system, which holds all records related to Highways and road maintenance, or in its complaints or legal services system.
19. The council has confirmed to the Commissioner that there are no records of any relevant information from 2016 onwards being deleted or destroyed. It has stated that its systems hold all records related to Highways and road maintenance for up to 12 years, depending on how long the highways works records are required for business purpose, and are classified as 'road maintenance' on its retention schedule. Since the request was limited to 2016 onwards, the council does not believe any records would have been destroyed.
20. On review of the above, the council has demonstrated to the Commissioner that it has carried out relevant searches for the information in this case. On that basis the Commissioner can only find that, on the balance of probabilities, no further information is held falling within the scope of the request.

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.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

Andrew White
Group Manager
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