

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

**Decision notice**

**Date:** 10 August 2020

**Public Authority:** Bedford Borough Council  
**Address:** Borough Hall  
Cauldwell Street  
Bedford  
MK42 9AP

**Decision (including any steps ordered)**

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1. The complainant has requested information regarding a property search request for information.
2. The Commissioner's decision is that, on the balance of probabilities, Bedford Borough Council does not hold any information in scope of the request.
3. The Commissioner does not require any steps.

## Request and response

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4. On 7 October 2019, the complainant wrote to Bedford Borough Council ('the council') and requested information in the following terms:

*"In July 2019 it is alleged that in connection with a conveyance for [redacted address] Bedford Council denied on Form CON 29 the road section of the Lane was maintainable at public expense. If that was the case, what information was provided for Roadways, footways and footpaths (Q2.1 a-d) and Public rights of way (Q2.2-2.5) on Form(s) Con 29. Any personal information should be redacted."*

5. The council responded on 4 November 2019. It provided information which it explained to be: *"a copy of our GIS records that show [redacted road name] is Adopted (as of 01/09/16) as a Local Road (red line) up to the entrance of [redacted property name], but not beyond."*
6. The complainant requested an internal review on 6 November 2019 on the basis that the information provided did not answer the request.
7. Following an internal review the council wrote to the complainant on 3 January 2020, stating the position had been revised. The council explained that the original response sent was incomplete, as it should have stated that *"there was no search made to the Council in July 2019, and therefore the information you request is not held by the Council"* Furthermore it stated that it had made an error in the way the map had been described and that it should have said that *"[redacted road name] was given the status of a Local Road as of 1/09/16 (red line) up to the entrance of [redacted property name], but not beyond."*

## Scope of the case

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8. The complainant contacted the Commissioner on 15 January 2020 to complain about the way his request for information had been handled. Specifically, that the council had not answered his request for the information provided on the form CON29 ('CON29').
9. Background:
- A CON29 form is used to make enquiries from a local authority regarding the status of roads, footways and paths, including public maintenance accountability;

- The road central to the request ('the Road') had been the subject of a dispute between the council and the local residents regarding whether it was maintainable at public expense;
  - The issue was resolved in 2016, when the council agreed to maintain the Road;
  - The complainant states that documents containing false information remained in circulation and that this was partly corrected using FOIA requests and the council's complaints procedure;
  - After further discussion between the council and the local residents the issues were resolved in 2018, a statement issued, and the matter was agreed to be closed;
  - However, in 2019 one of the residents stated that a house sale had stalled because a local search recorded on CON29 had indicated that the Road was not maintainable at public expense;
  - Subsequently the council spoke to the relevant solicitors associated with sale and confirmed that the Road is maintainable;
  - The complainant is concerned that incorrect information held in the council was used to inform the CON29;
  - During the course of the investigation the complainant obtained a copy of the CON29 and provided it to the Commissioner. The form states that it was prepared by *"Professional Property Searches West London"*. The relevant comment in the form states *"[the Road] is private and is not publicly maintained (as advised by Bedford Highways)."*
10. The Commissioner considers the scope of the case, in light of the investigation, is to establish whether, on the balance of probabilities, the council holds any records of information used to inform the CON29 form as set out above.

## Reasons for decision

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11. Regulation 5(1) of the EIR states that: "a public authority that holds environmental information shall make it available on request." This is subject to any exceptions that may apply.

12. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. She will also consider the actions taken by the authority to check that the information is not held, and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held.
13. The Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency* (EA/2006/0072) in which it was stated that *"there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records"*. It clarified that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. This is therefore the test the Commissioner applies in this case.
14. In discussing the application of the balance of probabilities test, the Tribunal stated that, *"We think that its application requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed."* The Commissioner has therefore taken the above factors into account in determining whether or not further information is held, on the balance of probabilities.

#### *The Complainants view*

15. In addition to the background information set out above the complainant states that:
  - Local residents are concerned whether the council holds incorrect information;
  - Furthermore, they are concerned that the information provided on CON29 is an indication of future intentions to levy maintenance charges on property owners;

- The complainant also claims that there is a dispute between employees of the council over the status of the Road.
- They are sceptical that the council will uphold agreements about the status of the Road.

*The council's response*

16. The council advised that it has no record of providing the CON29 response or any invoiced or free responses to land search enquiries relating to [redacted property] in the last 3 years.
17. It stated that the only explanation it can offer as to where the statement came from is that the third party agent who prepared the CON29 may have provided information obtained from Bedford Highways before 1 September 2016. It reiterated that since this date all information held by the council has been updated.
18. The council records enquiries for resource monitoring and further information requests. It found that no searches were carried out by the council for the preparation of CON29 in 2019.
19. The council advised if such information were held it would be in either electronic or manual record format.
20. It confirmed that no information in scope of the request had been deleted or destroyed and that the council follows its own record management and the GDPR guidelines for record retention.
21. It concluded that the council was not requested to provide information for the preparation of CON29 in July 2019.

*Conclusions*

22. In coming to her conclusion, the Commissioner has considered the issues raised by the complainant, and their view regarding why further information should be held by the council. The Commissioner has also considered the responses provided by the council during the course of her investigation.
23. The Commissioner observes that the core issue for the complainant, central to the purpose of the request, is whether or not the council is standing by its position that the road is maintained at public expense.
24. However, the request itself is for a specific information item, being the entry on the CON29 for the specified property relating to the road status. It is not a request for any records held by the council that are contrary to its stated position from 2016.

25. Therefore, the Commissioner must come to a conclusion whether, on the balance of probabilities, the council holds any recorded information regarding the statements made about the road on CON29 for the specified property in July 2019.
26. The Commissioner is satisfied that the council have undertaken appropriate searches to identify information held in scope of the request. It has explained that there is a business need to record property search enquiries, and that no such information was found in relation to the given property.
27. The Commissioner has no basis upon which to doubt the council's position that no information has been destroyed or deleted.
28. The Commissioner observes that there is evident mistrust of the council regarding the ongoing status of the road. However, it is outside of the Commissioner's remit, or the scope of this complaint, to make any further judgement on those issues.
29. The Commissioner has not found any evidence to the contrary of the council's stated position regarding the information requested. Therefore, taking all of the above into account, the Commissioner is satisfied that, on the balance of probabilities, no information in-scope of the request is held by the council.

## Right of appeal

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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: 0300 1234504

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)

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.

**Signed .....**

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