

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 26 February 2014

Public Authority: North Yorkshire County Council
Address: County Hall
Northallerton
North Yorkshire
DL7 8AL

Decision (including any steps ordered)

1. The complainant has requested a copy of a report made by a Highway Inspector, together with the criteria used by North Yorkshire County Council to measure defect intervention levels.
2. The Commissioner's decision is that North Yorkshire County Council ("the Council") has complied with its obligation to publish environmental information under regulation 4(1) of the EIR and has provided the complainant with all the information it holds which is relevant to his information request. The Council has therefore complied with regulation 5(1) of the EIR.
3. The Commissioner does not require the Council to take any further action in this matter.

Request and response

4. The complainant made his request for information on 19 June 2013. His request followed an email exchange between the complainant and the Council and in particular was prompted by an email from a council employee on 19 June, in which she referred to her having "spoken to the Highway Inspector..." The complainant asked for:

"...a copy of his report and a set of criteria he or you measure against, if you cannot send this as a document, please forward a link where I can locate the standards."

5. The Council responded to the information request on 21 August 2013. It sent the complainant a Third Party Claim Investigation Sheet relating to 'Junction of A172 with Strawberryfields, 70m South of R/bout nr Tree Bridge Pub' and its associated reports.
6. The Council advised the complainant that it had not received any other communications from external parties about this location, other than the emails he had sent. It also sent the complainant a link to the Council's website where he could find the defect intervention levels for repairs to the highway network.
7. The Council also informed the complainant that information had been redacted from the pro-forma document. It advised him that the redactions were made in reliance of regulations 12(3), 13(1) and 13(2) of the Environmental Information Regulations 2004.
8. On 22 August the complainant asked the Council to review the information it had sent him. He asserted that the information was clearly incomplete. He made this assertion on the basis that the Council had, in the past, referred to internal communications, requests for inspections and work that had previously been carried out. The complainant made the presumption that work had previously been raised and approved by the Council.
9. The complainant's email of 22 August also contained a new information request:

"...I was shocked to read that keeping the roads clean as noted on the last inspection is not the responsibility of NYCC, can you advise whose this is."
10. On 18 September the Council sent the complainant the results of its internal review. The Council informed the complainant that it had searched its Highway management systems (Lagan and Symology) together with the relevant email accounts and archives. It advised him that requests for inspections or works would normally be 'verbal' and so it is not expected that there would be any recorded information to disclose.
11. The Council asked the complainant to identify which communications he believes are missing so that it could look into the matter further.
12. The Council responded to Mr Riley's new (second) information request by advising him that North Yorkshire County Council would deal with road safety issues caused by deposits of mud, oil or diesel on the road: These issues would be dealt with as an emergency. It also advised the

complainant that the day-to-day road sweeping is the responsibility of the District Council (Hambleton District Council).

Scope of the case

13. The complainant contacted the Commissioner on 2 October 2013 to complain about the way his request for information had been handled. He stated, "I feel their response was not close to a full disclosure of information exchanged between the Council and their internal inspectors, repairs department or contractor if used." He asserted that there must be internal documents and records for more inspections that that supplied.
14. The complainant also complained about the legibility of the document which the Council sent him – the Third Party Claim Investigation Sheet referred to in paragraph 6 above.

Reasons for decision

Is the requested information 'environmental information'?

15. Regulation 2(1) of the EIR defines what constitutes 'environmental information'. Subsections (a) to (c) state –

'(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges, and other releases into the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements.'
16. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.

17. In the Commissioner's opinion the information sought by the complainant constitutes environmental information: the information relates to the landscape – roads in North Yorkshire, and measures – the maintenance of the roads. The information request therefore falls to be considered under the EIR.

Regulation 5 – is the requested information held?

16. Regulation 5(1) of the EIR states that –

“...a public authority that holds environmental information shall make it available on request.”

17. In this case the complainant asserts that the Council holds more information than that sent to him on 21 August 2013.
18. In scenarios where there is a dispute about the amount of, or lack of information held by a public authority, the Commissioner applies the civil standard of 'the balance of probabilities', following the lead of a number of Information tribunal decisions.
19. In other words, in order to determine such complaints the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
20. It is not the Commissioner's role to adjudicate on the substantive matter in this case, i.e. the issues concerning the maintenance of the roads in North Yorkshire. Whilst the Commissioner has noted the complainant's concerns about this matter, he has not factored them into his determination of whether the Council holds information relevant to the request, which has not already been provided.
21. The Commissioner notes that the Council has statutory duties in respect of making road inspections. He also notes that the Council is required to retain information for 21 years where it is relevant to a third party claim.
22. The Commissioner's enquiries concerning this complaint were focussed on the searches made by the Council to locate any information falling within the scope of the complainant's request. Questions were asked about the types of information relevant to the request, the possible location of that information and the possible deletion/destruction of that information.

23. The information sought by the complainant relates to highway inspections and includes notifications of defects made by members of the public, parish councils or other third parties.
24. The Council informed the Commissioner that relevant information, if it is held, would likely to be found in various databases, email accounts and the electronic systems used by the Council for highway asset management and customer service management.
25. The Council has confirmed to the Commissioner that searches were made of its highway asset management system – Symology and its customer service message system – Lagan. The Council believes that these systems are where relevant informations is most likely to be found.
26. Additionally the Council also searches its correspondence database and the email accounts of its Area Office of the Highways Department.
27. The Council confirmed to the Commissioner that all relevant information found as a result of its searches was sent to the complainant. It also confirmed that no information is likely to have been deleted or destroyed. This is due to the Council's need to evidence that it is carrying out its statutory functions regarding road inspections and to contest any third part claims it may receive within a 21 year period.
28. On 21 August the council advised the complainant that he could access information relevant to his request at the following web site:
<http://www.northyorks.gov.uk/CHttpHandler.ashx?id=15649&p=0>
29. The complainant informed the Commissioner that, regarding 'defect intervention levels', he has not been able to download or see any information giving the actions required.
30. The Commissioner has checked the web page (at paragraph 32) and was able to access information relevant to the complainant's request.
31. The Council, in publishing this information, has satisfied its obligation under regulation 4(1). Regulation 4(1) states –

“(1) ...a public authority shall in respect of environmental information that it holds—

(a) progressively make the information available to the public by electronic means which are easily accessible; and

(b) take reasonable steps to organize the information relevant to its functions with a view to the active and systematic dissemination to the public of the information.”

32. The Commissioner has considered the nature of the information sought by the complainant. He believes it is reasonable for the Council to have searched the databases and email accounts referred to in paragraphs 26 – 28 above as being the locations where this information is most likely to be found and considers that the searches were adequate for the purpose of locating that information.
33. The Commissioner therefore finds that, on the balance of probabilities, no further information relevant to the complainant’s request is held by the Council, other than that information already provided to him. The Commissioner finds that the Council has complied with regulation 5(1) of the EIR.

Right of appeal

34. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. 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.
36. 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
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