

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 30 January 2025

Public Authority: Wiltshire Council
Address: Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Decision (including any steps ordered)

1. The complainant submitted a four part request for information held by Wiltshire Council ("the Council") relating to drainage works at a specific location.
2. The Commissioner's decision is that, on the balance of probabilities, the Council has provided all of the information held that is relevant to parts 2, 3 and 4 of the request, but holds further information within the scope of part 1 of the request.
3. As the Council has failed to identify and provide all of the information held that is relevant to part 1 of the complainant's request, the Commissioner has found a breach of regulation 5 of the EIR.
4. The Commissioner requires the Council to take the following step to ensure compliance with the legislation.
 - The Council must issue a fresh response to part 1 of the request, conducting adequate searches aimed at identifying all of the relevant information held.
5. The Council must take this step 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 Act and may be dealt with as a contempt of court.

Request and response

6. On 8 April 2024, the complainant wrote to the Council and requested information in the following terms (numbering added by the Commissioner):

"We wish to make a FOI request for the below information regarding:

School Lane, Dilton Marsh, BA13 4FE

1. All material relating to any drainage surveys/reports – CCTV or other – conducted this year (2024) by contractors, including 'Jet Rod Ltd', on School Lane
 2. Information on all Council-led maintenance work, routine or otherwise, conducted on the drainage systems running the length of School Lane in the last 25 years
 3. Record of MyWilts Case reports regarding School Lane in the last 15 years
 4. Details of any permission given and works conducted by external contractors on School Lane in the last 15 years, including, but not limited to, Gas, Electric, Water and/or Internet providers, along with a map of the specific location of each of these works."
7. The Council provided the complainant with a partial response to the request on 17 May 2024, in which it denied holding information within the scope of part 2 of the request.
8. On 28 May 2024, the Council provided the complainant with a response to the remainder of the request. It disclosed information in response to part 3 of the request but denied holding information within the scope of parts 1 and 4 of the request.
9. On 3 June 2024, the complainant requested an internal review. The Council provided the complainant with the outcome of its internal review on 27 June 2024, disclosing some additional information within the scope of the request. However, the Council also withheld some information citing regulation 13(1) (personal data) of the EIR as its basis for doing so.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way their request for information had been handled. They stated that they consider the Council to hold further information within the scope of their request, particularly part 1 of their request.
11. The complainant has not contested the Council's decision to rely on regulation 13 of the EIR to withhold the personal data of third parties.
12. Therefore, the Commissioner will only consider whether, on the balance of probabilities, the Council holds any information within scope of the request in addition to that already disclosed to the complainant.

Reasons for decision

Regulation 5(1) – duty to make environmental information available

13. The task for the Commissioner where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request is to determine whether, on the balance of probabilities, the public authority holds any information relevant to the request which it has not already disclosed to the complainant.
14. In making this determination, the Commissioner will consider the complainant's evidence and argument and the actions taken by the public authority to check whether the information is held, and he will consider any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held.
15. The Commissioner is not expected to prove categorically whether the information is held; he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities. Applying the civil test of the balance of probabilities is in line with the approach taken by the Information Tribunal when it considered the issue of whether information is held

The Council's position

16. In its submissions to the Commissioner, the Council stated that School Lane is a private road which is not maintained at public expense by the Council. However, it confirmed that there is a drainage pipe that runs the length of the lane which is owned by the Council. It explained that in early 2024, Jet Rod Ltd were contracted on two separate occasions to

carry out CCTV surveys on School Lane and that these were the only drainage surveys that have been carried out on the lane.

17. The Council said that it considers that no further information within the scope of the request would be held by Jet Rod Ltd on behalf of the Council. Therefore, it has not asked Jet Rod Ltd whether it holds information within the scope of the request.
18. The Council explained that prior to the drainage surveys being carried out on School Lane in early 2024, searches of the Council's Strategic Asset and Facilities Management property database were conducted to establish who was responsible for drainage on the lane. It used the search terms 'School Lane', 'Dilton Marsh' and 'Dilton Marsh Primary School' when undertaking these searches. The Council has said that the searches did not locate any information relating to drainage on School Lane.
19. With regard to part 1 of the request, the Council stated that it has provided the complainant with all the material it holds relating to the two drainage surveys carried out on School Lane through an ongoing insurance claim the complainant has with the Council. The Council also stated that on 24 October 2024 (during the course of the Commissioner's investigation), it provided the complainant with further information within the scope of the request, that being a drainage report dated 30 January 2024.
20. With regard to part 2 of the request, the council has said that information relating to Council led maintenance work is statutorily held on its Streets Work Register (SWR). When conducting its search of the SWR, the Council limited its search to the time period specified in part 2 of the request and used the search term 'School Lane'. It stated that its search of its SWR located two records within the scope of part 2 of the request, which have been disclosed to the complainant.
21. With regard to part 4 of the request, the Council explained that as School Lane is not a highway maintained at public expense, contractors and utility companies do not have a duty to notify the Council when works are carried out on the lane. However, as some companies and contractors do still notify the Council of intended works, it said it has also searched its SWR for information within the scope of part 4, limiting its search to the time period specified by the complainant and the search term 'School Lane'. The Council stated that its search located two records within the scope of part 4 of the request which have both been disclosed to the complainant.
22. With regard to part 3 of the request, the Council stated that since 2020, information relating to issues reported via MyWilts has been held on its

Highway Infrastructure Asset Management System (HIAMS). Therefore, it has searched HIAMS for information within the scope of part 3 of the request. The Council stated that it has also searched archived reports dating from between 2012 and 2020 relating to School Lane for information within the scope of part 3 of the request.

23. In addition, the Council has explained that information dating from between 2008 and 2013 relating to reported road and street issues is held in spreadsheets. The Council has therefore conducted searches of those spreadsheets using the search term 'School Lane' for information within the scope of part 3 of the request. The Council stated that any information located by its searches that falls within the scope of part 3 of the request has been disclosed to the complainant.

The Commissioner's position

24. Based on the explanations provided by the Council, the Commissioner is satisfied that the searches of the SWR for information within the scope of parts 2 and 4 of the request, and of HIAMS and archived reports for information within the scope of part 3 of the request, are reasonable. He also considers that when conducting the searches, the Council used an appropriate and relevant search term.
25. However, the Commissioner is not satisfied that the Council has carried out reasonable searches for information within the scope of part 1 of the request. The Commissioner notes that the Council stated in its submissions that it has conducted a search of its Strategic Asset and Facilities Management property database. However, as he understands it, that search was conducted in January 2024, and therefore prior to the date of the request. Therefore, the Commissioner considers that after receiving the request, the Council should have conducted further searches of the Strategic Asset and Facilities Management property database for information within the scope of part 1 of the request.
26. The Commissioner notes that the Council has stated that all material held relating to the two drainage surveys that took place on School Lane has been provided to the complainant as part of an ongoing insurance claim. However, the Council has not offered any explanation of the searches it has undertaken to establish that this is all of the relevant information held. The Commissioner also considers that whilst the complainant may already have the material held by the Council relating to the drainage surveys, as it is information that falls within the scope of part 1 of the request, it should have either been disclosed to the complainant in response to the request, or a refusal notice should have been issued.

27. Furthermore, whilst the Council has stated that, on 24 October 2024, it provided the complainant with a drainage report dated 30 January 2024, having reviewed the Council's correspondence where it supposedly disclosed the report to the complainant, the Commissioner notes that this was addressed and sent to another individual rather than to the complainant. He considers that the drainage report should have either been provided directly to the complainant in response to their request, or a refusal notice should have been issued.
28. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold further information within the scope of parts 2, 3 and 4 of the request, but for the reasons outlined above, he considers that it does hold further information within the scope of part 1 of the request.
29. The Commissioner requires the Council to issue the complainant with a fresh response to part 1 of the request following searches aimed at identifying all the information it holds within the scope of this part of the request. When conducting its searches, the Council should take adequate steps to establish whether any additional information within the scope of part 1 of the request is held by Jet Rod Ltd on behalf of the Council.
30. Any relevant information that is identified by the Council which has not yet been provided in response to part 1 of the request, should either now be disclosed to the complainant or an appropriate refusal notice should be issued. This includes the information held by the Council that relates to the two drainage surveys carried out by Jet Rod Ltd that was provided to the complainant as part of their insurance claim, and also the drainage report dated 30 January 2024.

Right of appeal

31. 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

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Suzanne McKay
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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