

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 November 2011

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

Decision

1. The complainant was in correspondence with Essex County Council (the council) about permanent parking restrictions imposed in Feering, near Colchester. These were implemented in early 2003, about 18 months after the implementation of temporary restrictions in mid-2001. The complainant has requested information about the implementation process for the permanent restrictions.
2. The Commissioner's decision is that Essex County Council has disclosed the information it holds which is described in the request.
3. The Commissioner does not require the public authority to take any steps to comply with the legislation in this case.

Request and response

4. On 4 December 2009, the complainant wrote to the council about copies of public notices posted in Feering prior to the implementation of parking restrictions. He stated that he had not received copies and requested that the council issue them to him. On 10 December 2009, he re-stated the request and described the requested information in the following terms:

"copies of the public notices posted in Feering prior to the installation of the parking restrictions."

5. The complainant's correspondence prior to 10 December 2009 indicates that he objects to an aspect of the permanent parking restrictions imposed in early 2003, following advertising of the proposal in late

2002, therefore the context of the correspondence makes clear that 'the parking restrictions' referred to in the request are permanent restrictions imposed in Feering in 2003.

6. The council had previously responded, at intervals, to the comments made by the complainant in his correspondence. He had viewed the Traffic Regulation Order (TRO) which gave effect to the restrictions, and associated maps, in a meeting with the council on 5 November 2009 and he had previously been supplied with copies of the TRO in August 2009. Further copies of the TRO and 'tiles' from the council's mapping system 'Parkmap' which relate to the TRO were also disclosed on 9 November 2009.
7. Following an internal review the council wrote to the complainant on 12 March 2010. It stated that all requested information held by it had been disclosed to the complainant, with the exception of two documents. One was withheld because it was personal data, and disclosure would contravene the data protection principles, the other had recently been discovered during the course of the review. This was disclosed, with small amounts of personal data redacted.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He complained that, through his own research, he had located a copy of a map, which the council had not disclosed to him.
9. The Commissioner considers that the complaint relates to the complainant's request of 10 December 2009, quoted above and it is clear from the context, and supporting correspondence, that this relates to the permanent parking restrictions imposed some years previously.
10. He understood the complainant's specific complaint to be that he had located a map, title 'FEERING – WAITING RESTRICTIONS', reference 'Plot Date 4/9/2000' (the disputed map), which had not been disclosed to him in response to the request. The scope of the Commissioner's investigation was therefore to determine whether the disputed map:
 - was held by Essex County Council at the time of the request; and
 - should have been disclosed to the complainant in response to the request.
11. This was put to the complainant, who confirmed his agreement with the scope of the Commissioner's investigation summarised in the bullet-points listed at paragraph 10, above.

Reasons for decision

12. The applicable element of the legislation in this case is section 1 of FOIA.

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

The scope of the case therefore reflects the two obligations imposed at section 1(1)(a) and 1(1)(b) respectively.

13. The complainant explains that, at some point, he located a copy of the disputed map in a local library. He asserts that this is the map which was displayed in the Feering area prior to the implementation of the parking restrictions.
14. The council acknowledges that the map is held by it, because it was found in one of its libraries. However, it explains that it cannot find any reference to it in the planning systems it uses. Its conclusion is that, as the map is dated 4/9/2000, it pre-dates the introduction of the parking restrictions and it is likely that the copy the complainant located was a draft, which was discarded when the revised, temporary, plan and schedule was advertised in mid-2001.
15. Therefore, while it clearly holds a copy (ie at the library) it was not found in the file which it searched and which contains the information it holds on the parking matters identified by the complainant. It does not speculate on how or why the library has a copy of the map, beyond a comment that it may have obtained a copy by 'multiple possible methods'.
16. It confirms that the disputed map *"did not form part of the legal notification"* which took place at the time. From the standpoint of FOIA the Commissioner must decide whether the council has complied with the requirements of FOIA in the way it dealt with the complainant's request. Section 1(1)(a) and 1(1)(b) of FOIA puts an obligation on the council to communicate information *"of the description specified in the request"* to a person who has requested it.

17. Noting the council's confirmation that the map did not form part of the legal notification, the Commissioner considered whether the disputed map located by the complainant in a local library formed part of the *"public notices posted in Feering prior to the installation of the parking restrictions"*.
18. The complainant, for his part, asserts that the disputed map was indeed part of the public notices posted in Feering, and in the local press, prior to the installation of the parking restrictions. He maintains that his recollection of the map is quite clear and not unreliable due to the passage of time. He further argues that:

"The tile maps you refer to were not the public notices posted prior to the parking signage appearing in [Feering] ... [the council] do not appear to understand the difference between a tile from a parking map and a public notice posted in public places and in the local press."

19. He does not dispute that the 'tiles from the parking map' were disclosed to him but, rather, that these are not the map which is described in his request whereas the disputed map is. The Commissioner has asked the complainant if he has any evidence to support this assertion, but the complainant has not provided anything beyond repeating his firm recollection is that the disputed map was displayed in Feering prior to the implementation of the parking restrictions.
20. The Commissioner has examined the disputed map, and has considered the council's arguments. The request formed part of a protracted sequence of correspondence, which the complainant supplied to the Commissioner, from which it is clear that the 'parking restrictions' referred to are those which are the subject of a Traffic Regulation Order (TRO) in early 2003, creating permanent parking restrictions (following the introduction of temporary parking restrictions approximately 18 months prior to the permanent TRO). These were advertised in December 2002 (and the temporary restrictions in June 2001).
21. For the avoidance of any misunderstanding, the Commissioner recognises that the TRO itself is a different document to the public notices required to be posted prior to the implementation of the TRO. There is no suggestion that the 'tiles' from the Parkmap facility which form part of the TRO are the same as the maps which may have formed part of any such public notices. The question for the Commissioner is, rather, whether the disputed map forms part of the information which is described in the request.
22. In other words, the council argued that it had disclosed the information it held which matched the description in the request. If it holds other

information, but that is not within the scope of the request, then there is no obligation to locate it or disclose it in response to the request.

23. The request relates to the public notices posted in relation to the permanent TRO. The council has also explained what is required to be contained within such public notices. The Commissioner understands that the legal requirement is for the notices to adequately describe the proposed restrictions, no explicit requirement for a map is set out in the applicable regulations¹, which specify that such orders should contain the following information:

- The name of the order making authority.
- The title of the order.
- A brief statement of the general nature and effect of the order.
- Where the order relates to a road, the name or a brief description of the road and, where appropriate, a description of the length of it to which the order relates.
- Where the order relates to an off-street parking place or a loading area, a brief description of that place or area and of its location.
- Where the order relates to a parking place and prescribes charges for its use or restricts the times during which, or classes of vehicle for which, it may be used, a statement of those charges, times or classes.
- A statement that documents giving more detailed particulars of the order are available for inspection and a statement of the places at which they are so available and of the times when they may be inspected at each place.

24. Displaying a map may be argued to be good practice, but there are no grounds on which the Commissioner could conclude that any map, or in particular the disputed map, **must** have formed part of the notices described in the request, because there is no obligation for a map at all. Therefore, there is no clear 'business need' for the council to hold this particular element of the requested information. The Commissioner has not seen anything to suggest that the council is obliged to retain copies of the public notices, in addition to the TRO they referred to.

25. Further the disputed map does not correspond particularly closely to the areas of parking restriction which are specified in the written description in the notices, either for the TRO itself, or for the preceding, temporary, restrictions. Therefore, the Commissioner does not consider it particularly likely that the disputed map would have been used to

¹ <http://www.legislation.gov.uk/ukxi/1996/2489/contents/made>

illustrate the extent of the parking restrictions proposed, because it omits several areas which the notice describes and would therefore have misled members of the public who relied on the extent of the restrictions drawn on the map, rather than referring to the street-by-street description in the notice itself.

26. The Commissioner notes that the complainant remains adamant in his assertion that the disputed map was indeed displayed on Feering Hill and within Kelvedon station, as well as forming part of the notice in the local press at the time. Unfortunately, the complainant is unable to offer any concrete evidence to support his position and the Commissioner does recognise the inherent difficulties this would present, not least due to the passage of time.
27. For its part, the council has explained that other maps (tiles) form part of the TRO in its records, the disputed map does not and is not to be found in the relevant records. Its alternative explanation, that the map relates in some way to the previous, temporary, restrictions is credible partly due to the date of the document, partly due to the existence of a different set of reference maps for the TRO, and partly because the map does not correspond to the extent of the restrictions specified in the TRO notice itself.
28. Also, the council explains that the map is not held in those records because it has no requirement to retain superseded documents and, indeed, is required to dispose of them after a set period under its document retention and disposal policies and procedures. The TRO is still in force and therefore there is a current and ongoing requirement to retain statutory information about it. That will include maps which show the extent of the TRO, albeit as explained at paragraph 24 above, these would not necessarily have formed part of any public notices. It is suggested by the council that the map may have been retained by the library because the retention period for its purposes may be longer than the highway authority's.
29. Furthermore, the council has also provided the Commissioner with a copy of the TRO, and also a copy of the experimental order dated 14 June 2001, both of which clearly state that various roads, namely:
 - Driffield Close;
 - Hunt Close;
 - Marshall Close; and
 - Millers Mead

are subject to restrictions for their entire length, but there is nothing marked on the disputed map consistent with that and those roads,

where identified, are not marked as subject to restrictions. Therefore, the association of the disputed map with *either* of the two sets of parking restrictions as applied at the time, is doubtful. This is consistent with the council's suggestion that the disputed map is an earlier draft which, as its date shows, was created the year before the temporary restrictions came into effect and was subsequently discarded.

30. Where there is a dispute about whether information is or is not held, the required standard of proof is 'the balance of probabilities'. In this case, the council concedes that the information is 'held' by it, albeit in an unconventional location, however there is also disagreement over the provenance of the information. The Commissioner has therefore applied a similar test to the likelihood that the disputed map is information which is caught by the description in the complainant's request. The Commissioner considers, from his examination of the matter, that:
- there is a requirement for the council to retain details of the TRO in force;
 - there is a requirement for public bodies to manage their records, which includes disposal of records no longer required, after a set period;
 - the council has explained that it disposed of the records relating to the earlier, temporary, restrictions after the standard retention period, understood to be three years and no more than five years;
 - its searches for the documents described in the request were directed to the appropriate files and locations within the relevant department, and had located information, all of which was disclosed to the complainant;
 - its conclusion, while not definitive, is that the document was a draft, origin uncertain, which was not part of the permanent TRO issued in late 2002. Nor does it appear necessarily to have formed part of the temporary restrictions in 2001;
 - there is no requirement for copies of the public notices to be retained, beyond the normal retention period for such records, therefore no reason to conclude that they should be held; and
 - the disputed map was discovered by the complainant by his own efforts, in a location not related to the council's activities in highways, and the council can find no reference to it in the planning systems it uses. The provenance of the map he discovered is therefore not definitively established. The Commissioner has asked the complainant if he has anything from his local library which shows the origin of the disputed map, but he has not responded to that enquiry.
31. Therefore, there is a body of circumstantial evidence to support the council's explanation that the disputed map does not form part of the notices for the permanent TRO of December 2002, whereas there is no corresponding evidence to support the complainant's view that it does.

32. Therefore, the Commissioner concludes that the balance of probabilities supports the council's position, that the disputed map does not form part of the public notices posted in Feering prior to the installation of the parking restrictions.
33. For this reason, the Commissioner concludes that the disputed map is not information which is described in the complainant's 10 December 2010 request. It is not disputed that the information is held, albeit not by the appropriate council department, but as it is not information caught by the description in the request, there is no obligation under section 1(1) of FOIA to confirm or deny that the information is held, nor to disclose it in response to the complainant's request.
34. The council has therefore not breached section 1(1) of FOIA.

Right of appeal

35. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

36. 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.
37. 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

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