

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

Date: 16 January 2023

Public Authority: Powys County Council
Address: County Hall
Llandrindod Wells
Powys
LD1 5LG

Decision

1. The Commissioner's decision is that Powys County Council holds no information relevant to the complainant's request for information about highway obstructions and regulation 12(4)(a) of the EIR is engaged in that regard. The Council did not provide a refusal or internal review within the timeframe set out under regulations 14(2) and 11(4) of the EIR but it did not breach regulation 9(1), which concerns advice and assistance.
2. The Commissioner does not require Powys County Council to take any corrective steps.

Request and response

3. The complainant made the following information request to Powys County Council ('the Council') on 23 April 2022:

"Can you please provide a summary or alternatively a copy of all reports (from 1/1/2015 or earlier, to present time) of obstructions to the County Road, understood to be the F423 or F1423 between Little Mountain and to just south of Blaenllundeg.

The information requested is the date of the reports, what action was taken in respect of each report, and when/if the obstructions were removed.

<http://streetmap.co.uk/map.srf?X=315316&...> Shows the relevant road as depicted on OS maps, and an extract from the LoS has kindly been sent in the past, showing it as a continuous through route as a maintainable highway.

Secondly, the F1423 is shown in part on the NSG as USRN 85313303. Has the information on the full extent of F1423 been provided yet to the NSG, can it be confirmed when this will be provided and why only a part of this road was submitted?

N.B. The eastern end of U1423 is recorded on NSG as USRN: 85316899"

4. The Council's final position was that it does not hold the requested information and that regulation 12(4)(a) of the EIR is engaged.

Reasons for decision

5. In their complaint to the Commissioner the complainant has raised a number of concerns. These can be summarised as the Council failing in its statutory duties in relation to matters outside of this EIR request; disputing that the Council does not hold any information relevant to their request (they noted a report submitted to the Council in 2015 that they considered the Council must hold a record of); the Council failing to offer advice and assistance in relation to their request; disputing that the Council does not use the 'Fix My Street' website, and the timeliness of the Council's responses.
6. The Commissioner's focus is solely on whether or not the Council complied with its duties under the EIR in its handling of the complainant's request. The reasoning in this notice therefore covers whether, on the balance of probabilities, the Council holds recorded information within scope of the request, whether it offered adequate advice and assistance and the timeliness of the Council's responses.
7. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information to the extent that it does not hold the information when it receives the request.
8. In its response to the request on 17 June 2022, the Council advised that it does not hold any summary or report requested in part 1 of the request. With regard to part 2, the Council explained that as it does not use the 'F1' prefix, it had interpreted the enquiry as relating to the F423

rather than the F1423. It said it continues to add information to the National Street Gazette (NSG) and this will include adding the F423. However, a date for when the F423 road information will be added is not recorded, nor is there any recorded reason why only part of the information was loaded.

9. The Council maintained its position at internal review but provided relevant information it had identified but which post dated the request.
10. In a submission to the Commissioner, the Council has explained that there was no ambiguity about the request and the service area knew exactly what was being asked for. It understood what searches would be needed and where the material would be held if it were held at all. The Senior Network Manager for Highways checked two Local Environment systems which cover roads in the County, checking both the legacy system and the replacement system. They could find no information relating to the request. The Manager also asked the South East Local Environment Area Team for Highway Maintenance (Powys County Council) whether they held any data. That team advised that the request was for recorded details of an obstruction of an unmetalled highway dating back to 2015. The team confirmed it held no records of this on either system, and the newer recording system was only adopted for use on inspections from 2020.
11. The Council noted that in their request for an internal review, the complainant advised that they had reported obstructions on the 'Fix My Street' website so they reasoned that the Council must have the resulting reports.
12. The Council explained that its corporate retention schedule indicates that documentation about removing obstructions from a road has a retention of seven years. It is then marked for destruction. Therefore, if the Council held the requested data it would still be within its retention period. Once again, the Council said, it asked its Highways Team to check records, together with trying "wild card" searches on partial names. The team indicated that possibly the only way to pick anything up, if it were held at all, would be through a line by line search of the database which would be manifestly unreasonable. The team undertook a re-run of the system, which resulted in no data being found. The "old" system was a text based system with no mapping capability so the team carried out multiple searches of road names and numbers and partial road names/numbers and no relevant information was returned. The "new" system is spatially enabled and so a map search was undertaken as well as name searches. The new system records inspection and defect information as well as wider customer contact information. From the new search five new entries were identified, these post-dated both the initial request and the internal review request. However, to be as

transparent as possible the Council provided this information to the complainant in its internal review response.

13. The Council has gone on to say that following this complaint to the Commissioner, it communicated with its Customer Services Team as it was informed that Fix My Street uses the corporate email address for forwarding issues that outside parties reported to it. The Fix My Street site was set up in order to help members of the public make complaints about the state of roads. The Customer Services Team passes any email received to the relevant local area team (in this instance the South East Local Environment Team) who would undertake any necessary works.
14. The Network Manager has tried to encourage the complainant to use its corporate complaints system to log issues, rather than Fix My Street, as its complaints system is fed directly into the Highways database (as indicated by the five reports found recently).
15. The Council says it encourages staff to delete emails from the email system, as the system should not be used as repository for information or as a filing system. Emails are therefore deleted once a decision about an action is made but the decision may not be recorded. It is likely that a local area highway team would look at the issue when passing the location and if it is not a major highway issue then it would be dealt with at that time. If it is considered to be a major highway issue, then the job would be logged and a scheme of work undertaken.
16. The Council has confirmed that there is no legal requirement for it to hold the requested information; its legal responsibility is to maintain the highway.
17. The Commissioner is satisfied that the Council has consulted relevant individuals and teams within the organisation and has carried out very thorough and appropriate searches for any information within scope of the request. Having considered the complainant's concerns and the Council's submission, the Commissioner accepts, on the balance of probabilities, that the Council does not hold the requested information and is entitled to rely on regulation 12(4)(a) of the EIR.
18. Although regulation 12(4)(a) is a qualified exception, the Commissioner's position is that it is not necessary to consider the public interest test as to do so would be illogical; the public interest cannot favour disclosing information which is not held.

Procedural matters

19. Under regulation 14(2) of the EIR a public authority must issue a refusal notice within 20 working days of the request. And under regulation 11(4) a public authority must provide an internal review within 40 working days of a request for one.

20. In this case, the Council did not provide a refusal until 17 June 2022 and therefore did not comply with regulation 14(2). The complainant requested an internal review on 9 September 2022 and the Council did not provide one until 9 December 2022. The Council therefore did not comply with section 11(4) of the EIR either.
21. Regulation 9 of the EIR places a duty on a public authority to offer an applicant advice and assistance so far as it would be reasonable to expect the authority to do so.
22. The Commissioner has considered the Council's communications with the complainant. He has noted that the Council proactively re-interpreted the complainant's request and provided additional information to the complainant about the NSG in its response to the request. At internal review, the Council disclosed information that was outside the scope of the request but that it considered could be of some interest. As such, the Commissioner considers that the Council offered the complainant a satisfactory level of advice and assistance and finds that there was no breach of regulation 9 of the EIR.

Right of appeal

23. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.
25. 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

Cressida Woodall
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Wycliffe House
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