

Environmental Information Regulations 2004

Decision Notice

Date: 15 February 2010

Public Authority: West Sussex County Council
Address: County Hall
West Street
Chichester
West Sussex
PO19 1RQ

Summary

The complainant requested information about traffic restriction orders and road signs on roads around Balcombe. The council provided some information but stated that it did not hold, or could not find other information which he had requested. The complainant asked the council to review its position. The council responded claiming that the information was exempt because of the cost which would entail searching further for information it did not believe it holds.

The Commissioner wrote to the council and explained that in his view the information was environmental information and that the requests should have been considered under the Environmental Information Regulations 2004. The council agreed with this and reconsidered its position. It then responded indicating that the exception in regulation 12(4)(b) applied as it had already spent in excess of 33 hours responding to his request.

The Commissioner's decision is that the council was not able to apply regulation 12(4)(b) because it would not be manifestly unreasonable to search further for the requested information in this instance.

The Commissioner's Role

1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

Background

2. The complainant has requested this information in light of a review of traffic arrangements he says took place in 2005. He alleges that as part of that review traffic arrangements relating to HGV restrictions were modified, and that a HGV restriction order was removed from an unclassified road between the M23 into the village of Cuckfield and Haywards Heath and another placed on or around the same time on the B2184, the other major link between the motorway and the village. The complainant alleges that the intention or the result of that is that HGV traffic ceased to use its previous route and instead started to use the unclassified Balcombe Road which is unsuitable for that purpose.
3. The complainant alleges that this is an intended strategy by the council and alleges a number of reasons why this might be the case. He therefore asked for information on a number of road signs and restriction orders on roads around the county. The council has been unable to supply all of that information to him. It provided some information to him but stated that it found all the information that it could. The complainant asked the council to search further for the information, however the council refused, stating that it had now gone above the appropriate limit under the Freedom Of information Act and to ask it to search further would be vexatious under section 14 of that Act.
4. The Commissioner ascertained that the request was for environmental information. When he asked the council to reconsider the information under the regulations it stated that it would be manifestly unreasonable for it to continue to search for the remaining information given that it has already spent over 33 hours searching for it and because there was no evidence that further information is, or was ever held, or even that it existed in the first instance.

The Request

5. On 17 October 2007 the complainant requested from the council:
 - i The History of all Heavy Goods Vehicle restrictive signage, including 6'6" width restrictions on Balcombe Road, Haywards Heath (formerly Borde Hill Lane (before 1960's).

ii The History of all Heavy Goods Vehicle restrictive signage, including 6'6" width restrictions on the B2036, Cuckfield.

iii The History of all Heavy Goods Vehicle restrictive signage, including 6'6" width restrictions on the B2184, London Road, Cuckfield.

iv The History of all Heavy Goods Vehicle restrictive signage, including 6'6" width restrictions on Ardingly Road leading up to Hanlye Land, Cuckfield.

v The History of all Heavy Goods Vehicle restrictive signage, including 6'6" width restrictions on Borde Hill Lane at the junction of Hanlye Lane, Cuckfield.

vi The History of all Heavy Goods Vehicle restrictive signage, including 6'6" width restrictions on Hayward's Heath Road, Balcombe.

vii The engineers report and recommendations for the humpback bridge, River Ouse, Borde Hill Lane, before 1990 and current 2005 on.

viii The engineers report and recommendations for the skew bridge, railway, Borde Hill Lane, before 1990 and current 2005 on.

ix A copy of the brief and road policy given to a senior traffic calming engineer to implement traffic calming in Balcombe Road, ref DJC/TS.26/6/5.

x Information regarding the legal responsibilities required to restrict HGV traffic from "A and B" roads and allow HGV's the use of an unclassified road. And the removal of HGV restrictions from an unclassified road.

Because the above may not show confirmation, I ask how there are no signs, hence how does highways justify HGV usage in Balcombe Road/Borde Hill Lane/Stonehall to Balcombe from the following (I require a detailed response to each point and highways solution).

I point out that the Road in Balcombe Road/Borde Hill Lane/Stonehall to Balcombe is not suitable for HGV's.

1. The narrowness of the road, forcing lorries that pass one another, off the road and onto the public footpath.
2. Some residences are built directly on the highway boundary (Balcombe).
3. The road has an offset junction with close buildings also in Balcombe.
4. The Road is protected within an Area of outstanding natural beauty (the Ouse Valley AONB, containing the Ouse Valley viaduct grade 2 star listed).
5. The road is within the Townscape character plan for over twenty years, one of the first and consequently not given lightly, but never taken forward

to statutory conservation. (It remains a non- statutory conservation area, and unfortunately unrepresented).

6. An unsuitable humpback bridge of the river Ouse.

7. An unsuitable skew bridge under the railway.

8. Many adverse corners, causing one of the highest accident records in the area, and possibly of any unclassified road in West Sussex. (Six accidents in the fortnight preceding this letter, over forty recorded in three years).

9. The resultant diversion of traffic from a "b" road to an unclassified road.

10. The conditions set out for junction 10A to protect the villages from HGV's."

6. The council responded on 12 November 2007. It provided the following responses:

i It stated that it has no record of any width or weight restrictions on Balcombe Road, Hayward's Heath. However it added that the records only go back to 1974 when the area came under the jurisdiction of the council. It also added that the TRO team held no records, historic or current, of any restrictions being removed.

ii It provided a copy of the requested information to the complainant.

iii It stated that there was a sign in existence, but it believed that the sign was made prior to 1974 and hence the TRO team do not hold any details of it.

iv It stated that the TRO team has no records of width or weight restrictions on Ardingly Road, however the records only go back to 1974. Again no records are held, historic or current, of restrictions being removed.

v It stated that it was aware that there are height restrictions at Skew Bridge, Borde Hill Lane, but that it is believed that this order was made prior to 1974 and so no records are held by the TRO team.

vi It stated that the TRO team have no records of any width or weight restrictions on Stonehall or Haywards Heath Road. Once again however records only go back to 1974, and no records were held of historic, current or any restrictions being removed.

vii Summary information was provided to the complainant together with other information that was held. The council clarified that it could not find other information relating to tests carried out on the bridge but confirmed that the bridge had passed those tests.

viii Information was provided that Network Rail own the information relating to this request and contact information for that organisation was provided to the complainant.

ix The council provided background information to the complainant and explained the nature of the measures taken to prevent further accidents in the areas concerned.

x Summary information was provided to the complainant, although this did not seemingly directly answer the questions of the complainant.

7. Related documents were also provided to the complainant that sought to answer some of his questions. However that letter also stated that if the complainant sought any further information this would be likely to be difficult, time consuming and would be unlikely to be successful. It added that the complainant was free to search through its modern records department himself but as this would require an officer to supervise the search the council would need a payment of £450 in advance prior to the council agreeing to allow him to do this.
8. The complainant contacted the Commissioner on 12 April 2008 complaining about the way his request for information had been handled. At that time he specifically asked the Commissioner to consider the costing aspects of the council's response to him as well as whether the other information he had requested should have been provided to him. The Commissioner notes that the delay between the response to the request being received and the initial request to him for a decision falls outside of the period under which he would normally consider complaints acceptable. However the complainant explained the reasons for delaying his initial approach to the Commissioner and these reasons have been accepted as valid.
9. The Commissioner wrote back stating that the complainant would need to ask the council to review its decision in the first instance. The complainant therefore wrote back to the council asking it to review its decision on 15 June 2008.
10. The council responded on 23 June 2008. It stated that the council had already expended in excess of 18 hours of work providing the information it had already disclosed to the complainant. It also explained that it had supplied all of the information which it knew it held.
11. The council further explained that as there was no evidence of any TRO having ever existed for Balcombe Road it would not search further unless some evidence could be provided that there ever was such a sign. It therefore asked the complainant to provide any evidence he had to that effect.
12. On 11 July 2008 the complainant wrote back to the council stating that he did not believe that the council had checked its public records department for the information. He stated that it was apparent that the council would never provide information to him which would implicate it in unlawful activity and alleged that the signs had been changed for inappropriate reasons. As evidence that a sign had existed on Balcombe Road previously he provided the council with a witness statement, given and signed by him, stating that he had seen a sign and that this had disappeared in or around 2005.

13. On 15 July 2008 the council wrote to the complainant providing him with a photograph of the area, asking him to indicate where on the road the sign was and provide further details as to what that sign looked like. The complainant did not respond to that letter as he considers that the council would use any specific descriptions provided by him which were not entirely accurate as a means to discount his statement altogether.

The Investigation

Chronology

14. The Commissioner wrote to the council on 28 May 2009. In that letter he stated that a valid request has been received that he was preparing to investigate. He asked the council to consider its position and submit arguments prior to the investigation beginning, specifically as relates to the costs estimates it had used to establish that the requests would fall outside of the appropriate limit.
15. The council confirmed receipt of the letter and indicated that it had written to the Commissioner including evidence on 12 August 2008.
16. The Commissioner responded on 3 June 2009. In that letter he specifically asked:

“The letter of 28 May 2009 asked if you could please provide a detailed breakdown of how the Council have estimated that compliance would exceed the cost limit. Please note the time taken to redact exempt information cannot be included in this calculation. I would be grateful if you could respond to the letter of 28 May 2009 providing full and detailed arguments as to why complying with the request for information would exceed the appropriate limit.”
17. On 29 June 2009 the council wrote back stating why it had claimed that the request fell above the appropriate limit. It stated that in excess of 33 hours had been spent replying to the request prior to the council finding that no further information could be found. It explained that this was due to the number of TRO's and the fact that they dated back to 1930.
18. On the same day the Commissioner wrote back explaining that the case had now been allocated for investigation. He asked the council to reconsider the information under the regulations as it is environmental information.
19. Again, on the same day, the council responded. It agreed that the information was environmental information and attached a new refusal notice which it was about to issue to the complainant, refusing to carry out further checks under regulation 12(4)(b). In that refusal notice however that stated that it had offered the opportunity to the complainant to search the archives himself, free of charge, should he wish to do so.
20. On 30 June 2009 the Commissioner wrote back to the council asking it to

i) provide details as to how it had taken 33 hours so far to respond to the complainant's request.

ii) clarify if it had asked the complainant for £450 prior to letting him carry out his own searches for the information at its modern records department, and

iii) provide an explanation as to how TRO records are archived in its modern records facility, and explain the difficulties the council had with providing a full response to the complainant's request.

21. On 23 July 2009 the council responded. It provided a list of the time officers had spent on the case to date. The Commissioner notes that this merely included a list of officer names together with the total number of hours each officer had spent responding to the request. It did not detail what the officers had spent their time doing nor what activities had been carried out searching for the information.
22. In that letter the council reiterated that the request was manifestly unreasonable due to the time it had already spent searching for information together with the fact it was uncertain whether some information had ever existed at all. It stated that it would provide further details as to its archive process as soon as possible. It also confirmed that it had told the complainant that he would need to pay £450 in advance prior to letting him search for the information himself.
23. On 20 August 2009 the council wrote providing an explanation of the Modern Records facility. In that letter it provided an explanation of the problems it had with searching for records relevant to the request. It explained that ideally, the Highways Department would identify the relevant file through its own database and provide a file number to the Modern Records department. Through this it could interrogate its own database to identify the location of the relevant paper file in the archive. It added that where the file number of a relevant record could not be found on the Highways Department database, the Modern Records department archive was difficult to search because of the limited functionality of the search facility on its database. Additionally it added that the records held by Modern Records were not always complete as individual departments previously had the ability to draw up and destroy their own records in the past. It stated that its modern records database could be searched by the use of key words, however this functionality was limited and the search terms had to match exactly the way in which the terms were input in the first instance before they would find the correct entry.
24. On 24 September 2009 the Commissioner wrote to the council stating that the time schedule it had provided to him was relatively weak evidence given that there was no explanation as to what the officer's time was spent doing. He also asked if the council would be prepared to carry out specific types of searches for the information on part i) of the complainant's request in order to establish a) whether searches of the type suggested were possible and b), how effective these types of searches might be.

25. The council replied on the same day indicating that it was willing to carry out the limited searches but questioned their use given that the requestor had asked for a much wider range of information. The Commissioner explained that it was his understanding that this was the main concern of the complainant and if evidence could be found on this part of the request then this may go some way to facilitating an informal closure of the case. The narrower searches might provide the complainant with the central information he wanted without requiring the council to carry out further searches for the remainder of the information he had requested. The council wrote back the same day confirming that the searches had been carried out but that it had not found further information.
26. On 6 October 2009 the Commissioner wrote to the complainant explaining what had occurred. He highlighted that it was likely to be unreasonable to ask the council to search further for the information because of the number of records which would need to be searched and because no evidence could be found that relevant information was still held or in some cases that it was ever held by the council.
27. The complainant wrote back on 8 October 2009. He refused to withdraw his complaint, indicating that the narrower approach taken by the Commissioner when asking the council to search failed to take into account the far wider nature of his request. As an example he highlighted a further section of the request which he believed was as important as part i) in establishing his arguments. This related to part iii) of his request, a sign which is on London Road. The council had stated in its refusal notice that it did not hold, or could not find any information relating to this road as it believed that the sign had been put there before 1974, prior to it becoming responsible for that area.
28. The Commissioner wrote back to the council on 23 October 2009 asking the council to clarify the response which had been provided to the complainant in response to part iii) of his request. He asked if there was a sign still in existence on London Road and if the council had searched for a TRO for that sign. He also asked the council to explain if it was under a legal obligation to hold TRO's.
29. The council responded on 27 October 2009 stating that there was no HGV restriction for London Road, however there was a width restriction in place and a sign highlighting this. On the same day the Commissioner wrote back and asked the council to confirm whether a TRO existed for that sign.
30. On 28 October 2009 the council responded. It indicated that some signs are used on an advisory basis only (and therefore not supported by the same degree of enforcement abilities as other signs). These types of signs do not have TRO's. It stated that the width restriction sign in question was one of these, and that no TRO therefore exists for it.
31. On 17 November 2009 the Commissioner asked the council to explain why in this response it indicated that the sign was purely advisory, and yet in its refusal notice to the complainant it had indicated that no information could be found about the sign. The council responded on the same day stating that it had said that the sign was purely advisory because it could not find a TRO to support a

- legal basis for the restriction. The Commissioner understands by this that the council meant that as it could not find, or did not hold a restriction order to support the use of the sign it could not legally enforce the restriction against any driver purely on the basis that he or she had not followed the sign. The sign must therefore be there on an advisory basis only. In a later email the council confirmed that no TRO's would be held for advisory signs, and that it does not hold an inventory as to where these are in the county.
32. The Commissioner wrote to the council on 15 December 2009 asking for further information as regards the records management at the council. He asked specific questions relating to the time it would take to search each record of the electronic database, and how long it would take to search through all of the manual TRO files.
 33. On 17 December the council responded. It that a manual search of the files would involve searching through 3000 + files, taking approximately 2 minutes to read through a file to ascertain its relevance to the request. The argument is therefore that it would take in excess of 100 hours to manually search the TRO files.
 34. On 22 December 2009 the Commissioner asked the council further questions relating to the records management, together with questions relating to whether there are any visual differences between an advisory and a directly enforceable sign.
 35. The council responded on 29 December 2010. It stated that its previous estimate to search its files manually was wrong, and that a manual search of the boxes of records containing all of the TRO's would actually take approximately 10 hours. It added however that as no record of such documents could be found on its electronic database then this would in all likelihood be a futile search. To that extent the council's argument was now that no further information is held. It argued that as it was almost certain that no further information is held then it was manifestly unreasonable to require it to manually search its records. It stated that it would respond with details about any visual differences in signs in due course.
 36. On 14 January 2010 the council wrote again to the Commissioner. It stated that there are visual differences between advisory signs and those which are directly enforceable. The Commissioner wrote back to the council on 15 January. He asked it to confirm whether the sign on London Road (as referred to in paragraph 29 above) visually matches an advisory sign or whether it is a directly enforceable sign. On 4 January 2010 the council wrote back to the Commissioner. It stated that there are 2 signs on London Road, and that both have the appearance of enforceable signs but as no TRO's could be found they are not legally valid. It also clarified that there are no associated restrictive signs for traffic travelling in the opposite direction, which would be the normal requirement.
 37. The Commissioner spoke to the council on the same day and asked it to clarify whether the 10 hour search figure it had provided referred to a manual search of its modern records department's TRO files. The council emailed the next day confirming its finding that it would take approximately 10 hours. He also asked the council if it knew what had happened to the records of the authorities that had

had previous responsibility for the area (given the suggestion that the TRO team did not hold records made prior to 1974). The Commissioner stated that, as he understood it, normally records and the responsibility for those records would transfer to the authority taking over responsibility for the area. The council stated that that would not be an easy question to answer.

Findings of fact

38. The Commissioner recognises that areas of the county were previously administered by other councils, but that powers were transferred to West Sussex County Council in 1974.

Analysis

Substantive Procedural Matters

39. The Commissioner notes that the council initially refused the request for the information because it considered it unlikely that it held further information and because searching for that information further would be likely to exceed the costs limit under the Act (section 12). The Commissioner notes that the council did not however state that it was specifically refusing the request under section 12, but stated that it would allow the complainant to search further for the information if he agreed to provide a prior payment of £450 to pay for officers time escorting him in his search of modern records.
40. However the Commissioner considered that the information was environmental information which falls under the scope of the Regulations.
41. The Commissioner's decision is that the information is environmental information falling within Regulation 2(1) of the EIR.
42. Regulation 2(1)(c) provides that –
- “environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on -
- (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’
43. The factors referred to in (a) include -
- ‘ 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’

44. The Commissioner is satisfied that the information falls within the definition of environmental information as provided in Regulation 2(1)(c). The information is restrictions and court orders affecting traffic levels on roads around Haywards Heath which are likely to affect the elements and the factors referred to in (a) as well as a measure or activity designed to protect those elements. HGV restrictions are designed to protect the integrity of road surfaces and surrounding structures as well as safeguard the environment surrounding the road from pollution and other affects produced as a result of such activities.
45. Given this, the refusal notice which the council issued breached the requirements of Regulation 14(3), which requires that a public authority that refuses a request to provide environmental information specifies the exception it is relying upon in the refusal notice.

Is the information held?

46. In the normal course of events the Commissioner would firstly consider whether information was held prior to considering whether any other exception applied. Regulation 12(4)(a) exempts information from disclosure where it is not held by the authority at the time it receives the request. Clearly in the vast majority of cases where no information is held then the Commissioner need only verify that appropriate searches have been carried out prior to closing the complaint.
47. However in this case the main factor to be considered is whether it is reasonable for the complainant to require the council to search further to see if it holds this information in the first instance. Its initial response to the complainant it merely stated that the TRO team did not hold TRO's which were created prior to 1974. It did not confirm whether other sections of the council (such as its modern records department) might hold that information.
48. When the complainant asked the council to look for this information in modern records the council refused on the grounds that there was no evidence that the information existed in the first instance. Because of this it would be unreasonable to search further due to the cost and burden involved – however the complainant was aware that the sign on London Road was in place, and yet the council was also stating that it could not find a TRO for that sign either.
49. The council has not therefore gone so far as to establish whether it holds all of the information but has instead claimed that it is manifestly unreasonable to ask it to do so under regulation 12(4)(b). In this case the Commissioner has not therefore specifically made a decision on the application of regulation 12(4)(a) in this Decision Notice although it is a relevant factor in his decision on the application of regulation 12(4)(b).

Exceptions

50. The Council claims that it does not need to respond further as the request is manifestly unreasonable under regulation 12(4)(b). Regulation 12(4)(b) is provided in the legal annex to this Decision Notice.

51. The term “manifestly unreasonable” is not defined in the regulations. The Commissioner is clear however that the inclusion of “manifestly” in regulation 12(4)(b) indicates Parliament’s intention that, for information to be withheld under this exception, the request must meet a more stringent test than being simply “unreasonable”. “Manifestly” means that there must be an obvious, clear or self-evident quality to the unreasonableness referred to.
52. There is also no single test for what sorts of requests may be manifestly unreasonable. Rather, it has to be judged on each individual request, bearing in mind all of the circumstances of the case. The Commissioner is of the view however that Regulation 12(4)(b) will provide an exception to the duty to comply with a request where that request is vexatious, where it would incur unreasonable costs for the public authority or where responding would be an unreasonable diversion of resources.
53. the Commissioner is satisfied that the council has not provided evidence to him that the request is vexatious. He has not therefore considered the application of the criteria for vexatiousness to the request. Instead the council has argued that complying with the request would be an unreasonable diversion of resources.
54. The council’s argument is that it would be manifestly unreasonable to require it to carry out further searches of the information when:
 - It has already expended in excess of 33 hours responding to this complaint
 - There is no record that some of that information ever existed in the first instance,
 - It has already searched the relevant database and could not find a record of the information and it would be a significant imposition on the council to require it to look for the information in its modern records department
55. The Commissioner has firstly considered the evidence put forward by the council stating that it has expended in excess of 33 hours searching for the information below

The 33 hour claim

56. The Commissioner has considered the councils argument that it has already expended 33 hours looking for the information. The document that the council provided to Commissioner in evidence of that argument found that in excess of 33 hours had been spent responding to the request. The Commissioner has already highlighted the inadequacy of that document. The Commissioner can place little weight on it as evidence because it does not provide any detail as to what individual officers spent the time they have claimed actually doing.
57. It is nevertheless apparent that a degree of work must already have been carried out in order to have located the information it already has. The council provided information in respect of 5 of the 10 parts of the request. The Commissioner recognises however that some of the information which was provided was summarised, and other responses simply directed the complainant to another

organisation for the information. He cannot therefore place a particularly great weight on this evidence when making his decision.

58. The Commissioner has borne in mind the decision of the Information Tribunal in case *DBERR v The Information Commissioner (EA/2008/0096)* when coming to his decision regarding this part of his considerations. In that case the Tribunal clearly indicated that *public authorities may be required to accept a greater burden in providing environmental information than other information*” (see paragraph 39). Its decision was based upon the clear presumption in favour of disclosure provided in the regulations and because of the nature of the obligations laid on the UK via the Aarhus Directive.
59. Additionally the Commissioner considers that, following the Information Tribunal's decision in the *DBERR* case, a claim that 33 hours searching in itself would not of itself justify the engagement of regulation 12(4)(b) unless other factors were relevant that had a bearing on this decision. In this case the council's argument was that it was manifestly unreasonable to ask it to search further given the length of time that that would take together with the argument that there is no evidence that some of the information ever, or still exists in the first instance.

Does the information exist?

60. This question is to an extent the same as making a decision as to whether relevant information is held by the council, except in the circumstances of this case it provides only relative weight as to whether regulation 12(4)(b) applies. The Commissioner's view is that where it is likely that further information exists and is held then there is a greater onus on the authority to search further for that information.
61. The council has argued that all of its TRO records have been input into its electronic database of TRO's held at Modern Records. It states that these are searchable via a parish and street name. It argues that if the requested information cannot be found on the database then it is highly unlikely that that information will be held manually in the files as “as far as is known this database is a complete record of all TRO's held by WSCC since mid 1930”. The Commissioner notes however the earlier statement made by the council highlighting the difficulties in interrogating this database for information.
62. The modern records department has also stated that individual departments have previously been responsible for managing their own records, including creating, storing and destroying those records. It does not therefore have a complete record of all of the information which has been created or destroyed by the council within those departments. The council has however clarified that under the modern regime where a TRO is created, a duplicate of it is sent to Modern Records to be archived.
63. In his telephone call of the February 2010 the Commissioner asked the council whether the records of the previous authorities were transferred to the council when they took over jurisdictional responsibility for the area. The council stated that that would be very difficult to ascertain. The Commissioner notes that the

council's refusal notice stated only that TRO's implemented by other authorities prior to 1974 are not held by the TRO team. The Commissioner has not therefore been convinced by an argument that records from prior to 1974 are not held by the councils modern records department.

64. Although the complainant is seeking to prove the existence of a sign on Balcombe Road, the council states it has no record of there ever having been one. In this respect it may be considered significant that the complainant suggests that the restriction sign was removed in 2005. If this were the case then a record of that removal should exist on the database of the Highways Department. This would seem to be evidence that no record was ever held or existed and that the council is being asked to "prove a negative", (i.e. to prove that it does not hold information).
65. However the council has also stated to the Commissioner that details of inactive TRO's are not retained on its TRO database, but are retained by its Modern Records department. Even if there was previously a sign on Balcombe Road it is no longer there anymore. Presumably therefore there would be no record of a TRO on the Highways Department's database as it would now be inactive. The TRO's team's arguments in the refusal notice do not therefore provide any reassurance that relevant information is not held in the Modern Records Department.
66. In his email dated 24 September 2009 the Commissioner asked the council to carry out searches for part i) of the complainant's request, on the modern records database using search terms such as the road name, the road number and variations or potential misspellings of the road name. The council confirmed that no information was found using this approach. The Commissioner therefore considers that, at least for part i) of the request, without manually searching through each of the files in its archive the council would not be able to say categorically whether the information is held or whether it existed at all. The council has confirmed that it has searched this database for relevant information for all of the complainant's requests.
67. The Commissioner is not able to place a great deal of weight on an argument that the information has never existed purely because the council states that it cannot find the relevant TRO for it. The traffic restriction sign on London Road has the appearance of a legally enforceable sign and so a TRO for that sign must have existed at one point in time, and should still exist in order to maintain the lawfulness of that sign. The Council has indicated however that it has searched for this TRO but it has not been able to find one.
68. Given the doubts which arise when considering that the council should in fact hold TRO's for the sign on London Road, the Commissioner is not satisfied that the searches which the council has carried out have been vigorous enough to properly ascertain whether further information exists which falls within the scope of the complainants requests.

Would it be a significant imposition on council resources to manually search through the files for relevant information?

69. The Commissioner is satisfied that searches of the council's databases have not been successful in finding relevant information. However he has highlighted sufficient inconsistencies with the council's arguments to suggest that the only way to be certain that further information does not or no longer exists is via a search of the manual TRO files held at its modern records department.
70. The Commissioner initially received conflicting responses from the council regarding how long it would take to manually search through the relevant records in this department. The council finally confirmed that a search of its TRO files at its modern records department would take approximately 10 hours to complete.
71. In the DBERR case the Tribunal highlighted that there is a greater expectation that information will be disclosed under the regulations due to the explicit presumption in favour of disclosure together with the ability to extend the time for compliance with particularly voluminous cases. Given this, searching manually through the files would not therefore on the face of it be "manifestly or "obviously" unreasonable".

Conclusion

72. The council states that because it has searched the relevant databases it is sure that it does not hold the information. The Commissioner notes that the Modern Records department has cast doubt on the ability of its database to accurately find information via its database and so he cannot accept this as a valid argument.
73. The council further states that information created by the previous administration prior to 1974 is not held on the TRO team's database. It has not however clarified a) whether information which was created by the previous administration was transferred to it along with jurisdictional responsibility, and b) it has also not clarified whether relevant transferred TRO information would be held in its Modern Records Department rather than on the Highways database in any event. Again therefore the Commissioner places little weight on this argument as the council has not clarified its position regarding these records.
74. The council state that it has spent in excess of 33 hours searching for this information. It argues that because of this it would be manifestly unreasonable to ask it to search for information which may never have existed in the first place. The Commissioner cannot put much weight onto the 33 hour statement because of the inadequacy of the evidence was provided to him. The council cannot therefore rely on this to state that the need for additional searches in addition to the time already spent make the request manifestly unreasonable. The Council also cannot state categorically that the information has never existed, as it not been able to find the TRO for the sign on London Road, which clearly did exist, and which it is under a legal duty to hold.

75. The Commissioner is therefore satisfied that the council has not demonstrated that the request was manifestly unreasonable. The Commissioner therefore considers that further searches are required.

The Decision

76. The Commissioner's decision is that the public authority did not deal with the following elements of the request in accordance with the requirements of the Regulations:
- The Commissioner's decision is that the public authority was not correct to rely upon regulation 12(4)(b).
 - The council incorrectly considered the information under the provisions of the Freedom of Information Act rather than the Environmental Information Regulations 2004.
 - In providing a refusal notice which referred to exemptions under the Act rather than exceptions under the Regulations the council breached Regulation 14(3) in that it did not provide a refusal notice stating which exception it was relying upon when refusing the information nor its reasons for relying upon that exception.

Steps Required

- The Commissioner requires the authority to manually search through its TRO files to ascertain whether any of the information requested by the complainant is held.
- If relevant information is found in that search then the Commissioner requires the authority to disclose that information to the complainant or to provide him with a refusal notice citing a valid exception to disclosing the information under the regulations.

Failure to comply

77. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

78. Although it does not form part of this Decision Notice the Commissioner wishes to highlight the following matter:
79. Shortcomings in the Council's present system for recording and retrieving information related to TRO's appear to have contributed significantly to the difficulties experienced in meeting the complainant's request. In view of this the Commissioner believes that the Council would benefit from obtaining advice and guidance about the management of records from the Records Management Advisory Service at The National Archives (see contact details below).
80. The Commissioner would hope that such advice will improve the Council's handling of future requests for information

Records Management Advisory Service (RMAS)
National Advisory Service
The National Archives
Kew
Richmond
Surrey
TW9 4DU

rmadvisory@nationalarchives.gov.uk

Right of Appeal

81. 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
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

82. 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.

83. Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 15th day of February 2010

Signed

**Lisa Adshead
Senior FOI Policy Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Exceptions to the duty to disclose environmental information

12. - (1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if -

- (a) an exception to disclosure applies under paragraphs (4) or (5); and
- (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

(2) A public authority shall apply a presumption in favour of disclosure.

(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that -

- (a) it does not hold that information when an applicant's request is received;
- (b) the request for information is manifestly unreasonable;