

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 July 2014

Public Authority: East Riding of Yorkshire Council

Address: County Hall, Beverley, HU17 9BA

Decision (including any steps ordered)

1. The complainant has requested information relating to signage on the A614 at Kellythorpe.
2. The Commissioner's decision is that East Riding of Yorkshire Council (the council) has correctly applied section 12 of the FOIA to the withheld information. He also finds that the council has complied with its obligations under section 1 of the FOIA.
3. The Commissioner does not require the council to take any steps as a result of this decision notice.

Request and response

4. On 12 August 2013, the complainant wrote to the council and requested information relating to signage on the A614 at Kellythorpe. The full request is detailed below along with the council's response.

"Regarding the Long Lane backing boards, they are not high visibility they are Trunk road green and therefore illegal. If you are stating otherwise please provide the document from the DfT authorising the council for the use of trunk road backing boards. Regarding High Visibility backing boards the regulations are clear. Since the council has refused to give details of who authorised their use and has put in place a clear policy of sustained overuse I would like the matter escalated to the chief executive's office. At an average cost of an extra £25 per sign this is an appalling use of scarce monies which should be used for other matters. Regarding the inaccurate Universities signage; You know as

well as I know that there is only one University in Hull – made up of different schools shared with York & Scarborough amongst others. My point is very clear on this matter – the signs were replaced without any thought or proper management – it is indefensible and indicative of the sloppy management of this department. There is no forward thinking, indeed very little thought at all.

I await the freedom of information request details.

5. The complainant then sent an amendment to clarify his request, as the three points below.
6. The council responded on 9 September 2013 and provided the following:

1. Please be advised that the information I am looking for is regarding the highways 'A' road repair 'list' stating what position a particular repair is listed at and how its position has been decided upon i.e. what factors have been used.

"Your question concerning the prioritisation of A Road major maintenance was previously answered in your Freedom of Information request March 2009 (FOI 11190). The Council's prioritisation of major maintenance of the highways is determined by appraising each road based on weighted scores assessing the individual road condition observations (from SCANNER), engineer's requests, road traffic accident data and insurance claims.

Details of the scoring system used by East Riding of Yorkshire Council are set out in the Authority's Transport Asset Management Plan which forms Annex C of our Local Transport Plan. The document is available at:

<http://www2.eastriding.gov.uk/council/plans-and-policies/other-plans-and-policies-information/transport/local-transport-plan/?locale=en>

Any changes in data for individual elements of the infrastructure are reviewed each year to identify the works to be approved for a prioritised programme list for implementation the following year that can be delivered with the available resources.

We publish a final programme of maintenance work as part of the Authority's Capital Programme which is on public deposit for your inspection. I attach a copy of the approved programme for your convenience.

Unfortunately based on the method described above, the A614 Kelleythorpe does not fall within the approved programme of A Road major maintenance for the current year. However, for your information,

I can advise you that we are intending to undertake some minor patch repairs along the length.

2. Secondly I asked to see the document from the DfT which authorises the ERYC highways dept. to use green 'Trunk road' Backing boards on the signage at Long lane in Beverley? If it has not been authorised who is responsible for the illegal use & at what cost to the tax payer?

As has previously been outlined to you in correspondence the signs on Long Lane, Beverley are part of a trial site which has been in place for approximately two years and will be reviewed after three years. No documents are available showing authorisation as the site is a trial. Further information can be obtained from Paul Copeland, Assistant Principal Engineer on 0845 600 1666 regarding this trial.

3. Thirdly regarding High visibility backing boards, who is responsible for the decision to over-use the boards in direct contradiction of the DfT regulation and handbook? Again I would like to know the responsible individual/decision maker, and at what cost to the taxpayer?

High visibility backing boards are incorporated into signs for a number of reasons where improved visibility is an aim of the project. Projects are derived from a number of areas within the Council and can take several forms including accident prevention schemes, new traffic layouts, accident remedial sites, route safety treatment or more minor traffic improvement works. Such schemes are designed and delivered by a number of teams performing different disciplines within the Authority and not an individual."

7. Following intervention by the Commissioner, the council provided an internal review on 25 March 2014. It stated:

1) The list of 100+ road works that contains the A163 at Kellythorpe. You were provided with the information that came within the scope of your request in response to your initial request for information. "

2) With regard to Long Lane Beverley - Who authorised the Council to use green (trunk road) backing boards.

As we have explained above the identity of the officer who submitted the requisition for the sign on Long Lane would have been contained on the relevant requisition to the sign shop. After a search of the relevant electronic and paper records the Council is unable to locate the relevant requisition therefore the Council hold no information in relation to this request.

"3) The overuse of High Visibility Backing Boards

Who made the decision/s and what authority did they have to override the national regulations and guidelines.

As regards the latter point we do not accept that the national regulations and guidelines were overridden. We have no information as regards your request for authority to override national regulations and guidelines. As regards the former request the person who made the decision would be the member of staff who submitted the requisition to the sign shop for a particular sign (an example is attached). In order to ascertain the identity of the officer who submitted the requisition it would be necessary firstly to ascertain which signs are backed as we do not have a database containing this information. To carry out a check of the signs on the classified network would, we estimate take 58.3 hours. This is in excess of the 18 hour limit above which the authority can claim an exemption from disclosure. Following this it would be necessary to check the non-classified network and then to trace each order for each sign. The Council therefore claims an exemption with regard to the above on the basis that it would take more than 18 hours to trace the information. If it were possible to identify a sample the Council would have to consider whether it would release the names of the officers on a case by case basis.

Scope of the case

8. The complainant contacted the Commissioner on 28 October 2013 to complain about the way his request for information had been handled. As detailed above, the Commissioner contacted the council regarding an internal review.

9. Following the internal review the complainant contacted the Commissioner again on 1 April 2014. He stated:

"1) I was NOT provided with an answer I specifically asked for the list containing the priority road works this has not been received."

2) The council does not hold the electronic record of who authorised the signage – this is not acceptable in terms of an answer.

3) – this is simply flim flam and misdirection – I do not accept it would take so many hours to look for the individual who authorised this – one person must have ultimate responsibility."

10. Regarding part 1 of the request, the Commissioner has considered whether the council has complied with its obligations under section 1 of the FOIA.
11. With regard to part 2 of the complainant's correspondence above, it is not within the Commissioner's remit to comment on how the council holds its information. However, he has considered whether it has complied with its obligations under section 1 of the FOIA.
12. The Commissioner has also considered if the council has correctly applied section 12 of the FOIA to part 3 of the request.

Reasons for decision

Section 1

13. Section 1(1)(a) and 1(1)(b) of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
14. In considering cases such as this the Commissioner will consider whether, on the balance of probabilities, the requested information is held. In order to reach a decision on this the Commissioner would usually ask the public authority detailed questions as to the nature of the requested information and the searches it has carried out. However, in this case the previous correspondence clearly indicates that appropriate searches had been carried out to locate the information requested in part 2.
15. The council's initial response to part 1 of the request provided a link to its website <http://www2.eastriding.gov.uk/council/plans-and-policies/other-plans-and-policies-information/transport/local-transport-plan/?locale=en>
16. It explained that details of how the SCANNER assesses the roads were contained in Annex C. The Commissioner has reviewed the document and considers that it clearly explains the process. Therefore the Commissioner considers that the council has answered the part of the request relating to "*what factors have been used*" to determine what position a repair is listed at.
17. The council also stated that the complainant had been provided with a response to his question concerning the prioritisation '*list*' of A Road

major maintenance previously in response to a request in March 2009 (FOI 11190).

18. The Commissioner has obtained a copy of that response. He notes that the request contained a number of parts, however the one in question here relates to part 1 of this request.
19. The relevant part of the request and response from 2009 was as follows:

"What are the road scan results for the A614 and what work is proposed in 2009/10?"

Attached are the SCANNER results for the A614. At the moment, based on the SCANNER results for the whole 'A' road network, there are no major maintenance schemes planned for the A614 for 2009/10.

What is the matrix or mechanics by which road repairs are prioritised?

Major Maintenance 'A' Road repair, which would address road condition over substantial lengths, are prioritised based on weighted scores assessing the individual road condition observations (from SCANNER), engineer's requests, road traffic accident data and insurance claims.

What priority is being given to the A614 at (1) The damaged approach roads at Bainton roundabout? (2) the sinking road at Kellythorpe? (3) The A614 Middlethorpe bends?

Using the above method of prioritisation, the sections of roads that you enquire about will be treated 1) in 4 years time, 2) and 3) beyond 5 years, based on the available funding."

20. The Commissioner acknowledges that the above provides information in relation to the request of 2009. However, the complainant has specifically requested a list in 2013 to which the council's response was:

We publish a final programme of maintenance work as part of the Authority's Capital Programme which is on public deposit for your inspection. I attach a copy of the approved programme for your convenience.

21. The Commissioner sought further information from the council with regard to its programme of maintenance work.
22. The council provided the Commissioner with a copy of its approved capital programme, and an 'A' road repair list. He had already been provided with copies of pages 93 and 147 of the Council's capital schemes.

23. In relation to the first point above, the council's approved Capital Programme is included in papers available online, as considered by The Cabinet: -

<http://www2.eastriding.gov.uk/council/committees/the-cabinet/>

24. For ease of reference, the council provided the Commissioner with extracts from the programme. These reports list the whole of the capital programme including the past and the latest years approved new investment. These reports are extensively detailed but nevertheless only show a single line for the Principle A roads Major Capital Maintenance which, in essence only lists the approved amount.
25. The council further explained that the schemes on which the amount is to be spent are listed in the Capital Bids booklet on a specific page designated for Principle A roads Major Capital Maintenance each year for those few schemes that can be undertaken based on the priority system sent through earlier also published on the web site at:

<http://www2.eastriding.gov.uk/council/plans-and-policies/other-plans-and-policies-information/transport/local-transport-plan/?locale=en>

Commissioner's Conclusion

26. In the circumstances of this complaint the Commissioner must decide, on the balance of probabilities, whether the council has provided all held information that falls within the scope of the complainant's request.
27. The council has provided the Commissioner with examples of its approved Capital Programme and highlighted the approved budget, but this does not detail specific A roads. The council also explained that, although a road may be assessed as requiring repair, these are prioritised as detailed above in paragraph 19 and therefore subject to change.
28. The Commissioner has noted the complainant's position that a list must exist of planned maintenance, but there is no clear evidence that on the balance of probabilities, the council holds any further information.

Section 12

29. "Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit".
30. In other words, section 12 of FOIA provides an exemption from a public authority's obligation to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit.

31. This limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government departments and £450 for all other public authorities. The fees regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours in this case.
32. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
33. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.

Would compliance exceed the appropriate limit?

34. Section 12 explicitly states that public authorities are only required to estimate the cost of compliance with a request, not give a precise calculation. In the Commissioner's view, an estimate for the purposes of section 12 has to be 'reasonable'; he expects it to be sensible, realistic and supported by cogent evidence.
35. In correspondence with the Commissioner, the council explained that with regard to the complainant's request:

"High visibility backing boards, who is responsible for the decision to over-use the boards in direct contradiction of the DfT regulation and handbook? Again I would like to know the responsible individual/decision maker, and at what cost to the taxpayer?"
36. It took this to be a request for information as to the identity of the individual who had decided to use high visibility backing boards on road signs. The complainant appears to believe that there is one person who authorised all road signs with backing boards. This is not the case as the decision to order a sign with a high visibility backing board is one that is taken by each officer when they submit a requisition to the 'sign shop' for a road sign. The identity of the officer is that set out in the 'client' box. The exemption that applies to all of the above requisitions that may exist is that the cost of ascertaining for each road sign with a high

visibility backing board, the identity of the officer who ordered that sign, exceeds the cost limit. The calculation is set out below.

37. The council explained that its asset record shows it has 12,549 signs of which 6,996 could potentially be yellow-backed on the classified network (55% of total network). The first step to ascertain who ordered high visibility backing boards would be to ascertain which of the signs have high visibility backing boards.
38. To assess manually each one from its photo-records of the network would take approximately 30 seconds per picture (2 pictures per minute).
39. The calculation is therefore: $6996 \times 2 = 3498$ minutes = 58.3 hours (for 55% of the network).
40. The council further explained that to assess the remaining unclassified network would take significantly longer and to review the orders for each sign and scheme would take many more days.
41. Therefore the cost of carrying out half of the first part of the exercise i.e. to ascertain which signs have high visibility backing boards would exceed the cost limit and this does not account for the checks that would have to be carried out on the unclassified network and then, having identified the relevant signs, ascertaining who ordered each of them.
42. Clearly responding to the request for those records would therefore exceed the appropriate limit of 18 hours by a large degree. The Commissioner's decision is therefore that the council has correctly applied section 12 in this instance.

Right of appeal

43. 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

44. 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.
45. 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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