

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 18 May 2022

**Public Authority:** London Borough of Hillingdon  
**Address:** Civic Centre  
High Street  
Uxbridge  
Middlesex UB8 1UW

#### **Decision (including any steps ordered)**

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1. The complainant has requested information held by the London Borough of Hillingdon (the council) which relates to its 'Domestic Vehicle Footway Crossover Policy'.
2. The council refused the request, citing section 14(1) - vexatious request, of the FOIA.
3. Following the intervention of the Commissioner, the council revised its position, and provided the complainant with some information.
4. It is the Commissioner's decision that the request would fall within the scope of the EIR, and not the FOIA.
5. Whilst the information provided by the council was not what the complainant required, the Commissioner is satisfied that, on the balance of probabilities, the council does not hold any other information that is relevant to the request.
6. Therefore, the Commissioner does not require the council to take any further action as a result of this decision notice.

## Request and response

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7. On 13 December 2020, the complainant wrote to the council and requested information in the following terms:  
  
    'Information Requesting: With regards to the Council's DOMESTIC VEHICLE FOOTWAY CROSSOVER POLICY - Dated 5th April 2019, please could you provide all documented information of how the following legal requirements were reviewed and considered in the development of this particular policy, prior to the policy being signed off by the Council: 1. Human Rights Act 1998. 2. Local Government Association's "Equality Framework for Local Government". 3. Public Sector Equality Duty Act .'
8. On 13 January 2021, the council responded, advising that it considered the complainant's request to be vexatious, under section 14 of the FOIA.
9. On 16 January 2021, the complainant requested an internal review, and on 15 February 2021, the council provided its response, upholding its original decision.

## Scope of the case

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10. The complainant contacted the Commissioner on 7 March 2021, to complain about the way his request for information had been handled by the council.
11. Following the Commissioner's intervention, the council reviewed its handling of the request. It advised that 'in the spirit of compromise', it would now provide the complainant with a copy of its 'Domestic Vehicle Crossover Policy' document.
12. The complainant remained dissatisfied with the council's response. He advised the Commissioner that the council had provided him with a policy document that was already publicly available, and that he had asked how the Human Rights Act was considered within the development of that policy. The complainant said that the policy has no reference to this, and that the council should either confirm that it has not considered the Human Rights Act, or provide evidence of its consideration, and that it 'then disregarded it'.
13. The Commissioner is to decide whether it is likely that, on the balance of probabilities, the council holds any information within the scope of the complainant's request.

## **Reasons for decision**

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### **Correct Access Regime**

14. Information is 'environmental information' and must be considered for disclosure under the terms of the EIR, rather than the FOIA, if it meets the definition set out in regulations 2(1)(a) to 2(1)(f) of the EIR.
15. Regulation 2(1)(c) of the EIR says that any information on measures such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements or factors of the environment listed in regulation 2(1)(a) and 2(1)(b) will be environmental information.
16. It is the Commissioner's view that the construction of a vehicle crossover for 'front garden open plan parking' will have an effect on the environment, namely the land. The policy document that was disclosed to the complainant states that its purpose is to bring 'a consistent approach to determining applications for crossovers.' The policy sets out the framework on which the council will determine applications received for a crossover; the information contained therein will therefore have an affect on the decisions reached.
17. It is the Commissioner's opinion that the information requested relates to a measure (the policy) likely to affect the elements set out within regulation 2(1)(a), or designed to protect those elements. As such, he is satisfied that it fits squarely into the definition of environmental information set out within regulation 2(1)(c) of the EIR.

### **Regulation 5(1) of the EIR– duty to make environmental information available on request**

18. Regulation 5(1) of the EIR states that 'a public authority that holds environmental information shall make it available on request.' This is subject to any exceptions that may apply.
19. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. The Commissioner will also consider the actions taken by the authority to check that the information is not held, and any other reasons offered by the public authority to explain why the information is not held.

20. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.
21. The complainant advised that the policy document which was provided to him by the council following the Commissioner's initial enquiries, was not what he had requested.
22. The Commissioner accepts that the request was for particular information held about the formulation of the policy, rather than the document itself.
23. As a result, the Commissioner contacted the council again requesting clarification as to whether any other information was held that was directly relevant to the request.
24. In response, the council confirmed that it does not hold any additional information that is relevant to the request.
25. The Commissioner's role is not to consider whether a public authority should hold information that has been requested but whether, on the balance of probabilities, it does or does not hold it.
26. There is no evidence available to the Commissioner that would indicate that the information requested by the complainant should be held, or would be likely to be held, and that the council's position is incorrect.
27. Given the above, the Commissioner has concluded that, on the balance of probabilities, the council does not hold any information falling within the scope of the request.

## Right of appeal

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28. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

29. 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.
30. 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 .....**

**Suzanne McKay**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**