

My ref: FOI 4460  
Your ref:

Date: 27 March 2015

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Mr Robert Whittaker

By email:  
[request-227357-1802d283@whatdotheyknow.com](mailto:request-227357-1802d283@whatdotheyknow.com)

Dear Mr Whittaker

**Re: Environmental Information request Ref FOI 4460 – Internal Review**

I write in response to your email of 22 October, in which you expressed dissatisfaction with the Council's response to your request regarding rights of way data. Please accept my sincere apologies for the delay in the Council's response.

I have considered the handling of your request as an Internal Review under the Environmental Information Regulations and shall deal with the technical handling and each of the points you raise individually. Where reference is made to specific pieces of the legislation, you can find them appended to this letter for ease of reference.

*1. Technical handling*

You submitted your original request on 28 August 2014 and requested GIS data held by the Council on Public Rights of Way in Cambridgeshire, under either the Freedom of Information Act (the Act) or the Environmental Information Regulations (the EIR), as appropriate.

Whist section 1(1) of the Freedom of Information Act provides a right of access to recorded information that is held by a public body at the time a request is received, section 39(1) of the Act states that where an authority is obliged by the Environmental Information Regulations to make environmental information available to the public, then that environmental information is exempt from the provisions of the Freedom of Information Act.



The Council has considered your request and is satisfied that the information that you have requested falls within the definition of environmental information provided under Regulation 2(1) of the EIR and therefore, that EIR is the appropriate legislation under which to respond to your request.

Regulation 5(1) and (2) provide that an authority must make available environmental information upon request and no later than twenty working days after the date of receipt.

In this instance, the Council failed to meet its obligations under Reg 5(2); for this, please accept my apologies. The reason for the Council's delay was as explained to you at the time – significant numbers of requests were being received and, unfortunately, it took longer than anticipated to finalise the Council's response.

The Council responded to your request on 21 October 2014.

In the Council's response, question one (*1/ The name of database/file format used for your Rights of Way Database. (Here, I'm looking for an answer such as "a KML file", "a MySQL database", "an ARCInfo database with PostgreSQL storage".) If multiple databases exist in more than one format, please list all of them.*) was answered in full;

And a spreadsheet was provided for question two (*2/ A copy of the database definition / schema for your Rights of Way Database. (Depending on the format from 1, this could be a file specification, the relevant SQL table definitions, or simply a list of the tables, their relationships, and the fields they contain.) If it is not obvious from any of the field names what information they contain, please provide a brief description.*) which showed a list of the fields and a brief description of the information contained therein.

For question three (*3/ A full copy or data-dump of the information/data contained in your Rights of Way Database. (This should include, at a minimum, each Right of Way's name, parish, reference number, any internal ids, and the geographic/positional data necessary to define the route -- probably in the form of way segments and coordinates.))*), you were advised that some information was already published by the Council and was therefore reasonably accessible via the online map.

It was confirmed to you that the EIR permit access to information rather than to specific documents and that where information is readily accessible in one format, the EIR do not oblige an authority to provide them in an alternative.

Regulation 6(1) governs the form or format in which environmental information is made available and regulation 6(1)(b) specifically states that where information is already publicly available, there is no obligation on an authority to provide it in another way.

The Information Commissioner's [guidance](#) states that where a requestor requires information to be provided in a particular format or form, a public authority does not

have to comply with the preference if it is reasonable to make the information available in another form or format, or if the information is already publicly available and accessible in another form or format. If a public authority considers that the information is publicly available elsewhere, it must be able to direct the requestor to the information can be obtained. The EIR do not contain specific provisions that relate to datasets where a requestor asks that they be provided in a re-usable form, the authority should consider this as a preference for a particular form or format.

In this instance, the majority of the information that falls within the scope of question three is publicly available and has been provided in the spreadsheet that accompanied the Council's initial response. In addition to this, it is also easily accessible on the Council's online map.

In respect of this easily available and already published information, and with consideration to the provisions of Regulation 6(1) and the relevant guidance from the Information Commissioner, the Council has correctly applied the provisions of Regulation 6(1).

In the Council's initial response, you were advised that there were three fields of information included in the Council's GIS tool that were not already published and were not accessible via the online map. These three pieces of information are information that has been recorded under the "CCC\_Maintainable" field, information recorded under the "Last checked" field and information recorded under the "Notes" field.

In respect of the first two pieces of information, i.e. "CCC\_Maintained" and "Last checked" fields, the Council relies on the exceptions found under both Regulation 12(4)(d) and Regulation 12(4)(e) of the EIR.

Regulation 12(4)(d) provides an exception to disclosure where information is unfinished or incomplete. The exception exists to protect work that is currently in progress by delaying disclosure until a final and complete version can be made available.

In this instance, information recorded under these fields is incomplete and still in the course of completion for the purposes of the exception. It consists of internal note fields that have been added as part of an ongoing project to review the Definitive Map. Work is currently happening with partner organisations to create a single accurate record and it is anticipated that details relating to the "CCC\_Maintainable" field will be added to the online map once work has been completed and the accuracy of this information has been established.

The public interest test has been considered in respect of the Council's application of Regulation 12(4)(d). The following arguments were considered in favour of release as part of the public interest test:

- i. Release of the information would inform public debate of the day;

- ii. Release will provide and promote transparency regarding the information recorded internally around Rights of Way GIS Data, the processes followed and the issues encountered;
- iii. Release will allow consideration of the current funding that goes to the team responsible for maintaining Rights of Ways and there will be issues included in the notes, such as legal matter that will refer to spend or potential spend on those matters; and
- iv. Release will provide additional information on the management of rights of ways and ongoing issues that may help in understanding rights of way and how they can be used.

The following arguments were considered in favour of maintaining the exception:

- i. The Council is obliged under EIR to provide accurate information. The 'CCC\_Maintained' data is currently incomplete and in some cases entries may be inaccurate. Disclosing the information in its current state will not allow the correcting of the data by members of the public as they are unlikely to have access to the information required to check the data.
- ii. There is an ongoing project including other organisations (District Councils etc) to collate and update this information. Disclosing draft data at this stage will cause confusion and delays if people referring to that data direct queries and / or complaints to the wrong place. People will be unable to rely on the accuracy of the data. There will be an additional burden on organisations in dealing with queries and / or complaints relating to the data and this will slow down progress on compiling and publishing the accurate data by taking essential resources away from the task.
- iii. Problems will also be caused by disclosure of inaccurate information as old and inaccurate copies of data on the internet will be uncontrollable.

Having given careful consideration to the above, at this time, the public interest test has found in favour of maintaining the exception under Regulation 12(4)(d) in relation to information under these two fields. It was felt that allowing inaccurate information to be published and then to remain in the public domain where it could be relied on incorrectly, outweighed the public interest in release. Given the other information that has already been published and that is available via the online map, the withheld information in these two fields would do little to contribute to the transparency and consideration elements outlined in the arguments in favour of disclosure.

Regulation 12(4)(e) has also been considered in relation to the information contained in the "CCC\_Maintained" and "Last checked" fields, as well as information contained in the third undisclosed field, "Notes".

The "Notes" field is used by the team to make notes for referral to by colleagues and they contain a variety of information, including contact details for gate key holders

(which is personal information relating to individuals), references to ongoing legal matters and general internal reference comments, for example, see consolidation file.

The internal field entries are often written in shorthand which would be understood by the team but would make very little sense to anyone outside of the team. This would contribute greatly to the confusion and misinterpretation that would arise as a result of release and providing clarification for each entry would be likely to make the request manifestly unreasonable for the purposes of Regulation 12(4)(b).

Regulation 12(4)(e) provides an exception to release where information concerned is internal information. It exists to allow authorities to discuss proposals and decisions without outside interference and space to think in private whilst reaching decisions. It can also apply to competed documents. The definition of communication for the purposes of Regulation 12(4)(e) is broad and will include information that has been placed on a file to allow others to consult it.

Regulation 12(4)(e) is a class based exception which means that there is no requirement to consider the sensitivity of the information in order to engage the exception.

The public interest test has been considered in respect of the Council's application of Regulation 12(4)(e). The following arguments were considered in favour of release as part of the public interest test:

- i. Release of the information would inform public debate of the day;
- ii. Release will provide and promote transparency regarding the information recorded internally around Rights of Way GIS Data, the processes followed and the issues encountered;
- iii. Release will allow consideration of the current funding that goes to the team responsible for maintaining Rights of Ways and there will be issues included in the notes, such as legal matter that will refer to spend or potential spend on those matters; and
- iv. Release will provide additional information on the management of rights of ways and ongoing issues that may help in understanding rights of way and how they can be used.

The following arguments were considered in favour of maintaining the exception:

- i. There is a reduced interest in releasing internal notes in many cases as the shorthand notes will not add any great value to peoples' understanding of RoW as they will not make much sense without additional clarification and context.
- ii. The lack of such clarification and context is likely to lead to misinterpretation of the data and an increase in workload in dealing with queries / complaints / legal disputes arising from this, compromising the Council's ability to complete other RoW tasks and responsibilities.



- iii. Providing the necessary clarification and context would require substantial work that would be 'manifestly unreasonable' under EIR.
- iv. Additionally the notes include information such as personal data and references to ongoing legal disputes / queries. It would not be in the public interest to disclose such information widely into the public domain, breaching the Data Protection Act and potentially prejudicing future legal proceedings – exceptions that have not been considered at this stage because of the application of Regulation 12(4)(e).

Having given careful consideration to the above, at this time, the public interest test has found in favour of maintaining the exception under Regulation 12(4)(e) in relation to information under the three withheld fields. Given the other information that has already been published and that is available via the online map, the withheld information in these fields would do little to contribute to the transparency and consideration elements outlined in the arguments in favour of disclosure.

Having reviewed in full the Council's technical handling of your request, the outcome is summarised below:

- That the Council was correct to deal with your request under the EIR rather than Freedom of Information;
- That the Council failed in its obligations under Regulation 5(2) in that the final response was provided outside of the twenty working day deadline;
- That the Council acted within the provisions of Regulation 6(1) in refusing to provide information in an alternative form and format where it was already publicly available and easily accessible by other means;
- That the Council was correct to rely upon the exception under Regulation 12(4)(d) in respect of the "CCC\_Maintained" and "Last checked" fields and applied the public interest correctly;
- That the Council was correct to rely upon the exception under Regulation 12(4)(e) in respect of the above two fields and the "Notes" field and applied the public interest test correctly.

I therefore uphold the part of your complaint in respect of the failure by the Council to respond within twenty working days and I uphold the Council's initial application of the exceptions contained under Regulation 12(4).

*2. "First, I believe that your response is incomplete. While your answers to requests 2 and 3, deal with all the meta-data about each Right of Way, they omit any mention of the geographic and presentational information that must also be stored in the MapInfo files. I believe it was clear from my request that I also wanted details and copies of what geographic information you hold... For question 2, I would expect details of how each right of way is stored -- e.g. is each a single MapInfo object, what type of object(s) are used, what coordinates are stored (OSGB grid references, WGS84 lat/lon, etc.), and what other information (if any) is present?... For question 3, I would expect you to consider providing me a copy of (the information in) the .map and .id*

*files you have. (As I explained in my original request, the precise geographic information is not accessible via your online map.)"*

Your request was seeking details regarding the "Rights of Way database" and clarified this as "taken to just refer to those parts or tables that hold Public Rights of Way data".

Each Right of Way is created individually and stored as a linear object in a table. This information is published on the Council's online map, or not, as per the explanation given in the Council's original response.

The MapInfo file table contains five components: .TAB, .DAT, .IND, .MAP, .ID.

Where this information is not publicly available, the Council considers it to be excepted from disclosure under Regulation 12(4)(d) as they "relate to material which is still in the course of completion, to unfinished documents or to incomplete data". Please see the response given to *"Technical handling"* above for further details about the application of the exceptions.

The Definitive Map Review Project is currently ongoing to update the Definitive Map and Statement to provide an accurate and reliable legal record of registered paths for the modern county of Cambridgeshire.

The legal documents the team currently work with were inherited from previous local authorities and date from the 1960s-1970s. The new Definitive Map and Statement will take account of the modern development of the County. It will be available online, although the actual legal original will be a sealed hard-copy kept in the County Council archive. When outstanding legal errors have been resolved the documents will be printed, sealed and adopted as the new Definitive Map and Statement for the County of Cambridgeshire. This will be legally updated on an annual basis to ensure that it remains accurate and up-to-date.

Rights of Way data is on the Council's GIS as a working tool. For several years the Council has decided to go beyond its legal obligations in making this version of the information available to view online, but it is not made available for download. This is due to the incompleteness of the GIS data and the legal inaccuracies contained in the data that makes it important that the Council is able to ensure that this version is only available with suitable caveats that it should not be relied on for determining the position or alignment of any public right of way, and that it is presented in a way so that anyone who has a query can refer it to the appropriate team.

3. *"Secondly, I must disagree with your application of EIR 6(1)(b). While it is true that the information is "publicly available", and that the information for any individual Right of Way is "easily accessible" via your online map (assuming you already know roughly where it is located), I do not agree that the complete set of information I requested taken as a whole and covering all the rights of way is "easily accessible" as required by 6(1)(b)." For me to access the requested information for every right of*

*way through your online map, I would need to manually click on each route on the map individually. This would involve lots of zooming and scrolling around, as there are a lot of Rights of Way. I'd probably also get many duplicates, increasing the effort still further, since it is not always obvious from the map where one right of way stops and another starts. Since I do not even know the total number of Rights of Way, I could never be sure that I hadn't missed a small section with a different number somewhere.*

The Council has assessed this and I can confirm that the fact that you would need to look at individual entries manually does not prohibit it from being “easily accessible”. The information held by the Council in relation to your request amounts to the individual rights of way that are recorded and this information is publicly available via the map.

The fact that you wish to re-use the information in a way that allows you to import details of every right of way into another system does not affect this point.

The question is whether the information itself can be accessed, as EIR is solely concerned with the matter of making environmental information available. Regulation 6 does not impose an obligation on a public authority to provide information in different ways dependent on the precise requirements of how every individual requestor wishes to use the information.

Indeed, this situation is covered by Regulation 6 focusing on whether it is “reasonable” to make it available in another way. The Council has made the information available via the online map, in addition to the requirement to make the information available for inspection, in a way that meets the needs of the vast majority of people interested in this information. The Council therefore maintains that the information is available and is under no obligation to provide it in alternative form or format.

*4. “For the “Width” column, you state that it will be added to the online map shortly. If it is not currently available, then 6(1)(b) does not apply. Please provide this information in a reusable electronic format, together with a way to identify which path each width belongs to.”*

In respect of the width data, you have contested the Council’s response that it will be available online soon does not make it currently available. The information was –and is – published on the online map. The Council’s initial response had been drafted on the basis that this data was not viewable and this was not corrected prior to sending the Council’s original response. I apologise for this oversight. For clarity, I can confirm the Council’s position is that the information was published on our online map and therefore Regulation 6(1)(b) does apply.

*5. “Finally, I note that you have also failed to respond to my request to reuse the information you have provided. As 6(1)(b) is not an exemption to providing*



*information, I believe my re-use request covers the information you state is available in your online map. Please respond to this request as you are required to do under the Reuse of Public Sector Information Regulations.*

When a request is received to re-use public sector information under the Re-use of Public Sector Information Regulations 2005, Regulation 7(1) provides that a public sector body **may** (my emphasis) permit re-use.

This does not convey a legal obligation upon an authority to permit information to be re-used simply because it has been requested. Therefore, the Council does not agree to allow re-use of the information at this time.

6. *“Section 19(2A) of the Freedom of Information Act requires Public Authorities to include a requirement in their publication scheme to publish certain datasets in a reusable format...I therefore expect you to make the requested data available in a reusable format without further delay.”*

Section 102 of the Protection of Freedoms Act 2012 adds new provision to sections 11 and 19 of the Freedom of Information Act in respect of datasets. Of particular relevance is section 102(4) which adds the section you refer to above.

Whilst the provisions of section 19(2A) apply to datasets that have been requested, regardless of whether they are exempt, and therefore do incorporate datasets that comprise environmental information, the obligation on the authority is to consider whether it would be reasonable and appropriate to make the dataset available for re-use.

The Council has considered this and its decision is that, due to the inaccurate nature of the datasets and the inherent problems that allowing re-use of this information would create, at this time, this information is not going to be published in a re-usable format.

The Council's review of your environmental information request is now complete. If you remain dissatisfied you are entitled to refer the matter to the Information Commissioner's Office (ICO). Details on submitting a complaint to the ICO can be found on their website at the following address:  
<http://www.ico.org.uk/complaints/getting>

Alternatively they can be contacted by post at the following address: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Yours sincerely

Jo Withey  
Information Governance Officer

## Appendix 1 – relevant legislation

### Freedom of Information Act 2000

#### **1 General right of access to information held by public authorities.**

(1) 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.

#### **39 Environmental information.**

(1) Information is exempt information if the public authority holding it—

- (a) is obliged by environmental information regulations to make the information available to the public in accordance with the regulations, or
- (b) would be so obliged but for any exemption contained in the regulations.

### Environmental Information Regulations 2004

#### **Interpretation**

2.—(1) In these Regulations—

“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—

- (a) 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;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (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;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment

referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

### **Duty to make available environmental information on request**

**5.—**(1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

### **Form and format of information**

**6.—**(1) Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless—

(a) it is reasonable for it to make the information available in another form or format; or

(b) the information is already publicly available and easily accessible to the applicant in another form or format.

(2) If the information is not made available in the form or format requested, the public authority shall—

(a) explain the reason for its decision as soon as possible and no later than 20 working days after the date of receipt of the request for the information;

(b) provide the explanation in writing if the applicant so requests; and

(c) inform the applicant of the provisions of regulation 11 and of the enforcement and appeal provisions of the Act applied by regulation 18.

### **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.

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

(b) the request for information is manifestly unreasonable;

(d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or

(e) the request involves the disclosure of internal communications.

## Re-use of Public Sector Information Regulations 2005

### Permitting re-use

7.—(1) A public sector body may permit re-use.

(2) Where a public sector body permits re-use, it shall do so in accordance with regulations 11 to 16.

## Protection of Freedoms Act 2012

### 102Release and publication of datasets held by public authorities

(1)The Freedom of Information Act 2000 is amended as follows.

(4)In section 19 (publication schemes)—

(a)after subsection (2) insert—

“(2A)A publication scheme must, in particular, include a requirement for the public authority concerned—

(a)to publish—

(i)any dataset held by the authority in relation to which a person makes a request for information to the authority, and

(ii)any up-dated version held by the authority of such a dataset, unless the authority is satisfied that it is not appropriate for the dataset to be published,

(b)where reasonably practicable, to publish any dataset the authority publishes by virtue of paragraph (a) in an electronic form which is capable of re-use,

(c)where any information in a dataset published by virtue of paragraph (a) is a relevant copyright work in relation to which the authority is the only owner, to make the information available for re-use in accordance with the terms of the specified licence.