



Mr. I Louden
Request-450720-3f533dcf@whatdotheyknow.com

Clarence Court
10-18 Adelaide Street
BELFAST
BT2 8GB
Tel: (028) 9054 0682
Email: Paul.McGrory@infrastructure-ni.gov.uk

Your reference:
Our reference: DFI/2017-0491

5 March 2018

Dear Mr. Louden

You wrote to me on 28 December 2017 requesting an internal review of the handling of your Freedom of Information (FOI) request for information regarding copies of DfI Roads reports into three planning applications in the Antrim and Newtownabbey Borough Council area, received in the Department on 06 December 2017. You had received a response to your request on 20 December 2017, from Mr. David McQuitty, reference DFI/2017-0491.

An explanation of my role with regard to Internal Reviews and a summary of the correspondence are attached at **Annex A**.

I have examined the information relating to your request and completed my review. I can now inform you that, having reviewed the handling of your request, the Department did fulfil its obligation under the Environmental Information Regulations 2004. I would like to take this opportunity to explain my findings.

You are asking for copies of "reports stating the Department's requirements for road improvements" associated with three planning applications in the Antrim and Newtownabbey Borough Council area.

Background/process

The Department for Infrastructure acts as a consultee within the planning process in Northern Ireland. Advice or comments provided by consultees are material considerations taken into account by the planning authority when forming an opinion on the planning application, but it is the planning authority that will make the decision. However, consultees are obliged to respond in advance of the consultation expiry date. If no response is received within that time period, the planning authority will proceed to make a decision on the planning application.

Where a planning application appears to require the laying-out or construction of streets, Article 3 of The Private Streets (NI) Order 1980 requires the Department to determine the width, position and arrangement of the streets.

When a planning application is submitted to the relevant planning authority, DfI Roads are contacted to advise whether there are any issues in relation to the proposed road layouts submitted in developers' planning application drawings.

Those designing road layouts for developments are required to comply with the road design standards set out in The Private Streets (Construction) Regulations (Northern Ireland) 1994. Property developers will, generally, seek to design roads within their developments in line with these standards, because it is in their interests, both in terms of achieving planning permission and in having the roads within the development adopted as part of the public road network.

Guidance is available to the public on the Department's website that makes clear to developers what they must do, with the regard to the road layouts, in preparing their planning applications (<https://www.infrastructure-ni.gov.uk/articles/development-control-information-developers>).

When invited by the planning authority to comment on a planning application, relevant DfI Roads staff will examine the plans submitted to ensure that the proposals for the layout of streets within the development, and access onto the public road network, are acceptable from a design and safety point of view. Depending on the nature and impact of the development, and the plans submitted, DfI Roads may require that the developer provide for the improvement of a section of the public road network. DfI Roads will then respond to the planning authorities stating whether or not the designs submitted are acceptable.

However, the Department is not required to provide a report, as such, when advising the planning authorities. It is commonplace, when responding to the planning authority, for DfI Roads simply signify approval or highlight where the proposed development's design is inadequate. In circumstances where the planning application is acceptable, a simple letter, confirming this, and, if necessary, a copy of the Development Control Checklist, will be all the information that will be available. Where a planning application does not satisfy the necessary requirements, however, as in the case of U/2011/0141/F, DfI Roads will provide greater detail, highlighting those elements of the road layout that are unacceptable.

It is the responsibility of the planning authority to publish all relevant information on the Planning Portal, including copies of consultation responses. At the time of the planning application the planning authority was the Department of the Environment's (DOE) Planning Service. However, most planning functions, and their associated records, transferred to the Councils in 2015.

Handling of your request

As I have explained, above, DfI Roads/Roads Service does not submit reports to the planning authorities when acting as a consultee in the planning process. In response to your request, therefore, Mr. McQuitty would have been entitled to state that, as no reports existed, the information was not held. However, Mr. McQuitty sought to comply with the obligation on public authorities to be helpful and provided you with what information DfI Roads could access.

As Mr. McQuitty advised, responses that DfI Roads/Roads Service provided in relation to planning applications may be found online, via the Northern Ireland Planning Portal. You complained that you could not find the documents he referred to, when you used the Planning Portal.

The link that Mr. McQuitty provided was to the Planning Portal's "Simple Search" page. I have used this link myself and have found, on entering the planning application reference in the Search box, all associated planning application pages displayed.

Once any application is selected, clicking on the "documents" tab brings up all of the correspondence received from statutory consultees, including DfI Roads. I attach copies of the documents accessible via this method. I would recommend not limiting any search to the original application, but also considering associated applications identified by the Planning Portal search function.

You will note that I have not included a consultation response for LA03/2016/0357/F, because nothing is available on the website. However, as this application was simply for amendments to previously approved house types, rather than additional numbers of dwellings, it is probable that the planning authority did not seek to consult with DfI Roads.

The search for the above application did, however, identify that there is, on the other hand, a consultation response in relation to LA03/2016/1072/F, a variation to LA06/2016/0357/F, allowing for an additional 15 dwellings to be occupied in advance of the relief road becoming operational.

It appears, however, that the Planning Portal not only does not hold a copy of the consultation response for the original planning application, U/2009/0406/F, but that there are no application documents, of any sort, available for that application. I understand that this is because the Planning Portal was not introduced until after this planning application had been processed, and as a result the system only records that permission was granted to the planning application.

However, I would point out that such documents do exist on the Planning Portal for the amending planning applications that were submitted and approved for that development (U/2010/0418/F, U/2011/0151/F, and U/2014/0189/F).

The planning authority, in this case, is now Antrim and Newtownabbey Borough Council and this Council should, therefore, hold the planning file for U/2009/0406/F, as the file should have been transferred by DOE. DOE Planning Service would have kept correspondence received in relation to planning applications for ten years, it is reasonable to believe that, with the transfer of functions, including staff and records, that Antrim and Newtownabbey Borough Council would still hold the correspondence relating to U/2009/0406/F. If you are seeking any of the documents associated with this planning application that should have been made public, but not available via the Planning Portal, I would recommend contacting the Council, who should be able to provide you with access to the records.

The Environmental Information Regulations require that, unless the public interest favours withholding the information, public authorities should make environmental information available when requested. However, if information is not held there is no requirement to create information in response to any request. The right that the legislation has established is to information held, not to copies of records (although that may be the simplest approach).

The Department, in line with the guidance provided by the Information Commissioner's Office, seeks to make information available in the most accessible manner possible. In cases where, as with the Planning Portal, information is already

in the public domain and readily accessible online, it is entirely reasonable to direct requestors to the location of the information.

The Department did carry out a search of its records, to determine whether it held a copy of the consultation response for planning application U/2009/0406/F, but no record was found. I asked that a further search of Departmental records be carried out. This search did not uncover a copy of this consultation response. As a result, I must advise that the information is not held by the Department.

The Department is not expected to permanently retain copies of all documents that it generates, indeed, it is good records management practice to keep only those records that are necessary for the Department's business purposes. The Department will, naturally, retain "live" documents, but, once a record is no longer "live" it will become subject to retention and disposal processes.

The Department is required to comply with the requirements on the Public Records Act (NI) 1923 and by the Disposal of Documents Order (S.R. & O. 1925 No 167). The DfI Retention and Disposal Schedule identifies both the retention period for various record types and, following this retention period, the disposal arrangements for documents that the Department holds. These disposal arrangements may include destruction, but can also include ongoing retention by the Department, or transfer to the Public Record Office of Northern Ireland for permanent preservation.

The retention period for records, once they are no longer considered "live", depending on the records type, can be as little as three years, after which period a review will be carried out to determine the appropriate disposal outcome. Responses to consultations on Planning Applications made by the Department's Roads function are scheduled for destruction after five years. Given this it is expected that, as in this case, the Department will not be in possession of the information.

Other issues raised

In your request for an internal review, you complained that *"Mr McQuitty... preferred to dedicate a large section of his reply to warning me not to misuse any information that he has supplied - which I remind you is nonexistent"*.

I should explain that the wording of which you complain is a standard form of words that the Department is obliged to include whenever information is made available to members of the public (including those occasions where the Department informs a requestor that the information is already in the public domain). It is necessary to make clear to individuals that questions of copyright and appropriate reuse must be considered should they wish to make use of information provided in response to a Freedom of Information Act or Environmental Information Regulations request.

Mr. McQuitty had included a link to access the requested information in his response, you had, therefore, been provided with the requested information for the purposes of the legislation. As a result, Mr. McQuitty was obliged to include the copyright and reuse information in his response.

You suggest that *"the Department may have lost the main report referred to in planning application U/2009/0406/F. This document has been referred to in numerous recent planning applications and I simply want to see the content for myself. Is the Department stating that this report no longer exists?"*

I should make clear that the Department's position is that a report, as requested and in relation to this planning application, never existed, rather than that a report no

longer exists. DfI Roads does not submit reports, as such, when acting as a consultee for planning applications. The only information that will have existed will have been a routine letter to the planning authority and, potentially, a checklist. Mr. McQuitty made clear, in his response, that DfI Roads does not hold, in a recorded format, correspondence regarding a planning application with the reference U/2009/0406/F.

The planning authority, Antrim and Newtownabbey Borough Council, may hold information about this planning application, or even any outline planning application submitted relating to this planning application. As Mr. McQuitty advised, where this Department does not hold the information, you may wish to contact the relevant planning authority.

The Department is legally obliged to make available, where it is in the public interest, environmental information that it holds, on request. There is no requirement to create new records where recorded information that does not exist. I am satisfied that the Department has, in this case, complied with its legal responsibilities.

I hope you find this helpful. If you are dissatisfied with my findings, you have the right to appeal to the Information Commissioner and may do so by writing to him at the following address:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

I am copying this letter to Mr. McQuitty as he provided you with the initial response.

Yours sincerely,

A handwritten signature in dark ink, consisting of a stylized 'P' followed by a long, sweeping horizontal line that curves upwards at the end.

PAUL MCGRORY
Departmental Information Manager

Annex A

My role as Departmental Information Manager

As Departmental Information Manager, my role in carrying out an 'Internal Review' following a complaint or 'appeal', is pursuant to the Secretary of State for Constitutional Affairs' Code of Practice [which now comes under the responsibility of the Secretary of State for the Department of Justice] on the discharge of public authorities' functions under Part 1 of the Freedom of Information Act 2000 and, by extension, the Environmental Information Regulations. Section 39 of the Code of Practice requires "a fair and thorough review of the handling issues and of decisions taken pursuant to the [Freedom of Information] Act, including decisions taken about where the public interest lies in respect of exempt information." Under the Environmental Information Regulations, this review of the handling of your request for information is a "reconsideration", a public authority obligation contained within Regulation 11 (Representations and Reconsideration). I have no role or locus with regards to any issues arising out of the substance of any information sought or the resolution of complaints, which may be the subject matter of the information.

Summary of correspondence

Request - 06 December 2017

Could you please provide a copy of the Roads Service reports stating the Department's requirements for road improvements in relation to the following planning applications (Antrim & Newtownabbey):

- U/2009/0406/F;
- LA03/2016/0357/F; and
- U/2011/0141/F

Response - 20 December 2017

Thank you for your email dated 6 December 2017 regarding the above and requesting information under the Freedom of Information Act requesting any information held by this Department in relation to the following:

Could you please provide a copy of the Roads Service reports stating the Department's requirements for road improvements in relation to the following planning applications (Antrim & Newtownabbey).

- U/2009/0406/F;
- LA03/2016/0357/F; and
- U/2011/0141/F

In considering your request on behalf of the Department I have determined that the information requested falls under the aegis of the Environmental Information Regulations 2004, as opposed to the FOI Act 2000. A guide explaining the Environmental Information Regulations can be found at:

<https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/what-are-the-eir/>.

All responses stating the Departments requirements in relation to planning applications U/2011/0141/F and LA03/2016/0357/F can be found on the NI Planning Portal which also includes the dates of all correspondence. The NI Planning Portal can be found at: <http://epicpublic.planningni.gov.uk/publicaccess>.

There is none of the requested information held on our file for planning application U/2009/0406/F. I also note there does not appear to be any of the requested information held on the NI Planning Portal. You may wish to request this information directly from the planning authority.

Internal Review request - 28 December 2017

I am writing to express my dissatisfaction with your department's handling of my freedom of information request dated 6th December 2017. In short, I asked for a "copy of the Roads Service reports stating the Department's requirements for road improvements in relation to the following planning applications (Antrim & Newtownabbey).

U1200910406/F;

LA03/2016103571F; and

U12011101411F."

The request was "handled" by Mr D McQuitty representing the Dfi who has provided none of the requested information. Mr McQuitty has preferred to dedicate a large section of his reply to warning me not to misuse any information that he has supplied - which I remind you is nonexistent. He suggests that the information on two of the reports is available on the NI Planning Portal website but, if this is the case, I cannot find it, either during searches carried before the FOI request or since.

Mr McQuitty further suggests that I obtain the information from the Planning Department directly. I should inform you that my (and indeed my local MLA's) lack of success in this respect is what has led to the FOI request we are discussing.

Possibly, more worryingly, it would seem that the Department may have lost the main report referred to in planning application U/2009/0406/F. This document has been referred to in numerous recent planning applications and I simply want to see the content for myself. Is the Department stating that this report no longer exists?

Mr McGrory, I do to an extent sympathize with the Department for Infrastructure's problems of trying to run a "rudderless ship" but this does not dissolve you of your legal responsibilities. Please provide the information requested.

