

Customer Relations and Information Governance Team

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Our ref: CS903864

28 March 2014

Dear Dr Wozniak

Complaint: CS903864 – Traffic Management Plan for Sidmouth Folk Festival

Thank you for your recent email dated 6 March 2014 in which you register your dissatisfaction that your request (made by yourself using Freedom of Information Act 2000) for a copy of the draft Traffic Management Plan (TMP) for the Sidmouth Folk Festival was refused under the Environmental Information Regulations 2005. You complain that:

1. The document has not been made available to you under FOI
2. That the Council are acting inconsistently – reporting that the TMP was as stated by the Council "still in the course of completion,.... incomplete data". Why was it considered good enough to tell EDDC that DCC was satisfied with the TMP for the festival this year?
3. That it is in the public interest to see that the document is properly discussed

In line with Stage 2 of the Customer Feedback Procedure I have gathered evidence from the correspondence shared between yourself and Devon County Council, as well as interviewing Mr Martin Lawrence, Senior Information Governance Officer and Mr Paul Wilson, Senior Highways Events Advisor. I have also spent some time considering the exemptions applicable to the FOIA and the EIR in a bid to ensure that information previously provided is accurate and that exemptions have been correctly applied.

1. The document has not been made available to you under FOI

You ask that your initial request for the document is reconsidered and made available to you under FOI. I have spent some time with Mr Lawrence, who is a well experienced and senior officer within the Information Governance Team.

Resulting from these discussions I can report that the decision to handle your request under the EIR as opposed to the FOI was not intended to provide the Council with the means to refuse your request. Should your request have been handled using the FOIA

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the information would still have remained exempt under Section 43(2) of the Act (Commercial Interests).

I am informed that the decision to handle your request, and subsequent complaint under the EIR was taken as it was Mr Lawrence's view that the information contained in the TMP constitutes Environmental Information as defined by [Regulation 2\(1\) of the EIR](#) and therefore this was the most appropriate legislation to suit your request.

In arriving at this decision Mr Lawrence paid regard to the Information Commissioner's Office (ICO) guidance document entitled "[What is Environmental Information](#)". I should like to draw your attention to page 3 of this document which outlines the definition of Environmental Information from Regulation 2(1):

"environmental information" has the same meaning as in Article 2(1) of the Directive[2003/4/EC], 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"*

Having considered the contents of the TMP Mr Lawrence felt that information concerning traffic flows met the criteria of a factor which was likely to affect elements of the local environment. I am in agreement with this finding. Furthermore he felt that traffic management plans would constitute a measure as outlined above. Mr Lawrence spent some time checking this information to ensure absolute certainty and confirmed that his interpretation is compatible with that of the ICO in [Norwich County Council 29/11/2010 \[FS50305901\]](#), who ruled that discussions about the traffic aspects of a planning consent would on a balance of probabilities, constitute a measure as defined at Regulation 2(1)(c).

2. That the Council are acting inconsistently – reporting that the TMP was as stated by the Council "still in the course of completion,.... incomplete data". Why was it considered good enough to tell EDDC that DCC was satisfied with the TMP for the festival this year?

You should be aware that Devon County Council is not responsible for the licensing of the Sidmouth Folk Festival and has no statutory role in authorising the event's Traffic Management Plan.

Devon County Council was passed the Draft Sidmouth Folk Festival TMP as part of a non-statutory consultation with the event organiser; views were expressed informally by

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Devon County Council Highways Officers (to include Mr Wilson) at the time, based on the contents of the TMP.

The Council's Highways Officers did express their support for the principles that were being developed in the draft TMP. However the Council made it clear in its discussions with the event organisers that as and when a final version was presented, it would need to be discussed further with the local Police and their Event Planning Officer before it could be finally agreed as an acceptable document.

3. That it is in the public interest to see that the document is properly discussed

With regard to the Council's decision to withhold the TMP from disclosure, please note that this decision was taken following careful consideration of the Information Commissioner's Public Interest Test and of the arguments for and against disclosure. You should be aware that the decision to consider this matter under the EIR lends added weight to the public interest in disclosure as this legislation has an in-built presumption in favour of disclosure which the FOIA does not. However the Council still maintains that the public interest is best served through withholding this information from disclosure at this current time.

In withholding the TMP Mr Lawrence examined specific guidance from the ICO concerning the Exception at Regulation 12(4)(d) entitled "[Material in the course of completion, unfinished documents and incomplete data](#)". Following discussion with Mr Lawrence, he felt the following points were of particular concern when he considered the public interest test in this case:

(a) Misleading Information

In its draft form the TMP contained information which was not entirely accurate and would therefore have been misleading if made available to the public. Given that it is currently not possible for the council to place this information into context owing to on-going discussions to which the Council is not party, Mr Lawrence felt that this weighed in favour of withholding the information.

(b) Distracting public debate

Mr Lawrence felt that given the TMP consists of inaccurate information, this would be likely to distract public debate and in turn could prejudice on-going negotiations involving the author of the TMP. Mr Lawrence placed significant weight to this public interest in withholding the TMP.

(c) Content of the information

Given that the information contained in the TMP was out of date and in parts inaccurate, Mr Lawrence did not feel that releasing the information would further the public interest in openness and transparency. Furthermore he did not believe that disclosure would assist the public to debate the issues concerning Sidmouth Folk Festival and of the management of traffic resulting from this festival.

As well as the points listed above, Mr Lawrence also considered the points raised at paragraph 15;

"A public authority may well produce the types of material described in regulation 12(4)(d) as part of the process by which it formulates policy and reaches decisions. This is discussed above in relation to the definition of material in the course of completion. In such cases the public authority may argue that it needs a 'safe space' in which to do this away from public scrutiny, and that disclosing this material would harm that safe space.

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This is an argument about protecting the integrity of the decision making process. Whether it carries any significant weight in the public interest test will depend very much on the timing of the request. If the process of formulating policy on the particular issue is still going on when the request is received, it may be that disclosure of drafts and unfinished documents at that stage would make it difficult to bring the process to a proper conclusion.”

I am informed that Mr Lawrence felt that this was of particular relevance when considering the public interest test as he felt that given the circumstances of this case there was a public interest in ensuring that the parties could communicate freely within “a safe space” with a view to refining the final document.

For the reasons I have explained, the Council maintains that the balance of public interest was best served through withholding this information from disclosure at this time. However please note that the Council would be minded to consider its position again in the future, when more information is available to the Council and when negotiations concerning the author have been concluded.

In summary, your complaint as highlighted in your email of 6 March 2014 has been reviewed in accordance with the County Council’s Customer Feedback Procedure (Stage 2 complaint). I am not able to uphold any element of your complaint, but trust you accept the explanations I have provided in order to reach this conclusion.

If you remain dissatisfied, there are two routes which can be taken. If you remain of a view that the draft TMP should be disclosed, you may take your complaint to the Information Commissioners Office who are available on 0303 123 1113 or <http://ico.org.uk/complaints>. They can also be reached by post at Information Commissioners Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5 AF. Alternatively, if you believe that the service provided by the County Council has left you disappointed, you may consider discussing this with the Local Government Ombudsman (LGO), the regulator for local authorities. The LGO can be contacted on 0300 061 0614 or in writing to: PO Box 4771, Coventry, CV4 0EH.

Yours sincerely

Sally Richardson
Senior Customer Relations Officer