

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

### **Decision notice**

**Date:** 1 November 2022

**Public Authority:** Buckinghamshire Council  
**Address:** Council Offices  
Walton Street  
Aylesbury  
Buckinghamshire  
HP20 1YU

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

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1. The complainant requested from Buckinghamshire Council (the Council) information relating to Westhorpe Interchange project. The Council provided some information relating to the request, but refused the remaining information under regulation 12(4)(d) (material in the course of completion, unfinished documents and incomplete data) of EIR.
2. The Commissioner's decision is that regulation 12(4)(d) of EIR is engaged and the public interest in maintaining the exception outweighs the public interest in disclosure. The Commissioner does not require the Council to take any steps as a result of this decision.

#### **Request and response**

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3. On 10 December 2021 the complainant wrote to the Council and requested information in the following terms:

- "a) Please provide copies of any safety audits that have been completed, together with their completion dates. If no safety audit has been completed as yet, then please confirm that this is the case.
- b) Please specify the names of the 'overseeing organisations' and the 'independent auditors' (the latter being part of the formal safety audit process). These phrases are from a letter from [name redacted] dated July 26th (ref MPE-27181).
- c) Please provide details of the type of vehicle restraint barrier to be included along the section of footway which will be adjacent to turning vehicles. Please also specify the level of impact protection that it is envisaged that this barrier will provide. This barrier has been mentioned in correspondence ref MPE-27181.
- d) Please provide the date of the decision to change the project scope from (i) the text in the public consultation (stated below), to (ii) the text in the correspondence ref MPE-27181 (stated below). Please also advise who made this decision and provide the minutes of the meeting at which this was agreed."
4. On 13 January 2022 the Council provided its response. It stated the request was handled under EIR and confirmed that it does hold information falling within the description specified in the request. The Council provided some information and redacted third party personal data under regulation 13 of EIR.
  5. On 20 January 2022 the complainant acknowledged the Council's response, and sent a follow-up request to its original response. She asked the Council "...I would nevertheless like to also have a copy of the original RSA1, which is covered by my request."
  6. On 17 February 2022 the Council provided its response to the updated request. It confirmed that it does hold some information but withheld it under regulation 12(4)(d) (material in the course of completion, unfinished documents and incomplete data) of EIR.
  7. On 27 February 2022 and 3 March 2022 the complainant asked the Council for an internal review. On 26 April 2022 the Council provided its internal review response and maintained its position to withhold the information under regulation 12(4)(d) of EIR.

## Reasons for decision

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### Regulation 12(4)(d) – material in the course of completion

8. Regulation 12(4)(d) of the EIR provides that a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.

### The Council's position

9. The Council informed the complainant that the document requested was never completed in full and has been superseded by the Final RSA 1 document. It explained that "Whilst this draft document is referred to in the final RSA 1 document, that has already been shared with you, the superseded document does not form part of the formal road safety audit process. Therefore, the Council believes this falls outside of your original request for 'completed' road safety audits." However, the Council said that it still considered the request for this document and confirmed that it does hold some information. The Council maintained its position and withheld the information under regulation 12(4)(d) of EIR.
10. The Council further explained that "the Draft Report constitutes an unfinished document at the time of the request and still remains so following the publication of a final version." The Council said that as the document is unfinished, any subsequent engagement with National Highways and other organisations involved with this process, will only make reference to the completed RSA 1 document that contains full and complete responses from the designers/overseeing organisations and any previous incomplete versions will not be taken into account.
11. The Council believes that disclosing unfinished or incomplete information would hinder and distract its officers from completing the work of which the unfinished or incomplete information is a part, as they would need to answer queries from the public regarding any inaccurate information.
12. The Commissioner is satisfied the information is incomplete data and relates to material in the course of completion. He accepts that at the time of the request, the information in question constitutes an unfinished document, and this status remains until the publication of a final version of the document. The Commissioner finds the exception is engaged and the Council was entitled to rely on regulation 12(4)(d) of the EIR. He has therefore gone on to consider the public interest test.

### **Public interest test**

13. In considering the public interest in this case, the Commissioner is mindful that regulation 12(2) of the EIR instructs a public authority to apply a presumption in favour of disclosure.

#### Public interest in disclosing the information

14. The Council accepts there will always be some public interest in disclosure of environmental information to promote transparency and accountability of public authorities, greater public awareness and understanding of environmental matters, and effective public participation in environmental decision-making. All of which, the Council said, ultimately contribute to a better environment.

#### Public interest in maintaining the exception

15. The Council considers the public interest in maintaining this exception lies in the fact that the information is incomplete and would create a misleading or inaccurate impression. The Council said it would be difficult and would require a disproportionate effort to provide an explanation once the incomplete information is released into the public domain. The Council stated there is no public interest in hindering and distracting officers from completing the work of which the unfinished or incomplete information is a part, by answering queries from the public concerning any inaccurate information.
16. Although there is a public interest in transparency, the Council argued there is no public interest in releasing information around a safety audit that has not been concluded, has not been relied on.

#### Balance of the public interest

17. The Commissioner is aware that there is always a general public interest in disclosing environmental information, derived from the purpose of the EIR. He recognises that, as the public interest can cover a wide range of values and principles relating to what is the public good, or what is in the best interests of society, there are always arguments to be made on both sides.
18. The Commissioner accepts that having the requested document in the public domain, would clarify the Council's process and inform its decisions on the potential to improve safety with regard to active travel at the interchange in question.

19. Whilst the Commissioner recognises the complainant's concerns, he considers that there are strong public interest arguments in favour of non-disclosure of the information requested. It would clearly hinder and distract staff at the Council from completing the work required to finish the document/information concerning a safety audit.
20. The Commissioner also notes that projects such as this which concerns the Westhorpe Interchange, would already generate a large amount of information which is made publicly available. He understands that it would create confusion if the Council disclosed draft documents at each stage of the project.
21. The Commissioner is mindful of the actual wording of the complainant's original request which was for "copies of any safety audits that have been completed" and that this document was provided to the complainant in the Council's original response to her request. He is aware that the complainant is seeking further information which the Council is withholding under the exception cited.
22. The Commissioner is also mindful that there is an inbuilt public interest in enabling public participation in decision-making in environmental matters. However, public interest considerations should always be relevant to the exception being relied upon, to the specific nature of withheld information and to the context at the time of the request. In this instance, the Commissioner considers the Council has demonstrated that the information relates to and informs a decision-making process which is incomplete and its disclosure would, by misinforming public debate, impede the decision-making process that it supports.

### **The Commissioner's position**

23. The Commissioner's view is the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(d) of the EIR was applied correctly.

## Right of appeal

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24. 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@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)

25. 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.
26. 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 .....**

**Phillip Angell**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**