

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 10 May 2023

Public Authority: Greater London Authority
Address: City Hall
London
SE1 2AA

Decision (including any steps ordered)

1. The complainant has asked about the environmental standards of the Mayor of London's cars. The above public authority ("the public authority") relied on sections 38 (health and safety) and 31 (law enforcement) of FOIA to refuse to confirm or deny that the information was held.
2. The Commissioner's decision is that the public authority should have dealt with the request under the EIR although part b) is not a valid request for recorded information. He is not satisfied that the public authority is entitled to rely on either regulation 12(6) – national security – or regulation 13 – personal data – of the EIR to refuse to confirm or deny that the information is held. The public authority also breached regulation 14 of the EIR by failing to rely on an EIR exception within 20 working days.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Confirm or deny whether it holds information within the scope of elements a) and c) of the request. If and to the extent that it does hold information, it must either disclose that information or issue a refusal notice that complies with regulation 14 of the EIR.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. Central London operates an Ultra Low Emission Zone ("ULEZ") on its roads. Vehicles entering the ULEZ must comply with certain environmental standards relating to the emissions they produce. Vehicles that do not comply with these standards must pay a charge. The broad aim is to make it more expensive to drive the most polluting vehicles through the city centre – thus discouraging such activity. A failure to pay the charge can result in a Penalty Charge Notice (PCN).
6. The ULEZ currently covers only the central area of the city between the north and south circular roads – however the current Mayor of London, Sadiq Khan, wants to expand the ULEZ across all London boroughs from August 2023.
7. The expansion of the ULEZ has been controversial and four London Boroughs, as well as Surrey County Council, have been granted permission for a judicial review of the decision.

Request and response

8. On 13 February 2023, the complainant wrote to the public authority and requested information in the following terms:
 - "a) Does the Mayor of London, drive or is driven in a ULEZ compliant vehicle and disclose the number of vehicles used by him which are (i) ULEZ compliant (ii) non ULEZ compliant?
 - "b) Of the vehicles that are non-ULEZ compliant, how does this support Mayor's ULEZ policy on the current operational and ULEZ Expansion?
 - "c) Is the Mayor subject to issuance of PCNs for using non-compliant vehicles? If so, how many PCNs have been served on him and of this, how many were settled and provide proof thereof?."
9. The public authority responded on 2 March 2023. It refused to confirm or deny that the information was held. It relied on section 31(3) and 38(2) of FOIA as its reasons for doing so. It upheld this stance following an internal review.

Scope of the complaint

10. At the outset of his investigation, the Commissioner wrote to the public authority and explained that, in his view, the information (if it were held) was likely to be environmental.
11. The public authority agreed with the Commissioner's assessment and confirmed that, if the information were environmental, it would wish to rely on regulation 12(6) of the EIR to refuse to confirm or deny that any information was held. It also argued that the information would be the Mayor's personal data.

Reasons for decision

Would the requested information be environmental?

12. Regulation 2(1) of the EIR defines environmental information as being information 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)...as well as measures or activities designed to protect those elements;
13. The request seeks information about whether the cars the Mayor has use of comply with the ULEZ scheme. The ULEZ is a measure designed to have an environmental impact (i.e. on the air and atmosphere) and this information would be information on that measure (whether particular vehicles would or would not have to pay the charge). It is therefore environmental information.

Are all parts of the request valid?

14. Whilst the EIR do not include a formal definition of a valid request, regulation 2(1) defines environmental information as being “any information in written, visual, aural, electronic or any other material form.”
15. As with FOIA, the Commissioner considers that the EIR will extend to any environmental information a public authority holds in recorded form. However it will not extend to information in someone’s head and nor do the EIR provide a right to seek explanations or justifications from a public authority.
16. Parts a) and c) of the request are valid requests because they seek information that if they were held, would be held in recorded form.
17. Part b) does not seek recorded information. Instead it invites the public authority to explain how an action “supports” a policy. The public authority is being invited to justify its actions. This part is thus not a valid request for environmental information.

Regulation 12(6) – national security and public safety

18. Regulation 12(5)(a) of the EIR allows a public authority to withhold any information whose disclosure would adversely affect international relations, defence, national security or public safety.
19. Regulation 12(6) of the EIR allows a public authority to refuse to confirm or deny that particular information is held if the mere act of confirming or denying that information was held would, in itself, reveal information that would adversely affect international relations, defence, national security or public safety.
20. National security means the security of the United Kingdom and its people. It may include:
 - Preventing actions by an individual which are targeted at the UK, its system of government or its people.
 - The protection of democracy and the legal and constitutional systems of the state, as well as military defence.
 - Preventing action against a foreign state which is capable, indirectly, of affecting the security of the UK.
 - Protecting reciprocal cooperation between the UK and other states in combating international terrorism.

21. In its original refusal notice, the public authority noted that confirming or denying that the information was held would reveal details about the Mayor's security arrangements that were not already in the public domain. This in turn would make the Mayor more vulnerable to a terrorist attack.
22. The Commissioner recognises that the Mayor, as the directly elected leader of the UK's largest (and capital) city is an important part of the country's democratic and constitutional system as a whole. Preventing an attack on the person holding that office is a national security matter.
23. The public authority noted that in a previous decision notice, the Commissioner had agreed that confirming or denying that the Mayor had use of an official car would endanger his safety.¹
24. Whilst the present request seeks ostensibly different information to the previous decision notice (not least because of the environmental angle), the Commissioner accepts that the effect of confirming or denying would be the same: it would reveal that the Mayor does (or does not) have the use of some form of official car.
25. At the outset of the investigation, the Commissioner drew the public authority's attention to two articles that had appeared in national newspapers since his previous decision. Both articles include photos of the Mayor getting into, or out of, chauffeur-driven vehicles. One of the articles included a quote from an unnamed spokesman for the Mayor pointing out that the Mayor needed a car for official protection.
26. The Commissioner suggested to the public authority that the existence of such articles indicated that any details of the Mayor's security that might be revealed if it were to confirm or deny that the information was held were in fact now in the public domain – even if that had not been the case when he issued his previous decision.
27. The public authority responded to say that:

“The Media reporting is not always accurate and there can be harm if the Metropolitan Police Service (MPS) were required to confirm or deny everything that the Media reports. Sometimes, the Media may deliberately report speculative information with a view to putting

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2616454/fs50836455.pdf>

pressure on the MPS or other public authorities to confirm or deny. We believe this to be the case in this instance.

"There is also a clear difference between information that is visible or inferred at a particular time and making such information routinely available, officially, under FOIA. There have been numerous instances where the media produces articles depicting officials of the MPS or GLA in a different light, accompanied with speculative information about certain individuals receiving police protection. These articles are not necessarily accurate.

"The harm in providing 'ready-collated' information is applicable to many types of information that are visible, inferred or disclosed on limited basis such as officer names and identifiers, staff contact details, protection officers/measures, incident details witnessed by bystanders and disparate information relating to national security. Mosaic harm may disproportionately affect those at the margins e.g., those whose protection status is most likely to be subject to change, especially when combined with financial information."

28. Specifically in relation to the highlighted articles, the public authority stated that:

"neither the GLA nor the Metropolitan Police Service think that the second article, dated 21 August 2021, is relevant to the GLA's NCND stance as it is essentially unofficial speculation. Although the first article [of 15 May 2020] quotes a 'spokesperson' for the Mayor of London, this should be viewed as a snapshot in time, is nearly 3 years old and does not necessarily mean that the GLA or the MPS would give a running commentary in response to future requests or that the official statement took into account the mosaic harm. A confirmation or denial statement in this context may therefore constitute 'new' information."

The Commissioner's view

29. The Commissioner agrees in principle with some of the arguments put forward. Reporting information in newspapers does not give it the same status as official confirmation. Equally he recognises that, in principle, public authorities must be wary about when they confirm or deny holding information relating to national security – for fear of building up a broader pattern (or "mosaic effect") of information.
30. However, the Commissioner does not consider that the relatively generic arguments that the public authority has put forward fit the specific facts of this case.

31. The first article highlighted by the Commissioner appeared in a national newspaper and carried a quote from an unnamed spokesperson alongside the photos as follows:

"The Metropolitan Police provide round the clock protection for the Mayor of London. This is not a case of the Mayor having a chauffeur-driven car, either provided by City Hall or anybody else. The vehicle is there for his safety."

32. Further down the article another quote appears from "a spokesman for the Mayor London" (it is not clear whether both quotes were from the same person) stating that:

"The Mayor does not have a chauffeur-driven car, either provided by City Hall or anybody else. The Metropolitan Police provide round the clock protection for the Mayor of London due to the heightened threat level to his safety."

33. Whilst the Commissioner accepts that the spokesperson (or -persons) have not been named, he considers it implausible that a national newspaper would simply invent a quote and attribute it to an official source. There is certainly no indication that the Mayor's office objected to the authenticity of the quote. Whether or not the spokesman properly "took into account the mosaic harm" when they provided their quote is irrelevant – they knew, or should have known, the risks in providing such a statement. Whether the source of the quote was a political appointee of the Mayor or a non-political press officer is equally irrelevant – both are entitled to make statements on behalf of the Mayor and those statements should be regarded as carrying official weight.
34. The Commissioner recognises that the quote referred to the situation as it stood in 2020 – but it is difficult to see why, if the Mayor needed a car in 2020 (and apparently also in 2021) he would no longer need one today.
35. Furthermore, if the public authority were to merely confirm that it held information within the scope of the request (ie that the Mayor did have access to a car), it would reveal very little about security arrangements. It would not reveal, for example, how often the Mayor uses a car (if indeed he did use a car), the number or type of cars he has available or the sorts of journeys he uses them for.
36. If the public authority were (hypothetically) to deny that it held information because the Mayor never used a car, that would not prevent him from using one in future.
37. The Commissioner also notes that the Mayor has been pictured in national newspapers cycling to work. This would suggest that he uses

more than one mode of transport to get around – further diminishing the value of anything that might be revealed by confirming or denying that this information is held.

38. The Commissioner can see force in the argument that it would be inappropriate to confirm or deny holding information if doing so would reveal details of, for example: when, or on which sort of trips, the Mayor was most likely to use a car; how many individuals would be likely to travel with him and; whether any backup vehicles would be used. Clearly such details are not static and will change depending on the circumstances and the assessed risk. It would therefore be unwise for any public authority to provide a “running commentary” on such arrangements.
39. However the Commissioner is not convinced that confirming or denying in this particular situation would amount to providing a “running commentary” on a situation in flux.
40. The exceptions in the EIR must be interpreted restrictively. Where an “adverse effect” exception has been cited, a public authority must demonstrate that any adverse effect is more likely than not to occur. In these circumstances, the Commissioner does not consider that providing a confirmation or a denial that the information is held is more likely than not to have an adverse effect on national security.
41. The public authority is therefore not entitled to rely on regulation 12(6) to refuse to confirm or deny that the information is held.

Regulation 13(5A)

42. The public authority also argued that providing a confirmation or a denial that the information was held would, in itself, disclose personal data about the Mayor. However it provided no details of any assessment it might have made of any legitimate interest in issuing a confirmation or a denial.
43. Regulation 13(5A) of the EIR allows a public authority to refuse to confirm or deny that information is held if providing a confirmation or a denial would unlawfully reveal personal data.
44. The Commissioner accepts that confirming or denying that this information is held would reveal personal data about the Mayor: it would provide insight into how the Mayor gets to work and how he travels to appointments. Whilst such information primarily concerns the Mayor’s professional life, it does stray into his personal life as well.

45. However, in the circumstances, the Commissioner considers that the Mayor's rights as a data subject are outweighed by the legitimate interest in confirming or denying that the information is held.
46. The Mayor has a reasonable expectation that the public authority will not provide confirmation or denial of his travel arrangements where such an action would be likely to put him at risk. However, for the reasons outlined above, the Commissioner is not persuaded that that would be the effect of providing a confirmation or a denial that this particular information is held.
47. Furthermore, the Commissioner notes that the ULEZ expansion is a policy likely to affect large numbers of people. It is a policy that has been controversial and it is one which the Mayor has personally championed.
48. It is not for the Commissioner to determine the effectiveness of the current or proposed ULEZ. There may well be sound reasons for the policy. However, when a policy becomes so closely associated with one individual, there is a very strong legitimate interest in understanding the extent to which that person will be subject to the very policy that they wish to subject others to – especially when that policy comes with a punitive element.
49. Given the strong legitimate interest and the limited amount of detail it will reveal about the Mayor's private life, the Commissioner does not consider that the Mayor should have a reasonable expectation that the public authority will not confirm or deny holding such information. If that is his expectation, it is not a reasonable one.
50. The Commissioner is therefore satisfied that, in the circumstances of this case the legitimate interests in confirming or denying that the information is held outweigh the rights of the Mayor as a data subject.
51. The public authority is thus not able to rely on regulation 13(5A) of the EIR to refuse to confirm or deny that the information is held.

Procedural matters

52. The Commissioner considers that the public authority breached regulation 14 of the EIR in responding to the request as it did not provide any environmental information that it held or cite a valid EIR exception within 20 working days.

Right of appeal

53. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

54. 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.
55. 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

Roger Cawthorne
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