

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

**Date:** 9 September 2013

**Public Authority:** Stockport Metropolitan Borough Council  
**Address:** Town Hall  
Edward Street  
Stockport  
SK1 3XE

**Decision (including any steps ordered)**

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1. The complainant has requested a report on road drainage in relation to the construction of a relief road for Manchester Airport. The Council withheld the report under regulation 12(4)(d) on the basis that the report was a draft document. During the course of the Commissioner's investigation the Council withdrew its reliance on this exception and released the report.
2. The Commissioner's decision is that Stockport MBC has not dealt with the request in accordance with the EIR. The Commissioner finds that the report is not a draft document and even if it were the public interest would favour disclosing it. Although the Council later accepted the Commissioner's advice and disclosed the report, this disclosure exceeded the statutory time for making information available. The Council has therefore breached regulation 5(2) of the EIR.
3. However since the report has now been released the Commissioner does not require the Council to take any steps.

**Request and response**

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4. On 18 October 2012, the complainant wrote to Stockport MBC, he explained that he understood that a firm of consultants, Mouchel, had produced a report on road drainage earlier that year and requested a copy of that report which was entitled,

'SEMMMS A6 to Manchester Airport Drainage Treatment Proposal'

5. The Council responded on 19 November 2012. It withheld the report under regulation 12(4)(d). It stated that the information was being withheld under regulation 12(4)(d) on the basis that it was a draft report. Therefore the request related to information still in the course of completion and incomplete data. The exception is subject to the public interest test and the Council found that it would not be in the public interest to release misleading information at that time.
6. Following an internal review Stockport MBC wrote to the complainant on 4 January 2013. It upheld its use of regulation 12(4)(d).
7. Ultimately, on 2 September 2013 the Council withdrew its reliance on regulation 12(4)(d) and disclosed the report.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 16 February 2013 to complain about the way his request for information had been handled. The complainant was concerned that the project would have an adverse impact on the well-being of the public and he was concerned that the Council had failed to properly take account of the public interest in disclosing the information
9. The Commissioner initially considered two matters. First, was the exception engaged? This involved determining whether the Council was correct to say that the requested information is a draft report and as such relates to unfinished work or is an unfinished document. If the exception was engaged the next question was whether the public interest in maintaining the exception outweighs the public interest in disclosure.
10. The Commissioner notes that in August 2013 the Council published a report with the same title as that requested by the complainant in October 2012. However that report is materially different to the one which existed at the time of the request. The focus of this decision notice is on the complainant's right of access to the report which existed at the time of his request.
11. Ultimately the Council withdrew its reliance on regulation 12(5)(b) and accepted that it had not been correct to rely on it at the time of the request. It therefore disclosed a copy of the report that existed at the time of the request.

## **Background**

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12. The report relates to the proposal to build a relief road from the A6, just south of Stockport, to Manchester Airport via the existing A555. The scheme is being developed by Stockport MBC in partnership with neighbouring authorities. The report deals with the impact on local waterways caused by water draining off the relief road together with the effect of any accidental spillages onto its carriageway.
13. The first phase of the consultation scheme on the proposal ran from the 22 October 2012 to 25 January 2013. The second phase ran from the 3 June 2013 to 19 July 2013. The Council intends to submit a formal planning application in September 2013. If permission is granted, the construction of the road will take place over three years beginning in 2014.

## **Reasons for decision**

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### **Regulation 12(4)(d)**

14. Regulation 12(4)(d) of the EIR states that a public authority can refuse to provide information if the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.
15. During the Commissioner's investigation the Council argued that the report was still in the process of being completed and that its disclosure would represent an unfinished document being placed in the public domain.
16. Clearly the proposal to build the relief road is an on-going project and it is conceivable that its design will continue to change and be fine-tuned up to and beyond the formal application for planning permission in September 2013. The Council explained that the development of the relief road scheme was an iterative process, with draft designs being appraised and then modified. In support of its position the Council provided a copy of what it described as the "emerging preferred scheme" that was current as of July 2013 to illustrate the changes in the road design since the road drainage report had been prepared.
17. The Council originally argued that the version of the road drainage report requested is part of that iterative process and that it relates to a specific road layout, known as Highway Design Freeze 5, that has now been superseded. As such the Council considered the report to

be material which is still in the course of completion and is an unfinished document.

18. The Commissioner is satisfied that the design process to which the reports relates was on-going at the time of the request. The Commissioner also recognises that following modifications to the design of the relief road, the associated road drainage proposals may need to change. This is borne out by the fact that the Council has recently published an updated report on the 'Draft Road drainage Treatment Proposals' which relates to a different road layout (Highway Design Freeze 7) than that to which the requested report relates.
19. However as the Commissioner's guidance explains that the fact that a public authority has not completed a particular project does not necessarily mean that all the information the authority holds relating to that project is automatically covered by the exception. The Commissioner considers that even though the overall road scheme is an on-going project there would be discrete processes within the development of that scheme which would need to be completed in order for the scheme to progress. If the requested report related to one of these discrete processes and that process had been completed, the report could not relate to incomplete work and the exception could not apply on that basis.
20. The Council has told the Commissioner that the requested report was drafted and submitted to the Environment Agency (EA) with the aim of gaining the EA's agreement in principle on the drainage proposals. This would mean that as the road scheme was modified the project team could amend road drainage proposals as necessary, confident that those amendments were in line with the broad agreement of the EA. In light of this the Commissioner is satisfied that the report was part of a discrete process, the seeking and obtaining of the EA's approval, which had been concluded by the time of the request.
21. In its refusal letter to the complainant Stockport MBC described the requested report as a "working draft" and similarly it described it as a "draft report" at internal review. The Commissioner understands that the Council was arguing that the requested report should be regarded as a draft version of the road drainage report that it ultimately published in August 2013 in respect of Highway Design Freeze 7. As explained above the Commissioner is satisfied that the report should be regarded as a discrete stage in the design process. This is because it relates to a specific road layout, Highway Design Freeze 5, and was prepared for submission to the EA. It follows that a report completed as part of that discrete process should not be regarded as being a draft of a report that could only be produced once the proposals had been finalised, in the form of Highway Design

Freeze 7. This remains the case even though it was known at the time the requested report was produced, that it would be superseded by later reports.

22. In its submissions to the Commissioner Stockport MBC also referred to the report being "out of date" and in the "process of being updated". The Commissioner accepts that at the time the report was requested it may already have been out of date and in need of updating. However the fact that something needs to be updated does not necessarily mean that it constitutes a draft of a later report that replaces it.
23. As explained above, the Commissioner is satisfied that the requested report relates to a discrete and completed part of the design process. It follows it cannot be considered a draft version of a report relating to a later stage in that design process. This remains the case even if the requested report informed the later report to large extent and if some elements of the published report are directly taken from the requested report.
24. The Commissioner is aware that the published report follows the same format as the requested report and that this may give the impression that the earlier report is a draft version of the later report. However the Commissioner is not surprised that such reports follow a standard format developed by a particular consultant. Therefore the Commissioner found no support to the argument that the requested report is a draft of the published report based on the similarity in their presentation.
25. Although the Commissioner is satisfied that the request report cannot be regarded as a draft of the published report there is still the potential for the requested information to be a draft version of the report which was presented to the EA. The Information Tribunal has previously found that a draft version of a report remains an unfinished document even once the final version of that report has been produced. Therefore even though a final report was presented to the EA, an earlier draft of that report would still be covered by the exception.
26. However the requested report contains a Document Control Sheet which clearly identifies the status of the report as being a final version. The one time existence of an earlier draft is indicated by reference to a 'Final Draft' dated around three weeks before the requested version.
27. The Council has explained that the 'final' status of the report reflects the fact that no further action was required in respect of that particular design task and that the report had been produced

following consultation with its client, the Council. This point was made by the Council while arguing that the requested report was simply part of the iterative process that involved the production of a series of reports. However, the Commissioner considers that the document control sheet indicates that the requested report represents the conclusion of a discrete stage in the design process.

28. The Commissioner is satisfied that the requested report relates to a discrete part of the design process for the relief road which was completed by the time of the request. The request does not therefore relate to unfinished material. This is so even though the report was later rendered obsolete by modifications to the road scheme which necessitated changes to the road drainage proposals. The Commissioner is also satisfied that the requested report represents a final version of the report within the context of that discrete process.

### **Public interest**

29. Even though the Commissioner found that the exception was not engaged, in this case he went onto consider the public interest arguments for maintaining the exception presented by the Council.
30. The public interest test is set out in regulation 12(1)(b) and states that information can only be withheld if in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
31. The main concerns that the Council had over disclosing the information were understood to be that, because the report was already out of date at the time of the request, it contained inaccurate information and its disclosure would confuse the public. The Council also appeared to be concerned that as the matters to which the report related were still under consideration, the early disclosure of the report could have delayed the project.
32. As explained in the Commissioner's guidance, in most cases the Commissioner does not give any significant weight to the argument that the information is misleading. This is because the Council could have put the information in the report into context by explaining the purpose of the report and that, as such, it contained provisional estimates and values for its road drainage calculations. It could have gone on to explain that as the design process progressed new calculations would be necessary which would form the basis of an updated report. Therefore the Commissioner does not consider this argument carries any great weight.
33. The Council did not expand on its argument that the early disclosure of the report would delay the project. However the Commissioner does recognise the potential for the report to generate some debate

if it was disclosed. If the Council's time and energy were taken up by dealing with concerns based on out of date information these would not be in the public interest. However the relief road is a major project which was the subject of two major consultation exercises. The Council has explained that this involved leaflets being distributed to 85,000 homes, a dedicated website, exhibitions, specialist forums, including ones for environmental interest groups and local liaison forums. Set within this context, and the resources already deployed in addressing any concerns of the public, the Commissioner is not convinced that dealing with any enquiries prompted by the disclosure of the report would cause any discernible delays in, or problems with managing the consultation process.

34. Stockport MBC referred to the fact that the drainage proposals were under review at the time of the request. The suggestion appeared to be that if the report was disclosed it would hinder the proper consideration of any amendments to the drainage proposals that were needed. The Commissioner recognises the need for safe space in which officials can consider all the relevant factors needed to come to a robust decision, free from the public glare.
35. However having considered the report the Commissioner considers that it is very much of a technical nature. Consultants, using their expertise and experience, have analysed the available data, the results of which are then fed into calculations which produce values for the risks that water runoff and accidental spillage may pose to local water courses. The Commissioner finds that technical considerations of this nature are less susceptible to being influenced by public debate. That is not to say that public's views on any risks posed are irrelevant to the debate on the overall merit of the proposed relief road. It is simply that the debate should not influence the results of an expert analysis of the road drainage issues.
36. Furthermore the road drainage issues have been dealt with by a firm of expert consultants. The Commissioner finds it very unlikely that such experts would allow their professional opinion to be swayed by public debate as it would seriously undermine their professional credibility and future employability. Also the fact that they are consultants provides some cushion between themselves and any public debate, which it is assumed would be directed towards the Council.
37. The Commissioner finds there is very little weight to the Council's argument for maintaining the exception. However as there is some, there is still a need to consider the public interest in disclosing the requested information.

38. As the information contained in the report was out of date at the time of the request it is questionable whether there is any significant value in disclosing it. However, at the time of the request there was an absence of any other, more up to date information. Therefore at that time the report did provide information that would have helped the public understand the road drainage issues that needed to be tackled and how they were being addressed. The Council has acknowledged that during the consultation process the public did show an interest in information on road drainage and the location of any ponds that would be created to cater for water run-off.
39. Disclosing the report would also increase the transparency of the overall process that is followed when developing a major infrastructure scheme such the relief road.
40. The Commissioner does not consider the public interest in disclosing the report is particularly weighty. However he is satisfied that even if the exception had been engaged there was sufficient value in disclosing the information to outweigh any public interest there would be in maintaining the exception.
41. In light of the above the Commissioner finds that at the time of the request the report should not have been withheld under regulation 12(4)(b).

### **Regulation 5(2)**

42. Regulation 5(2) requires a public authority to make information available within 20 working days from the date the request is received. Under regulation 7(1) that period can be extended if the complexity of the request or the volume of information requested makes this necessary. However even when these circumstances are encountered the period can only be extended to 40 working days and the public authority is required to explain to the applicant why the extension is necessary within 20 working days.
43. Although the Commissioner acknowledges that the Council ultimately accepted that it had been wrong to withhold the information under regulation 12(4)(d), by not releasing the information until 2 September 2013, the time allowed for complying with the request was far exceeded.

The Commissioner therefore finds that Stockport MBC is in breach of regulation 5(2). However since the requested information has now been released he does not require the Council to take any remedial action.



## Right of appeal

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44. 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: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

45. 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.
46. 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 .....**

**Pamela Clements**  
**Group Manager, Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**