

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

**Date:** 28 March 2017

**Public Authority:** City of York Council  
**Address:** West Offices  
Station Rise  
York  
YO1 6GA

**Decision (including any steps ordered)**

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1. The complainant has requested a transport appraisal relating to the development of a site in the centre of York. The Council refused the request under regulation 12(4)(d) – material in the course of completion.
2. The Commissioner's decision is that the exception is engaged and can be maintained in the public interest. The Council is therefore entitled to rely on regulation 12(4)(d) to refuse the request.
3. The Commissioner does not require the public authority to take any further action in this matter.

**Request and response**

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4. On 17 January 2016 the complainant wrote to the Council regarding, what he described as, the York central consultation document and requested information of the following description:

"Can I have a copy of the transport report behind this that's mentioned in the Executive report please."

5. On 19 February 2016 the Council responded. It relied on the exception under regulation 12(4)(d) to refuse the request on the basis that the report constituted material that was still in the course of completion.

6. The complainant requested an internal review on 20 April 2016. The Council responded on 13 July 2016 and advised him that,  
  
"In principle the position remains as indicated in the original response to the FOI request".
7. The Commissioner has taken this to be the outcome of the internal review. In effect the Council upheld its original position.

## Scope of the case

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8. The complainant contacted the Commissioner on 13 July 2016 to complain about the way his request for information had been handled. He said that part of the consultation referred to in his request asked for views on how traffic should be managed. He argued that people's responses were likely to be influenced by a fuller understanding of the impact the development would have on traffic and therefore the report should have been disclosed.
9. The Commissioner considers the matter to be decided is whether the transport appraisal, which constitutes the report referred to in the request, engages the exception provided by regulation 12(4)(d) and, if so, whether the public interest favours withholding the appraisal.

## Reasons for decision

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### Regulation 12(4)(d)

10. Regulation 12(4)(d) states 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.
11. The exception sets out three distinct categories and the information must fall within one of these for the exception to be engaged. The first category is that the information relates to material which is in the course of completion. The 'material' in question may be a final policy document that is to be produced later. Therefore although the requested information may be contained in a document which is itself complete, if that document is intended to inform a policy process that is still ongoing, the information may attract the exception.
12. The interpretation of unfinished documents is more straight forward. A document will be unfinished if the public authority is still working on it at the time the request is received. Furthermore, a draft version of a

document will remain an unfinished document even once a final, finished version of that document has been produced.

13. Incomplete data is data that a public authority is still collecting at the time of the request.
14. The Council has argued that the requested information both relates to material in the course of completion and is itself an unfinished document. The Council considers it relates to material in the course of completion because it relates to the wider policy process of developing plans for the York Central site.
15. The Council has provided the Commissioner with a copy of the withheld information. The transport appraisal was produced by consultants and consists of a twenty seven page document and a number of appendices which explain in more detail the approach taken and rationale behind assumptions used in the appraisal as well as setting out how the data used in the appraisal was collected. It also contains an independent review of the appraisal carried out by a different firm of consultants.
16. The document is marked as a draft and the actual appraisal is dated early February 2016. This postdates the request. The Council has explained that there was an earlier version of the appraisal dated 22 December 2015. At an internal meeting on 6 January 2016 officers decided to request some minor amendments which were made following a meeting with the consultants on 28 January 2016. The Council has provided the Commissioner with a list of the amendments made. Technically the requested information is that which existed at the time the request was made, ie the December 2015 version. Unlike FOIA, there are no provisions within the EIR to accommodate amendments to the requested information which would have been made regardless of the request being received. However in light of the limited nature of the amendments and the fact that the Council is in a position to identify all the changes, the Commissioner is satisfied that should she decide that the appraisal ought to be disclosed, providing a copy of the February 2016 appraisal together with a list of the amendments would meet the Council's obligation under regulation 5(1) to make the information available.
17. The Commissioner notes that two of the amendments relate to the status of the appraisal. One is the insertion of a 'DRAFT' watermark, the other the insertion of an explanatory note stating that the appraisal is in draft format. The Commissioner accepts the decision to include these amendments was made prior to the request being received. Although simply labelling the appraisal as being 'draft' does not render it an unfinished document, the Commissioner accepts that in this case it is indicative of how the appraisal was regarded within the Council.

18. The explanatory noted added to the appraisal states that it is subject to further change and iteration as proposals for the York Central site evolve. The very fact that at the time the request was made there were amendments to the appraisal planned also supports the Council's argument that the appraisal was an unfinished document. However, even though the Commissioner accepts that there will be further transport appraisals as plans to develop the site take shape, she is less convinced that there will be further amendments to this particular document. Nevertheless at the time of the request, amendments were planned and therefore it was an unfinished document at that point in time.
19. Although the fact that the appraisal constitutes an unfinished document is sufficient to engage the exception, the Council's main argument for withholding the appraisal is that it relates to material in the course of completion. The Council has explained that it is a very high level document. Its purpose was originally twofold. Firstly it was produced to help the Council and its partners in the York Central site decide whether developing the site was a viable proposition. The Council's development partners, Network Rail, the National Railway Museum and the Homes and Communities Agency are collectively referred to as the York Central Partnership. Once York Central Partnership has completed its consultation process and presumably any further site investigation work, it will produce a master plan for the site upon which it will base a planning application. That planning application will then be considered by the Council in its separate role as the local planning authority.
20. York Central Partnership's proposal is to build a mix of residential properties and office space. The site is close to the York's main railway station and encompasses the National Railway Museum. It is completely surrounded by railway lines and therefore the site required at least one additional access point to accommodate the traffic that is likely to be generated by the finished development. The transport appraisal selected one of a number of potential options for a new access point and considered whether the site could cope with the traffic that would be generated by the completed development and the impact on the existing transport network. The Council explained that although it was necessary to select one access point for the purposes of the appraisal, this did not indicate that any decision had been taken as to which access point would ultimately be chosen. It was simply that in order to carry out an appraisal it was first necessary to choose one, hypothetical, access point to base the appraisal on. The appraisal concluded that a scheme to develop the site was practical and that any access or transport problems could be overcome. It was one of, what the Commissioner assumes would have been, many threads which informed the decision that some form of scheme to develop the site was a practical proposition.

21. The York Central site is a very high profile because of its location. The Council explained that the York Central Partnership recognised it was important to obtain input from the residents of York at a very early stage. This was achieved by the 'Seeking your views' consultation which took place through January and February 2016, after the Council had been provided with the December 2015 version of the appraisal.
22. The planning application which the Partnership will ultimately submit to the Council in its role as the local planning authority, will be for detailed permission to develop the infrastructure of the site, including whichever new access point is finally selected as the preferred option. However the application will only seek outline planning permission in respect of the plots within the site. That is, it will identify which plots are to be developed as offices and which are to be housing and will set out some criteria for that development such as how many storeys the offices can be. But it will then be for individual developers to submit detailed planning applications for these plots.
23. Before submitting any planning application the Partnership will conduct at least one further consultation exercises. This will be based on more detailed plans informed by the responses to the 'Seeking your views' consultation and other ongoing work. Those plans will be more detailed and will include information on two or more possible access points. Depending on the outcome of that consultation and the extent of any revisions required, there may be one further consultation exercise. Ultimately this entire process will feed in to the final planning application. The Council has emphasised that the consultations exercises conducted by the York Central Partnership are not mandatory; they are an attempt by the Partnership to ensure the resulting planning application properly reflects the concerns and interests of the residents of York.
24. Once a planning application is submitted by the Partnership there will then be a statutory period of consultation in accordance with the relevant planning legislation.
25. Originally there was a second purpose for the producing the appraisal and conducting the 'Seeking your views' consultation. They were also intended to feed in to a draft of what is known as a 'Supplementary Planning Document'. This would be used by the Council in its role as local planning authority. If formally adopted the Supplementary Planning Document would form what the Council refer to as, material guidance in the determination of future planning applications for the site'. However the Council has now advised the Commissioner that it no longer intends to produce a Supplementary Planning Document. The Commissioner considers this change in the Council's intentions indicates the fluid nature of the early stages of the planning and development process for sites such as York Central.

26. It is clear that the process of developing policies in respect of the York Central site is ongoing. The master plan the Partnership is developing will be informed by ongoing work, including further, more detailed, transport appraisals and at least one further consultation exercise. Until this process has been concluded the Commissioner is satisfied that the transport appraisal which is the subject of this request relates to material which is still in the course of completion.
27. Therefore the Commissioner is satisfied that the exception provided by regulation 12(4)(d) is engaged on two grounds. Firstly, that at the time of the request the actual document was unfinished, as evidenced by the subsequent amendments. Secondly, that the policy processes to which the transport appraisal relates were still ongoing, and therefore it related to material still in the course of completion.

### **Public interest test**

28. However regulation 12(4)(d) is subject to the public interest test as set out in regulation 12(1)(b). This means that even though the exception is engaged, the 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 disclosure. In simple terms this involves considering whether disclosing the appraisal would be harmful in some way and, if so, balancing that harm against the value to the public in making the appraisal available.
29. The Council has argued that the transport appraisal was produced at an early stage in the development process. The Council believes that it is important for both itself and the York City Partnership to have the ability to objectively and robustly assess options and formulate strategy away from public scrutiny at what was an early and formative stage in the project.
30. Although it was being used to inform the Council on what options were viable, which in turn informed the options presented for consultation, the purpose of the consultation at that stage was not to help select a preferred options for managing traffic through and around the site, but was to establish some broad principles on different aspects of the development in order to guide future stages of the scheme's development.
31. The Council argues that to disclose the transport appraisal would create a misleading or inaccurate impression which could be damaging to the project commercially and undermine future planning objectives. Furthermore the Council is concerned that disclosing the appraisal would draw the public debate away from the broad principles on which the views of the public were being sought at the time of the request.

32. The Council also argues that responding to queries about the transport appraisal would be an unnecessary distraction of the resources it had committed to the project. Finally it has argued that the disclosure of information such as the appraisal would be likely to impact on the efficiency and integrity of future Council consultations on major development projects.
33. In favour of disclosure the Council has recognised the general public interest in disclosing environmental information. That disclosure would serve the public interest by promoting transparency and accountability, lead to greater public awareness of environmental matters and promote more effective participation in environmental decision making.
34. The complainant has developed the Council's final point further. He has argued that part of the 'Seeking your views' consultation exercise respondents were asked for their views on what choices should be made on how traffic should be managed. He therefore considered that it was wrong to withhold information that at the time would have helped people understand the scale of the traffic impacts arising out of the different options for managing traffic through and around the site.
35. The Commissioner has considered the Council's arguments for withholding the information. She accepts the principle that there is often a value in a public authority being able to develop the early stages of a policy or project in private. Plans at an early stage are unsettled. In order to explore all available options it may be necessary to look at many alternatives, some of which may be radical or impractical and be swiftly dismissed as more information is gathered on the proposals. Nevertheless it is necessary to explore these options in order to ensure the final plans represent the best way forward. To make such early thinking public could hinder proper consideration of the full array of options. It is reasonable to allow a public authority time to develop its thinking to a stage where its proposals are more fully considered and therefore defensible before it is placed in front of the public for scrutiny.
36. The Commissioner accepts that the appraisal was produced at an early stage in the development of plans for the site. Inevitably therefore some of the working assumptions and inputs on which it is based will have to be reconsidered as the plans are developed. It could be argued that these assumptions and options reflect the Council's early policy development and therefore warrant protection.
37. However it is more difficult to sustain an argument that the Council and its partners are entitled to safe space to develop its options when they have, to some extent, invited the public in to that safe space through the consultation exercise. Nevertheless the Commissioner accepts that the purpose of 'Seeking your views' consultation was to seek views on

the broad principles for the site's development, rather than the details of the working assumptions on which the appraisal was based.

38. Although one of the Council's original aims, i.e. of producing a Supplementary Planning Document, has now changed, it is clear that the Council and the York Central Partnership always intended to conduct further consultation exercises once it had used the feedback from the 'Seeking your views' consultation to produce more detailed plans. The appraisal and the 'Seeking your views' exercise were a means of getting the ball rolling and obtaining early input on what people wanted from the site. The Council argue therefore that there was no need for the public to have access to the detailed analysis contained in the transport appraisal as it related to options which may subsequently be rejected and that in any event the public would get the opportunity to have their say and make more focussed comments on more detailed plans in the future.
39. The Commissioner does recognise though that the York Central site is very high profile and its development has the potential to impact on many people. People are particularly sensitive to possible traffic problems. This is borne out by the responses to the 'Seeking your views' consultation. Therefore if the appraisal had been released at the time of the request, ie as the consultation was taken place, it is reasonable to expect that it would have been scrutinised and widely reported. This would have refocussed the attention of some respondents on the details of the transport appraisal rather than on the broader issues which the consultation exercise was seeking views on. This would have undermined the objectives of the consultation. Furthermore any debate on the details of the transport appraisal would be based on figures and findings that were never intended for such detailed scrutiny because the working assumptions on which the appraisal is based will inevitably change as plans evolved. The Commissioner accepts the Council's argument that disclosing the appraisal at the time of the request would distract the public debate. To a far lesser extent, the Commissioner also accepts that the need to respond to any enquiries generated by disclosing the appraisal would also distract resources from the policy formulation process.
40. The Council has argued that disclosing the appraisal would be misleading and provide an inaccurate impression of the plans for the site. However it has had no problem in explaining to the Commissioner the nature of the transport appraisal and the process involved in modelling traffic flows, the need to rely on working assumptions at an early stage in a plan's development. The Council stated that disclosing misleading information would damage the project commercially. The Council has not however developed this point or demonstrated any causal link between the disclosure and a commercial prejudice.



Therefore the Commissioner is not able to give this argument any weight.

41. Similarly the Council has argued that the disclosure of what it considers to be misleading information would undermine future planning objectives. Again, it has not developed this point. If it is the Council's argument that disclosing the appraisal would have refocused the public debate around the 'Seeking your views' consultation away from its intended purpose, then this argument has already been made.
42. Turning to the Council's argument that the disclosure of information such as the appraisal would impact on the efficiency and integrity of future Council consultations on major development projects, this would again appear to be based on the premise that disclosure of appraisal would distract the consultation exercise. The Commissioner would not accept that disclosing this appraisal would set a precedent that all appraisals produced at an early stage of a project's development would have to be disclosed in the future. Nor is it the case that all such disclosures would necessarily have a detrimental effect. Each case has to be considered on its own merits.
43. The Commissioner finds that the main harm that would be caused by disclosing the appraisal is the distraction to the 'Seeking your views' consultation that was taking place at that time of the request. This therefore has to be balanced against the weight of the arguments in favour of disclosure.
44. There will always be some weight given to the value in disclosing environmental information to promote transparency and accountability, and to lead to greater public awareness of environmental matters. In this particular case the added public interest relates to whether the requested information would further the public debate on the issues raised by the consultation exercise and therefore promote public participation in environmental decision making.
45. The Commissioner has viewed the transport appraisal. She has also looked at the 'Seeking your views' consultation exercise. As previously explained, the appraisal considers the additional traffic generated by the development based on the additional access point selected for the purposes of the appraisal. It then goes on to look at different options for managing traffic around Leeman Road, which runs around the site of the National Railway Museum, close to the main railway station and assesses the impact of those options on the surrounding road network. In particular it looks at the impact the different scenarios would have on the junctions surrounding the site. The Commissioner notes that the 'Seeking your views' consultation does ask for views on traffic management around the railway station in particular on different options for managing traffic on Leeman Road. Therefore the Commissioner is

satisfied there is information within the appraisal that has some relevance to the 'Seeking your views' consultation exercise.

46. When considering the Council's argument that disclosing the appraisal would be a distraction from the consultation exercise the Commissioner recognised that people are particularly sensitive to possible traffic problems. Traffic management can have a profound effect on the quality of people's lives, both as commuters and for those living around the main road routes. Therefore it can be argued that there is a real value to those people inputting to the decision making process and that therefore they require the appraisal to inform their contribution.
47. However as emphasised by the Council, the consultation was not seeking views on which options should form the final traffic management solution. It is understood there will be further consultation on the traffic management issues. Furthermore it is understood that these will be based on more detailed and updated appraisals. This should go a long way to satisfying the public interest in providing individuals with the information necessary for them to make informed contributions to the decision making process. The public interest in disclosure is therefore not as great as may first appear. Against this is weighed the risk that disclosing the information at the time of the request would have disrupted the 'Seeking your views' consultation exercise. This would have hindered the Council's ability to obtain the public's view on what the broad principles and desired outcomes of the development should be. The collection of this information is an important part of the process of developing the York Central site. The Commissioner therefore finds that the public interest in favour of maintaining the exception outweighs that in its disclosure.
48. The Council are entitled to rely on regulation 12((4)(d) to refuse the request. The Commissioner does not require the public authority to take any further action.

## Right of appeal

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49. 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: 0870 739 5836  
Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

50. 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.

51. 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 .....

**Rob Mehan**  
**Senior Case Officer**  
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**Water Lane**  
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