

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

Date: 30 March 21

Public Authority: Lancashire County Council
Address: PO Box 78
County Hall
Fishergate
Preston
Lancashire
PR1 8XJ

Decision (including any steps ordered)

1. The complainant has requested information in relation to the construction of a road near their property
2. The Commissioner's decision is that Lancashire County Council is entitled to rely upon regulation 12(4)(b) and that the public interest rests in maintaining this exception. However, the Commissioner finds that the council breached regulation 14 in its handling of the request.
3. The Commissioner does not require any steps.

Request and response

4. On 9 November 2020, the complainant wrote to Lancashire County Council ('the council') and requested information in the following terms:

"For the avoidance of doubt this should be treated as an FOI request. i.e. the specific questions posed.

I simply wish to understand the report's methodology: specifically, (i) confirmation that the relevant equipment was properly calibrated and a calibration certificate produced as evidence from the manufacturer within 12 months of the tests, (ii) evidence of wind speed and wind direction during the period of measurement and (iii) whilst the precise locations of actual measurement are known, the modelling methodology when predicted and applied to [redacted] is not known nor the location applied specific to individual facades of [redacted]. To be clear the summary document produced will have the raw data behind it, it is the raw data that is requested in each of the above questions that we need. I also have requested (iv) confirmation as to the qualifications of those operating measurement equipment."

5. The council responded on 11 December 2020. It stated:

"There is nothing within your request that has not been requested previously. In essence, we have pointed you to the relevant sections of the published information, and we have explained to you the reasons we are not providing further information, quoting EIR and GDPR.

With regard to a 'summary document' we have previously explained we are not obliged to create information in order to respond to a request; the Regulations apply only to information that is held.

The published information to which you have previously been referred includes statements as to the method of survey and calculations, equipment and weather conditions:

Assessment of noise levels at various noise sensitive receptors has followed the "Detailed Assessment" methodology outlined in HD 213/11.

Noise levels at receptors have been calculated using the CadnaA noise modelling package, which incorporates the methodology contained in the Calculation of Road Traffic Noise, 1988 (CRTN). CRTN is a technical memorandum produced by the Department for Transport providing the definitive method of predicting road traffic noise in the United Kingdom.

Weather conditions during the survey were generally dry and sunny, with a light breeze.

All measurements were undertaken with class 1 precision instrumentation. Measurements were all undertaken in free field locations with the microphone at a height of approximately 1.5 m above ground level.

The instrumentation was calibrated at the start of the survey and checked at the end. There were no significant differences in calibration.

We do not hold calibration certificates; these are held by Jacobs, and are not held by them on our behalf.

Similarly, we do not hold information about the qualifications of Jacobs' employees, nor is such information held by Jacobs on our behalf. Even if we were to hold the information it would be absolutely exempt from disclosure on the grounds that it is personal data. The exception at Regulation 13 of the EIRs and/or the exemption at section 40(2) of the FOI Act would apply.

With regard to the raw data , you will be aware that we have previously refused to disclose this and that refusal is subject to an ongoing investigation. Until such time as the ICO issue a Decision Notice on that matter our position in this respect remains unchanged."*

*The council refused to provide the raw data in a previous request on the grounds of regulation 12(4)(b), see decision notice IC-42805-P2P2¹.

6. The complainant requested an internal review on 12 December 2020.
7. Following an internal review the council wrote to the complainant on 12 January 2021

"...As we have advised in a separate response to you, in order to receive the most efficient responses to requests for information, you should limit your requests in terms of not asking for the same or similar information when you are still awaiting a response to a previous request for which the deadline has not yet been reached. Requests should also be as clear and specific as possible.

We confirm that the response was issued 4 working days after the deadline and reiterate our apologies for that slight delay and any inconvenience thus caused.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2021/2619108/ic-42805-p2p2.pdf>

That aside, we believe that the substance of the response was appropriate and correct"

Scope of the case

8. The complainant contacted the Commissioner on 15 December 2020 to complain about the way his request for information had been handled. Specifically, that the council holds further information within the scope of the request which should be released and disputing the council's reliance on regulation 12(4)(b) to withhold the raw data requested.
9. In response to the Commissioner's investigation, the council advised that it was refusing the request, in its entirety, on the basis of EIR 12(4)(b), manifestly unreasonable on the grounds of costs. This was because the request included a requirement for the raw data, that it had refused previously on the basis of EIR 12(4)(b), and was upheld by the Commissioner in decision notice IC-42805-P2P2 served on 11 January 2021.
10. The council advised that it had attempted to be helpful and provide the complainant with advice on other the aspects of the request. However due to the disproportionate burden being placed on its resources, it was refusing the request in its entirety on the basis of EIR 12(4)(b).
11. The Commissioner considers the scope of the case is to establish whether the council has correctly engaged the exception at regulation 12(4)(b). She will also consider whether the council made any procedural breaches of the EIR in its handling of the request

Reasons for decision

Regulation 12(4)(b)

12. The EIR allow public authorities to refuse a request for information that is manifestly unreasonable when the cost of compliance of the request is too great a burden on the public authorities' resources. The exemption can be applied to a request in its entirety, therefore there is no requirement on a public authority to provide partial answers to a request that is refused on these grounds.
13. The information request which is addressed in the previous decision (IC-42805-P2P2) asks for a number of items and states that the complainant requires '*the underlying raw data*'. In this current request the complainant qualifies his request with this statement "*To be clear*

the summary document produced will have the raw data behind it, it is the raw data that is requested in each of the above questions that we need". The raw data in the earlier request and the raw data referred to in this current request both relate back to the same published report.

14. The Commissioner is therefore satisfied that both requests refer to the same raw data.
15. In the previous decision notice the Commissioner found that regulation 12(4)(b) was engaged because the costs incurred in obtaining the data were excessive and would divert significant resources to fulfil the request. It also found that the public interest rests in maintaining the exception.
16. The Commissioner has no requirement to revisit the arguments outlined in IC-42805-P2P2 and therefore finds that regulation 12(4)(b) is correctly engaged.

Procedural matters

17. Regulations 14(1) and (2) state:

- (1) *If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing.*
- (2) *The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request*

18. Regulation 14(3) states:

- (3) *The refusal shall specify the reasons not to disclose the information requested, including any exception relied on under regulations 12(4), 12(5) or 13*

19. The refusal notice should therefore include the full regulation number, and precise wording of the exception or regulation concerned
20. The council failed to specify to the complainant the exception it was relying on and the regulations it had applied.
21. The Commissioner therefore concludes that the council failed to issue an adequate refusal notice and thus breached Regulation 14 of the EIR.
22. As the Commissioner has reached a decision on this case, no steps are required from the council.

Right of appeal

23. 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@justice.gov.uk

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

24. 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.
25. 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

Andrew White
Head of FOI Casework and Appeals
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Wycliffe House
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Wilmslow
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SK9 5AF