

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

Date: 6 May 2022

Public Authority: Coventry City Council
Address: The Council House
Earl Street
Coventry
CV1 5RR

Decision (including any steps ordered)

1. The complainant has requested information about specific parts of Coventry's road network. Coventry City Council ('the Council') has disclosed some information (with personal data redacted) and withheld the remaining information under regulation 12(4)(d) of the EIR, which concerns material still in the course of completion.
2. The Commissioner's decision is as follows:
 - At the time of the request, the withheld information engaged regulation 12(4)(d) of the EIR because it could be categorised as information relating to material in the course of completion. The public interest favoured maintaining this exception.
3. The Commissioner does not require the Council to take any corrective steps.

Background

4. The Council has provided the following background. It says that the complainant has submitted a number of other requests over the course of the last year or so. Although they have referred to different headings and locations, they are all covered by the Coventry North Outline

Business Case (OBC). The Council only received the final version of the OBC in January 2022. Following the due process of briefing the relevant Cabinet Members as to the context, the OBC has now been published on the Council website along with other related information.

5. The Commissioner notes that he has considered a separate complaint from the complainant which also concerned the OBC and the Council's reliance on regulation 12(4)(d), reference IC-97640-T7T4.

Request and response

6. On 18 March 2021 the complainant requested information of the following description:

"I would like to understand future traffic at

- Junction 3 on the M6
- The Ricoh Arena roundabout
- the junction of Wheelwright Lane and Winding House Lane

Can i please see

1. Any modelling studies done of traffic in future years at these locations - up to 2041

1. i would particularly like to understand, for each study, what feeder flows were considered - from new and existing developments in Nuneaton Bedworth, from the full or partial build out of the Keresley and Eastern Green SUEs, from the creation of a new traffic profile in Coventry (as mooted by Highways England), from development around the HS2 Hub at UK Central, and other major west midlands new developments.

2. Where modelling is supplied, would you please make sure that the assumptions for each scenario are stated with the model outcomes.

3. i would like to know if the modelling includes any assumption that a NW Coventry Outer Orbital Road connecting the A45 and M6 will be completed - and what the likely route of that road would be, insofar as known.

2. Any discussion or plans or options for junction improvements that will be needed to accommodate capacity after 2026

3. Any modelling, planning, reports or consideration which relates to traffic diverting towards and around Coventry when the M6 is blocked

- which is a regular occurrence.

Can I please see any correspondence, email, modelling studies or reports which relate to these 3 locations - especially capacity and safety – during the last 2 years.”

7. On 21 April 2021 the Council responded. It withheld the requested information under regulation 12(4)(d) of the EIR.
8. The Council provided an internal review on 27 May 2021. It released some information with personal data redacted – this was a Local Model Validation Report for the Coventry Area Strategic Model (CASM). The Council said this gave detailed information about the CASM including its scope and validation data.
9. The Council upheld its reliance on regulation 12(4)(d) with regard to the remainder of the information within scope of the request.

Scope of the case

10. The complainant contacted the Commissioner on 8 June 2021 to complain about the way their request for information had been handled.
11. The personal data that the Council has redacted from the information it disclosed is out of scope of this investigation. The Commissioner’s investigation has focussed on whether, at the time of the request, the Council could rely on regulation 12(4)(d) to withhold information the complainant has requested, and the balance of the public interest.

Reasons for decision

Regulation 12(4)(d) – material in the course of completion, unfinished documents

12. Under regulation 12(4)(d) of the EIR 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.
13. The explanatory memorandum to the EIR (COM/2000/0402) states that:
“...the Commissioner places great importance on public authorities being afforded safe space (thinking space) and drafting space when considering whether, and on what terms, a venture should be entered into.”

14. Regulation 12(4)(d) is class-based, which means that it is engaged if the information in question falls within its scope. If the information falls into one of the three categories, then the exception is engaged. It is not necessary to show that disclosure would have any particular adverse effect in order to engage the exception. Regulation 12(4)(d) is a qualified exception so the public authority must consider whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
15. In its submission the Council has said that, at the time of the request, the OBC was still a work in progress, and subject to review and amendment. The Council says it does not dispute that it needs to make information associated with the OBC available in the public domain. However, it goes on to say, the Council has a duty to ensure that the information it releases is accurate, reliable, comprehensive and above all, is complete.
16. The Council has confirmed that the basis for withholding the information was that the OBC was still work in progress at the time of the request.
17. In a telephone conversation with the Commissioner during his consideration of the separate complaint IC-97640-T7T4, the Council also advised that at the time of the request a consultation about the OBC was ongoing.
18. In their request for an internal review, the complainant disputed that all the information they have requested could be categorised as material in the course of completion. Emails for example, they argued, were completed documents. It is true that a sent email is a completed document. However regulation 12(4)(d) concerns information that **relates to** material in the course of completion, or unfinished documents. The email correspondence here, although "finished", relates to the draft OBC. This OBC is part of the Coventry North Package which in turn is part of Coventry's Strategic Transport Investment Programme. At the time of the request, the OBC/Coventry North Package was an unfinished document/material in the course of completion and the email correspondence related to that document and material.
19. The Commissioner is satisfied that, at the point of the request, the OBC and information associated with it could be categorised as information relating to an unfinished document (because the Council was still drafting the OBC itself) and to material in the course of completion (finalising the overall Coventry North Package policy including the consultation). As such, the Commissioner has decided that the Council was entitled to apply regulation 12(4)(d) of the EIR to the information it is withholding. He has gone on to consider the associated public interest test.

Regulation 12(1)(b) - public interest test

Public interest arguments in favour of disclosure

20. In their request for an internal review, the complainant argued that the Council had not given weight to the right of the public to participate in environmental decision making at an early stage and before a decision is reached. They consider that the Council had deprived the public of its Aarhus right to participate in environmental decision making. The complainant said that concerns about traffic at the three locations referred to in the request had been germane to planning decisions made at Eastern Green and Keresley. Without the models, the public cannot properly engage and scrutinise the planning and highway authorities' judgments.
21. The complainant also disputed that the Council has an obligation to disclose only "accurate, reliable, comprehensive, and above all, ...complete" information. They considered this was a generalised attempt to refuse information until the last possible moment and exclude the public. The complainant argued that there is nothing in the EIR which says that only "accurate, reliable, comprehensive, and above all, ...complete" information is covered by the obligation to supply environmental information. They considered that "any" information held, accurate or not, is covered by the Regulations and that it is the very purpose of the Regulations, to allow the public to scrutinise figures and to come to their own judgment if they are accurate reliable or complete. In their view, that is what it means for the public to participate in environmental decision making.
22. Finally, the complainant also argued that disclosing the information would not hinder or damage debate. They noted that the Council has many communications officers who can clarify and explain the information if they feel it might be misunderstood. In the complainant's view, withholding the information is an attempt to stifle debate and it is patronising for the Council to assume that the public cannot correctly assess any information disclosed.

Public interest arguments in favour of maintaining the exception

23. In its submission to the Commissioner the Council has confirmed its view that releasing the requested information would not aid public debate. Rather, it would hinder the debate, as members of the public would not have access to the full information necessary to make a well informed and balanced decision.
24. The Council has also noted that, at the time of the request, "the application" was subject to a live consultation process. Responses to that consultation would therefore have superseded the material that the

Council held at the time. In the Council's view, disclosing that material would have been both unprofessional and unhelpful, as it would not be disclosing information that was accurate.

25. In its submission to the Commissioner in IC-97640-T7T4, the Council advised that the completed and published OBC would include details of the options it had considered, the evidence base and the factors that it took into consideration during the process of assessing the schemes and alternatives.
26. The Council confirmed to the Commissioner that the OBC had now been published¹. It says it also identified a further separate modelling report, which is not included in the combined appendices that have been published. However, because the Council found that it does not hold this on its system, it asked the consultants who worked on the project to provide the Council with a copy. The Council says it has provided the complainant with a link to the published OBC. The Council has also now confirmed that it has received the copy of the additional modelling report, has arranged for this to be published and has provided the complainant with the link to this further information.

Balance of the public interest

27. 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.
28. In reaching a decision in this case, the Commissioner has considered the arguments put forward by the complainant and by the public authority. He has also consulted his guidance 'How exceptions and the public interest test work in the Environmental Information Regulations'.
29. In that guidance, he notes:

"The factors determining the weight of the arguments for and against disclosure can include: the likelihood and severity of any adverse effect; the age of the information; how far disclosing the information would serve the public interest; and what information is already in the public domain."

¹ <https://www.coventry.gov.uk/transport-strategy-2/coventry-north-transport-package>

30. In the Commissioner's guidance, he also states:

"When dealing with a complaint that information has been wrongly withheld, the Commissioner will consider the situation at the time the authority dealt with the request or internal review."

31. In determining where the balance of the public interest lies in this case, the Commissioner has given due weight to the presumption under regulation 12(2) in favour of disclosure and the specific public interest in transparency and accountability in relation to decisions that may have widespread effects on the community.
32. The Commissioner has noted the complainant's arguments. However, it appears to the Commissioner that the public interest in openness and people being able to influence decisions on options for the Coventry North Package have been met by the Council's consultation. The OBC, now published, refers to the importance of early and effective engagement with local residents and stakeholders. The Council has also explained that the OBC discusses the options considered, the evidence base and the factors that were taken into consideration as the schemes and alternatives were assessed. And finally, the Council has achieved a degree of transparency through its responses to previous EIR requests from the complainant about this Package and through the information it disclosed in relation to the specific request in this case.
33. Infrastructure projects of the scale of the Coventry North Package will always concern people – for the reasons the complainant has given such as the impact on traffic, air pollution and the landscape. The complainant has not, however, raised concerns that are unusual or of special significance.
34. In the absence of any extraordinary concerns about the OBC and Coventry North Package, it appears to the Commissioner that the timing of the request is key here. As in IC-97640-T7T4, given that the Council was still drafting the OBC, and the consultation was ongoing, the Commissioner considers there was greater public interest in the Council having the 'safe space' it needed to formulate its Coventry North Package and reach decisions away from public scrutiny and distraction. Disclosing the information would frustrate the process of developing the associated options and inhibit the Council's ability to conduct this work. This is the very activity which the exception is formulated to protect.
35. While he recognises the complainant's concerns, the Commissioner therefore finds the need for a 'safe space' in which to develop the Coventry North Package outweighed the public interest in complete transparency in this case.

36. The Commissioner has found that the Council applied regulation 12(4)(d) appropriately and that the public interest in maintaining the exception outweighed the public interest in disclosure.

Right of appeal

37. 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

38. 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.
39. 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

Cressida Woodall
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