

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 21 October 2022

Public Authority: Oxford City Council
Address: St Aldates Chambers
St Aldates
Oxford
OX1 1DS

Decision (including any steps ordered)

1. The complainant requested information from Oxford City Council ("the Council") relating to the Oxfordshire Growth Needs Assessment.
2. The Council refused to provide the requested information citing the exception under regulation 12(4)(d) of the EIR for requests that relate to material which is still in the course of completion, to unfinished documents or to incomplete data.
3. The Commissioner's decision is that the Council has failed to demonstrate that the exception under regulation 12(4)(d) is engaged.
4. The Commissioner requires the Council to take the following step to ensure compliance with the legislation:
 - Disclose the withheld information.
5. The Council must take this step 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 FOIA and may be dealt with as a contempt of court.

Request and response

6. On 1 April 2021, the complainant wrote to the Council and requested information in the following terms:

“Please provide the name or names of contractors who have been appointed to work on the Oxfordshire Growth Needs Assessment (OGNA). This should include all contractors even if they did not complete the project.

Please provide the following information in respect of each contractor:

1. interim and final outputs from each contractor. If the final output from each contractor is not yet finalised please state if/when it is expected to be finalised and when it will be made available as part of the Oxfordshire Plan 2050 evidence base.
2. copies of correspondence relating to OGNA (emails, letters, notes of conversations etc) between the contractor and:
 - a) the Oxfordshire Plan 2050 Team (as mentioned in the OGNA Invitation to Tender document) and
 - b) the officer steering group from across the councils which is overseeing the work (as mentioned in the OGNA Invitation to Tender document) and
 - c) officers of the Growth Board relating to:
 - clarification and objectives of the work to be carried out by the contractor (ie the terms of reference) and
 - any emerging findings of the work carried out by the contractor (eg any interim reporting)
 - the outcome of the work carried out by the contractor (e.g. any conclusions reached or drafted).”

7. The Council refused to provide the information and relied on regulation 12(4)(d) of the EIR as its basis for doing so. It stated that the information was currently still work in progress and incomplete and that once complete it would be published on the Oxfordshire Plan website. It noted material which is still in the course of completion can include information created as part of the process of formulating and developing

policy, where the process is not complete. The public authority upheld its position at internal review.

Reasons for decision

8. The following analysis sets out why the Commissioner has concluded that the Council has failed to demonstrate that the exception under regulation 12(4)(d) is engaged.
9. It is not clear from the wording of the request that regulation 12(4)(d) would be engaged in respect to the information requested. As stated in paragraph 9 of the Commissioner's guidance on regulation 12(4)(d)¹, the fact that a public authority has not completed a particular project or other piece of work does not necessarily mean that all the information the authority holds relating to it is automatically covered by the exception.
10. In the absence of the Council taking the multiple opportunities offered by the Commissioner to provide further explanation in support of its reliance on regulation 12(4)(d) in response to the request in its entirety, the Commissioner is not satisfied that the exception is engaged.
11. The Commissioner therefore has no alternative but to require the Council to disclose the requested information.

¹ https://ico.org.uk/media/for-organisations/documents/1637/eir_material_in_the_course_of_completion.pdf

Right of appeal

12. 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

13. 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.
14. 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

Victoria James
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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SK9 5AF