

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 24 October 2022

**Public Authority:** Leicestershire County Council  
**Address:** County Hall  
Glenfield  
Leicestershire  
LE3 8TG

#### **Decision (including any steps ordered)**

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1. The complainant requested information from Leicestershire County Council ("the Council") about road inspection reports for a particular road for the years 2014 to 2020. During the course of the Commissioner's investigation the Council disclosed the road inspection reports, however, within the reports from the past six years, it redacted specific dates that defects in the road condition were logged and then repaired. It withheld this information under regulation 12(5)(b) of the EIR on the basis that to disclose this information would adversely affect the course of justice.
2. The Commissioner's decision is that the Council has correctly applied regulation 12(5)(b).
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 26 August 2021, the complainant wrote to the Council and requested information in the following terms:

"Please could you send me the all road inspection reports for Bosworth Road Walton, for 2014, 2015, 2016, 2017, 2018, 2019, 2020."

5. The Council provided some information within the scope of the request but refused to provide the remainder citing the following exceptions as its bases for doing so:
  - Regulation 12(5)(b) – Affect the course of justice,
  - Regulation 12(4)(e) – Internal Communications,
  - Regulation 13 – Personal Information.
6. The Council upheld its position at internal review. However, during the course of the Commissioner's investigation the Council changed its position. It disclosed further information within the road inspection reports, redacting specific dates that defects in the road condition were logged and then repaired from the reports from the last six years. It stated that it was now relying solely on the exception under regulation 12(5)(b) (affect the course of justice) to withhold the redacted information.
7. The Council also redacted the name of the member of admin staff who had generated the report, the Commissioner has not considered this in this notice.

## **Reasons for decision**

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8. The following analysis sets out why the Commissioner has concluded that the public authority was entitled to rely on regulation 12(5)(b) of the EIR in this particular case.
9. The Council argues that to disclose specific dates that defects in the road condition were logged and then repaired from the reports from the last six years would adversely affect the course of justice in that this information could be used to facilitate fraudulent claims against the Council in respect of damage or personal injuries relating to alleged poorly maintained roads. Its basis for withholding the dates from the last six years specifically is that a claim for property damage must be brought within six years of the cause of action (and a personal injury claim within three years).

10. The Commissioner accepts the arguments made by the Council. Furthermore, in Decision Notice IC-45186-B4K7<sup>1</sup> the Commissioner found that Birmingham City Council was entitled to withhold the dates of road safety inspections on a specific road under regulation 12(5)(b) of the EIR on the basis that it was more probable than not that disclosure of the information would undermine existing legal remedies and adversely affect the course of justice. The Commissioner finds that the exception under regulation 12(5)(b) is engaged with respect to the withheld information in this case for the same reasons as set out in Decision Notice IC-45186-B4K7.
11. Regarding the public interest test, in this case, the Council considered the presumption of disclosure under the EIR, the general principles of accountability and transparency and its responsibility to keep the roads free of defects as factors in favour of disclosure. In favour of maintaining the exception, it considered the likelihood of fraudulent claims arising as a result of disclosure, its responsibility to prevent fraud and protect the public purse from such claims, the fact that genuine claimants could obtain the information under pre-action disclosure rules and the fact that any concerns regarding the frequency and/or quality of highway inspections and repairs can be raised as a complaint to the Local Government Ombudsman. The Council's position is that the public interest in maintaining the exception outweighs that in disclosure.
12. The Commissioner agrees with the Council, his decision is that the public interest in maintaining the exception outweighs that in disclosure in this case. Paragraphs 21 to 34 of Decision Notice IC-45186-B4K7, referred to above, includes detailed analysis of the public interest in disclosing/withholding this type of information.

## **Other matters**

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13. Although the Commissioner's decision is that the Council has correctly applied regulation 12(5)(b), he notes that the Council's engagement with his office regarding this complaint was poor.

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2619209/ic-45186-b4k7.pdf>

## Right of appeal

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14. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

15. 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.
16. 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**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**