

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 1 December 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 from Coventry City Council ('the council') data relating to air quality collected by specific air quality sensors which are under trial by the council in parts of the city. The council withheld the data under Regulation 12(4)(d) (material which is still in the course of completion, to unfinished documents or to incomplete data).
2. The Commissioner's decision is that the council was not correct to withhold the requested information under Regulation 12(4)(d).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To disclose the requested information to the complainant
4. The public authority must take these steps 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

5. On 19 November 2021, the complainant wrote to the council and requested information in the following terms:

"I would like ALL the data collected by/on behalf of Coventry CC for ALL 12 Earthsense Zephyr air quality sensors positioned with Coventry to include:

 - 1 - exact location (road + 12 figure grid reference)
 - 2 - date each sensor was installed
 - 3 - comprehensive data/readings for NO₂ and other pollutants measured (especially PM_{2.5}s, but also NO, PM₁₀s, Ozone-O₃, SO₂ and CO)
 - 4 - data tabulated (in Excel format) by date and by hourly tranche 0800-0900 etc. I know this amount of detail is available for DEFRA data for Binley Rd so presumably it is for Earthsense data.
 - 5 - data up to at least a week (ideally 2-3 days) before your response. I will be sharing this request with MP and selected councillors so the quicker you can reply the better."
6. The council responded on 16 December 2022. It refused the request on the basis that Regulation 12(4)(d) applied (incomplete data).
7. Following an internal review, the council wrote to the complainant on 27 January 2022. It upheld its previous decision.

Reasons for decision

8. The following decision notice provides the Commissioner's reasons for deciding that the council was not correct to apply Regulation 12(4)(d) to withhold the data from disclosure.
9. Amongst other things, Regulation 12(4)(d) of the EIR allows information to be exempted from disclosure where it relates to incomplete data.
10. The council explained that it is trialling the sensors to try and understand more about the data they can provide. It said that the trial has been ongoing since 2019, and that it has no set end date. It said therefore that this information remains in draft form.
11. The Commissioner is satisfied that the withheld information can be categorised as incomplete data. The data collection is ongoing as part of the trial, and therefore further information will be added to it in the future.

12. As such, the Commissioner has decided that Regulation 12(4)(d) of the EIR is engaged by the information which the council is withholding. The has therefore gone on to consider the associated public interest test.

The public interest test

13. The test is whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
14. Regulation 12(2) also provides that a public authority shall apply a presumption in favour of disclosure.

The public interest in the exception being maintained

15. The council clarified that whilst it is using this information informally, the trial is set to determine whether the sensors in question are suitable to be used on a formal basis. It clarified that its data collection is ongoing, however, the data collected from the monitors is still not recognised by Government's Joint Air Quality Unit as the equipment is not yet "type-approved".
16. It highlighted that DEFRA guidelines require that data accuracy needs to be assured before reliance is placed on the data obtained from sensors. It said that the data cannot therefore be used as part of any formal business case or technical evidence submission to the Government.
17. Until that decision is made, it considers that it has a duty to ensure that the information it releases is accurate. It argues that by releasing incomplete or partial data, this could lead to misleading conclusions being drawn.

The public interest in the information being disclosed.

18. Air quality is of growing importance and awareness throughout the UK, with a number of deaths being associated to heavy pollution levels. The government has stated that "The annual mortality of human-made air pollution in the UK is roughly equivalent to between 28,000 and 36,000 deaths every year."¹

¹ <https://www.gov.uk/government/publications/air-pollution-applying-all-our-health/air-pollution-applying-all-our-health#:~:text=The%20annual%20mortality%20of%20human,and%2036%2C000%20deaths%20every%20year.>

19. Air quality is of particular concerns in many cities, including Coventry. There has been media reports that it has been ordered to reduce its Nitrogen Dioxide levels within the city or the Government will consider introducing a clean air charging zone².
20. There is therefore a very strong public interest in the disclosure of data which informs upon air quality within the city of Coventry.

The Commissioner's analysis

21. Paragraph 9 of the Commissioner's guidance on regulation 12(4)(d)³ states that 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.
22. Paragraph 11 of the guidance clarifies that data that is incomplete because a public authority is still collecting it will be covered by this exception, but where an authority is using or relying on data at the time of the request, then it cannot be considered incomplete simply on the basis that it may be modified or amended in the future.
23. In the case of *Armagh Brainbridge Craigavon Council v IC Lavery* ([EA/2019/0225](#)) the First-tier Tribunal accepted that a plan was 'unfinished', although it considered that this status was ambiguous. However, it subsequently drew upon the fact that the plan had been relied upon in the council's decision making, and in the fact that it had influenced the council's actions, in deciding that the greater public interest rested in the disclosure of the information.
24. The Commissioner considers that, even where it can be demonstrated that the data is incomplete, the fact that an authority is relying upon it, and that it is influencing its decision making, is likely to be a strong factor towards the disclosure of the information when considering the public interest test under Regulation 12(1)(b).

² <https://www.coventrytelegraph.net/news/coventry-news/clean-air-charging-zones-introduced-22449104>

³ https://ico.org.uk/media/for-organisations/documents/1637/eir_material_in_the_course_of_completion.pdf

25. The council argued that if the data is inaccurate, then its disclosure in this form would be misleading. It confirmed to the Commissioner, however, that it is relying upon the data on an informal basis when making decisions. It confirmed that whilst the data cannot be used as a formal business case and technical evidence to the government, it is using the data to inform strategy development and identify ongoing air quality trends.
26. The Commissioner notes that the developer of the sensor system suggests that the council used, or was intending to use, the system as part of a decision-making process in order to direct and divert traffic flows when the sensors measure increased pollution within areas of the city.⁴ The Commissioner considers that whilst the data may still be being considered for its accuracy, the sensors were intended to be used to make decisions which affected traffic flows and individuals movements in and around the city. The Commissioner notes, however, that the council states that it no longer continues to use automatic (continuous) monitoring (paragraph 3.1.1 at <https://www.coventry.gov.uk/downloads/file/38378/asr-coventry-2021>).
27. The Commissioner also notes that the council states that the trial period has no set end-date. He therefore considers that there is a public interest in the council disclosing the information it has gathered up to the point of the request. Otherwise, it could be an indefinite period of time before the data can be analysed by interested parties. A disclosure of the trial data would allow interested parties to consider the accuracy of the data as compared with that of the council's ongoing systems of measuring air quality.
28. The Commissioner also notes that as the council is using the information to inform strategy, there is a public interest in the disclosure of that information in order that interested parties can understand the council's reasons for its actions from a fully informed position.
29. As regards the accuracy of the data, the Commissioner considers that the public authority would be able to place the disclosed information in context, and add a proviso to the disclosure that the data is being collected as part of a trial, and that its accuracy is still being evaluated.

⁴ <https://www.earthsense.co.uk/post/zephyr-sensors-send-alerts-to-divert-traffic-from-pollution-hotspots-in-coventry>

30. The Commissioner also notes that the systems are already used by a number of different local authorities, for various purposes.

The Commissioner's conclusion

31. The Commissioner has reviewed both the complainant's requests and the public authority's responses. Regulation 12(2) of the EIR states that a public authority shall apply a presumption in favour of disclosure, and the Commissioner has borne this in mind when reaching his decision.
32. On the evidence presented to him in this case, the Commissioner has decided that the public interest in the disclosure of the information outweighs that in the exception being maintained in this instance.
33. The Commissioner has therefore decided that the council was not correct to apply Regulation 12(4)(d) to withhold the information from disclosure.

Right of appeal

34. 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

35. 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.
36. 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

Ian Walley
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