

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 8 November 2022

Public Authority: London Borough of Hammersmith and Fulham
Address: King Street
Hammersmith
London W6 9JU

Decision

1. The complainant has requested copies of engineering reports related to Hammersmith Bridge from the London Borough of Hammersmith and Fulham (the "Council").
2. The Commissioner's decision is that the Council is entitled to rely on regulation 12(4)(b) (manifestly unreasonable) of the EIR to refuse to comply with the request.
3. The Council also breached the requirements of regulation 11 by failing to conduct an internal review within 40 working days.
4. No steps are required.

Request and response

5. The complainant made the following information request to the Council on 19 September 2021:

"in regards to Hammersmith Bridge ...the engineers report that the bridge was dangerously defective around or before August

2020" and "the following engineers report that the bridge was safe enough for pedestrians and cyclists in or before July 2021."

6. On 13 October 2021, the Council refused to provide the requested information citing section 24 (national security) and section 38 (health and safety) of the Freedom of Information Act (FOIA) as its basis for doing so.
7. The complainant requested an internal review on 25 October 2021 but did not receive a reply until 4 May 2022. The Council acknowledged that it should have dealt with the request under the EIR. It revised its position refusing the request under regulation 12(4)(b) of the EIR (manifestly unreasonable). It said that if regulation 12(4)(b) did not apply, it would instead rely on regulation 12(5)(a) (international relations, defence, national security or public safety).

Reasons for decision

8. The Commissioner agrees that the requested information is likely to be environmental and therefore, the Council was right to handle the request under the EIR.
9. The Commissioner has therefore considered whether the Council is entitled to rely on regulation 12(4)(b) (manifestly unreasonable) of the EIR to refuse to provide the requested information. The Commissioner notes that if regulation 12(4)(b) applies, then regulation 12(5)(a) does not fall to be considered.
10. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable. In this case, the Council is citing regulation 12(4)(b) on the grounds that to comply with it would impose a significant and disproportionate burden on the Council's resources, in terms of time and cost.
11. In March 2021, the Commissioner decided that the Council was entitled to rely on regulation 12(4)(b) of the EIR as its basis for not responding to a request for similar information - see the ICO Decision Notice IC-53516-C4Q0¹ (the "2021 Decision Notice"). The Commissioner has taken

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2619536/ic-53516-c4q0.pdf>

the 2021 Decision Notice into account when reaching this decision as both requests for information are comparable. He has also referred to his own Guidance² and the detailed submissions provided to the complainant by the Council in the internal review response.

12. This request (on the face of it) only seeks two reports. While the Commissioner has not seen the withheld information he understands, from the summary on page 5 of the internal review, that the decision to close the bridge to all users in August 2020 was based on over 40+ documents held by the Council relating to Hammersmith Bridge and the structural issues. The Council states that each of these documents is very large, for example, the appendices of a feasibility study are 4000 pages, another of the reports is 285 pages. The Commissioner notes, therefore that the decision to close the bridge to all users was based on a series of reports generated over a period of years, rather than in two single reports.
13. The Commissioner therefore accepts that the information requested is voluminous and seeks significantly more than two reports. In the 2021 Decision Notice, where the request for information was comparable, the Council estimated that it would take over 72 hours of time to respond to the request in that case dated June 2019³. The Council note that, as further information has been produced since the 2019 request was received, which would be relevant to the complainant's request, it is reasonable to assume that the resources involved in responding to this request, received over two years later, would be greater than the previous estimate and would impose an unreasonable burden upon it.
14. The Commissioner is also satisfied that the Council would require the involvement of an engineering specialist to consider what EIR exceptions would apply to the information. It is important to note that the Council may refuse to disclose information if disclosing it would 'adversely affect'

² <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

³ 7 June 2019 request wording: "What engineering reports have there been relating to Hammersmith Bridge sent to/from the Council since May 2014? I would like to see copies of all the reports."

(harm) one of the interests listed in regulations 12(5)(a) to 12(5)(g)⁴ – and not only if it would disclose legal advice, as suggested to the Commissioner by the complainant. Due to the technical nature of many of the documents, this review would need to be undertaken by engineers to determine what information was and was not suitable for redaction. The Council says these engineers would need to “be pulled off their work on the bridge” to do so.

15. The Commissioner is therefore satisfied with the Council’s explanation that going through the information in order to respond to this EIR request would impose an unreasonable burden upon it. Under EIR, unlike under FOIA, public authorities are entitled to include the time taken to consider the application of exceptions when calculating the cost of compliance with an EIR request.
16. Regulation 12(4)(b) is subject to a balance of public interest test. The Commissioner recognises that there is a considerable public interest in understanding work undertaken on Hammersmith Bridge. However, he recognises that the cost of providing a response in this case would be extremely expensive and time consuming. The Council already proactively makes information about Hammersmith Bridge, including a summary of the reasons for the closure and partial re-opening and details of the planned repair works, available on the Council’s website. There is also information available on the Department for Transport’s website and weblinks were provided to the complainant in the internal review response.
17. The Commissioner is therefore satisfied that the Council is entitled to rely on regulation 12(4)(b) as its basis for not responding to the request. Given his conclusion with regard to regulation 12(4)(b), the Commissioner has not gone on to consider whether the Council can also rely on regulation 12(5)(a).
18. Regulation 9 of the EIR requires a public authority to provide advice and assistance to requesters. The Commissioner accepts that the Council have sufficiently met its obligations under regulation 9. Given the sensitive nature and the significant volume of the requested information, the Commissioner agrees that revising the request would be unlikely to make a difference. In addition, the Commissioner notes that the Council,

⁴ <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/refusing-a-request/>

in its internal review, provided numerous links to information that is publicly available via its website and the Department for Transport's website. The Council say that this information is updated as new information becomes available.

19. Under the requirements of regulation 11, a public authority is obliged to respond for a request for internal review within 40 working days. In failing to carry out an internal review within 40 working days the Council has also breached regulation 11 of the EIR. The Commissioner notes that the Council apologised for this.

Right of appeal

20. 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

21. 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.
22. 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

Jonathan Slee
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