

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

### **Decision notice**

**Date:** 15 December 2022

**Public Authority:** Bolton Council  
**Address:** Town Hall  
Victoria Square  
Bolton BL1 1RU

#### **Decision**

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1. The complainant requested information relating to a proposed Traffic Regulation Order ("TRO"). Bolton Council (the "council") withheld the information under the exception for material in the course of completion – regulation 12(4)(d) of the EIR.
2. The Commissioner's decision is that the council correctly handled the request under the EIR and correctly withheld the requested information under regulation 12(4)(d). He does not require the council to take any steps.

## Request and response

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3. On 20 June 2022 the complainant made the following information request to Bolton Council (the "council"):

(In related to proposed Traffic Order Ref TRO303959/HS/web Markland Hill Primary School Area)

- "Copies of all the concerns (suitably redacted) that the council say have been made to them.
  - Details of the observations and surveys undertaken by the Highways dept in support of their application of the TRO
  - A copy of the Equality Impact Assessment undertaken by the Council in respect of this proposed scheme required by the Public Sector Equality Duty (Equalities Act 2010). All of the residents of this part of ARW are elderly and some have health/disability issues."
4. The council's final position is that the requested information is subject to the exception for information in the course of completion (regulation 12(4)(d)).

## Reasons for decision

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5. The complainant has raised concerns that the request should have been considered under the Freedom of Information Act 2000 (FOIA) rather than under the EIR.
6. The Commissioner considers that the requested information relates to measures "...affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements..." as set out in regulation 2(1)(c) of the EIR. He is, therefore, satisfied that the information is environmental in nature and that the request falls to be considered under the EIR. The Commissioner has issued numerous decision notices which reflect this position<sup>1</sup>.

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<sup>1</sup> See, for example: <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4023226/ic-178398-q4z7.pdf>

7. The reasoning below covers whether the council is correct when it says that it the information is subject to the exception in regulation 12(4)(d).

**Regulation 12(4)(d) – material in the course of completion**

8. Regulation 12(4)(d) of EIR provides that 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.
9. The aims of the exception are:
  - to protect work a public authority may have in progress by delaying disclosure until a final or completed version can be made available. This allows it to finish ongoing work without interruption and interference from outside; and
  - to provide some protection from having to spend time and resources explaining or justifying ideas that are not and may never be, final.
10. For regulation 12(4)(d) to be engaged, the requested information must fall within one of the categories specified in the exception. It is not necessary to show that disclosure would have a particular adverse effect but any adverse effects of disclosure may be relevant to the public interest test.
11. The Commissioner considers that the fact that the exception refers to both material in the course of completion and unfinished documents confirms that these terms are not necessarily synonymous. 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.
12. The council has confirmed that it considers the information requested represents material in the course of completion as the information will form part of a report to the Executive Member for Highways and Transport which, on completion, will be made public via its website.
13. The council has explained that a Traffic Regulation Order (TRO) is a legal document that restricts or prohibits the use of the highway network, in line with The Road Traffic Regulation Act 1984. It has stated that TROs help it to manage the highway network for all road users, including pedestrians, and that their purpose is to improve road safety and access to facilities.

14. The council has explained that officers must apply a strict priority assessment process to fairly determine which TROs will be progressed based upon the borough-wide programme for all highways work. It has clarified that the assessment of TROs is based on a number of factors, including national policy, safety, benefits to public transport and cycling, routes to school and community facilities, air quality, congestion, and environmental benefits.
15. The council confirmed that TROs follow a statutory process and that it is the council's responsibility to make sure a fair process is undertaken in determining a TRO, including drafting plans which consider all highway user impacts, robust consultation, followed (if appropriate) by a report to the Executive Cabinet Member for approval to implement (taking into consideration residents' views, concerns, and opinions).
16. The council explained that its Highways Service has confirmed that the TRO process in relation to the location identified in the request is still ongoing.
17. In light of the above, it is clear that the requested information falls within the scope of the exception and that, therefore, regulation 12(4)(d) is engaged.
18. As the regulations under the EIR are all subject to the public interest test, the Commissioner has considered whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.
19. The Commissioner recognises that there is a general public interest in transparency and accountability in relation to decisions which will have an impact on the environment. This is particularly the case where decisions may, as in this case, raise health and safety issues. The Commissioner acknowledges the complainant's genuine concerns in this regard.
20. The Commissioner is mindful that the purpose of the exception is to provide authorities with a safe space within which decisions can be made without this process being frustrated or hindered. He accepts that putting information in the public domain about speculative proposals which might never actually come to fruition may result in the effectiveness of decision making being challenged as the council may be forced to field enquiries about hypotheticals.
21. The Commissioner considers it to be an established fact that the need for a safe space is heightened when decisions are yet to be reached.

22. In this case the council has confirmed that, once it has finalised the TRO, a report containing the requested information will be published. The Commissioner considers that the public interest in transparency and accountability in this case is, therefore, satisfied as the information will be published and open to public scrutiny.
23. The Commissioner recognises the complainant's concerns in this matter. However, is not aware of any specific public interest factors which warrant publishing the information before the TRO process is complete, at least not factors which would counterbalance the potential damage to the effectiveness of the council's deliberations in this case.
24. The Commissioner is satisfied that, at this time, the public interest in road safety and in facilitating effective decision making by the council and is best served by maintaining the exception and withholding the information.
25. The Commissioner has concluded that the council has correctly applied regulation 12(4)(d) and that the public interest favours maintaining the exception.

## Right of appeal

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26. 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)

27. 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.
28. 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 .....**

**Christopher Williams**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**