

**Freedom of Information Act 2000 (FOIA)
Environment Information Regulations 2004 (EIR)**

Decision notice

Date: 12 May 2022

Public Authority: London Borough of Waltham Forest
Address: Waltham Forest Town Hall
Forest Road
Walthamstow
E17 4JF

Decision (including any steps ordered)

1. The complainant requested information from the London Borough of Waltham Forest ("the Council") about 'LTN's (Low Traffic Neighbourhoods), Road Closures and Mini Holland.'
2. The Council disclosed some of the requested information but cited section 40(2) of FOIA (personal information) as its basis for refusal to disclose the redacted information. It introduced additional reliance on section 31(1)(a)(b) of FOIA (law enforcement), and section 24 of FOIA (national security). During the Commissioners investigation, the Council amended its response changing its reliance to regulation 12(5)(a) (national security) of the EIR, and regulation 13(1) of the EIR (personal information) to withhold the redacted information.
3. The Commissioner is satisfied that the Council is entitled to refuse to comply with the request for the redacted information on the basis of regulation 12(5)(a) and regulation 13(1) of the EIR and that the public interest favours maintaining the exception.
4. The Commissioner does not require any steps to be taken as a result of this decision notice.

Request and response

5. The complainants original request for information from the Council was submitted on 18 December 2020 and was in the following terms:

“Could I please have access to all consultation documents relating to consultation Greenwich Council have had with Emergency & Essential Services regarding LTNs, road closures & Mini Holland changes.

I would like both the Councils notice to each service e.g., Police / Fire / Ambulance and their response to each liveable Street consultation area.”
6. The complainant reworded their request on 8 January 2021 after being prompted by the Council that the wrong Council’s name had been quoted, and their request was unclear:

“Could I please have access to all communication between Waltham Forest Council and the Emergency Services regarding LTNs (Low Traffic Neighbourhoods), road closures & Mini Holland changes.

I would like both the Councils communication to each service e.g., Police / Fire / Ambulance and their response.”
7. On 1 February 2021, the Council cited Section 12 (cost of compliance) of FOIA to refuse the requested information.
8. The complainant contacted the Commissioner to complain about the way their request for information had been handled.
9. The Commissioner advised the complainant that they had not exhausted the complaints process, and they needed to request an internal review.
10. The complainant went on to ask for an Internal Review of the Council’s refusal on 25 July 2021, stating they wanted the information from the latest date to the oldest date in the time the Council have, not to go over the budget. The Council asked the requester to clarify which request they were asking for an Internal Review on.
11. On 20 August 2021, the complainant wrote to the Council in order to clarify their request, and requested information in the following terms:

“Could I please have access to all consultation documents relating to consultation the Council have had with Emergency & Essential Services regarding LTNs, road closures & Mini Holland changes.

I would like both the Councils notice to each service e.g., Police / Fire / Ambulance and their response to each liveable Street consultation area

Please supply the information requested, from the latest information to the oldest, in the time you have available, so you don't go over budget."

12. The Council responded on 20 September 2021 with the disclosure of some of the requested information. However, parts of the disclosed information were redacted with the Council refusing to disclose this information citing section 40(2) (personal information) of FOIA to do so.
13. On 19 October 2021, at internal review, the Council maintained its stance under section 40(2) of FOIA to the withheld information.

Scope of the case

14. The Council provided the outcome of its internal review to the Complainant on 20 August 2021, who then asked the Commissioner to investigate their complaint.
15. During the course of his investigation of this complaint, the Commissioner considered the request that the Council had refused on the basis of section 40(2), section 31(1)(a)(b), and section 24 of FOIA concerning LTNs should have been handled under the EIR. The Commissioner asked the Council to consider their reliance on the access regime on 21 March 2022. The Council agreed with the Commissioners consideration and advised the Complainant citing regulation 13(1) and 12(5)(a) of the EIR for the withheld information.
16. The Commissioner considers the scope of this case to be to determine whether the Council was correct to rely on regulation 12(5)(a) and regulation 13(1) of the EIR to withhold the requested information. If the Council were correct, then the Commissioner will go on to consider whether it is in the public interest to release the withheld information.

Reasons for decision

The applicable access regime

17. Regulation 2(1) of the EIR provides a definition of 'environmental information' including information on:

'(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape, and natural sites including wetlands, coastal and marine areas, biological diversity, and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation, or waste, including radioactive waste, emissions, discharges, and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a).

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affecting the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements'

18. In the Commissioner's view the information sought by the complainant's request concerning LTNs is information on a measure, namely the LTNs, which are likely to affect the state of the environment. For example, measures introduced under the LTN include changes to road layouts and traffic flows. Such measures will affect the state of the element as these will require changes to road layouts and are also likely to affect traffic flows thus having an impact on emissions from vehicles. Consequently, the information sought by this request falls within the definition of 'environmental information' contained at regulation 2(1)(c) of the EIR.

Regulation 12(5)(a)

19. Regulation 12(5)(a) of the EIR states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

(a) international relations, defence, national security, or public safety.

20. In this case the Council has applied the exception on the basis that disclosure would adversely affect public safety and national security.

21. The Commissioner's guidance on the EIR describes public safety as:

'Public safety' may be interpreted widely. The exception covers information that, if disclosed, would adversely affect the ability to protect the public, public buildings and industrial sites from accident or acts of sabotage; and where disclosing information would harm the public's health and safety.

22. The exception will therefore include measures designed to protect against factors ranging from protecting the public from terrorism incidents, emergencies such as flooding, pandemics, and protecting against the actions of groups intending to disrupt Council services, damage property etc...

The Council's position

23. The Council argues that a disclosure of the specific information on pages 18 and 22 of the document '1737132 Redact.pdf' would put sensitive information into the public domain which would allow malicious parties to undermine and bypass procedures which the Council has in place to protect public safety in the event of public emergencies. It argues that it has published the information that it considers can be put into the public domain without undermining public safety, and it has disclosed a redacted copy of the information to the complainant in response to their request for information.

24. It said that the consultations were undertaken to allow the Council and related services to function in an emergency situation. It argues that if an un-redacted version were released publicly this would reveal any risk factors, or weakness in plans, and the details of how the Council intends to mitigate against them. It argues that this would provide opportunities for the plans to be sabotaged or undermined in an emergency situation, leaving the health and safety of individuals and the community at significant risk.

25. It further argues, for example, that particular people, systems, or processes relevant to emergency plans could be targeted in order to sabotage continuity plans being carried out effectively. The Council said that the redactions made to the documents provided in fulfilment of the request have been made as to disclose the information would adversely affect national security and that therefore regulation 12(5)(a) is engaged.

26. It said that publication would also allow individuals to understand planning for different types of emergencies and to identify how to

sabotage those plans, for example what planning is in place for the event of a major fire, flood, or a loss of resource.

27. It also said that the likelihood of an adverse effect would be high. It considered that local authorities are a target for cybercrime, terrorism, and other acts to undermine the safe and effective running of local government and services.

The Complainant's position

28. The complainant has argued that 'I asked multiple times for correspondence between the Council and the emergency services.

They claimed they had agreement from the 3 services. The LAS freely gave me a copy of a letter they sent the CEO of the Council in July 2020 totally against physical roadblocks as it's a danger to life. At Least one person has died after an ambulance was delayed due the LTNs.'

The Commissioner's analysis

29. The central issue which the Commissioner needs to consider when deciding whether the exception is engaged in this case is whether disclosing the withheld information would have an adverse effect upon public safety. This involves two central questions which need to be considered. The first is whether a disclosure of the withheld information would, in actuality, be capable of causing the concerns which the Council has highlighted if used inappropriately (i.e., would it be capable of being used to undermine emergency planning). The second is whether that affect is likely under the circumstances.
30. Organisations or individuals' intent on undermining the Council's and emergency services ability to react would find the information contained within the redacted document helpful in achieving the aim of disrupting these services.
31. The issues highlighted by the Council regarding the withheld information providing access to information on contacts, systems, and processes in the event of an emergency. The risks of providing such information are clear, and, having seen the withheld information, the Commissioner accepts the arguments of the Council that a disclosure could be used to undermine the plans.
32. The second question is therefore whether a disclosure of the information would be likely to cause that affect.
33. When considering this issue, the Commissioner has taken into account that the Council's plans range across a number of emergency services,

but it is only the redacted information for the MET and LFB which has been requested here.

34. The Council said that it considers the likelihood that this information could be used to undermine procedures is high.
35. They also argued:

'In The Office of Communications and the Information Commissioner and T-Mobile (UK) Limited (EA/2006/0078 4 September 2007), Ofcom successfully argued that disclosing a database of base stations for mobile phones would assist criminals wanting to steal cabling and other materials. This in turn would adversely affect public safety. The Tribunal also accepted that information would be of use to terrorists intending to disrupt the country's communication system.

This illustrates that relatively mundane information about primarily civil infrastructure could also be of use to terrorists and therefore could attract the exception provided by regulation 12(5)(a).'

36. The Commissioner has taken into account the fact that the UK threat level for international terrorism is currently rated as "Substantial" meaning an attack is "Likely."
37. However, he recognises that the issue is much wider than the threat of terrorist attacks.
38. Recent campaigns by various organisations and groups of individuals have caused significant disruption to various town and city centres, as well as the highway infrastructure in various parts of the UK.
39. Safeguarding national security also includes protecting potential targets even if there is no evidence that an attack is imminent (Decision Notice FS50308040).
40. The Commissioner recognises terrorists can be highly motivated and may go to great lengths to gather intelligence. This means there may be grounds for withholding what seems harmless information on the basis that it may assist terrorists when pieced together with other information they may obtain (Decision Notice FS50368290).
41. He also recognises that knowing the planned reaction to an incident extends to other services in place to deal with such an incident. The redactions relating to the request cannot therefore be considered as isolated to that service.

42. Taking all of this into account, the Commissioner is satisfied that there are existing threats to the Council's provision of services, and to the public generally in the City, and that a disclosure of the information could provide information which would allow individuals or groups to undermine responses to emergency situations in some circumstances.
43. The Commissioner's decision is therefore that Regulation 12(5)(a) is engaged.

The public interest

44. Regulation 12(5)(a) is subject to a public interest test. The test is set out in Regulation 12(1). 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. When carrying out this test, Regulation 12(2) requires that a public authority shall apply a presumption in favour of disclosure of the information when carrying out this test.

The public interest in the information being disclosed

45. In addition to the general public interest in transparency and accountability, and any public interest arising from the issue concerned, there may be a specific public interest in disclosing the information in question.
46. The Council is aware that the public interest in disclosure may be equally real and when restrictions are placed on the rights and freedoms of the public, it is important that the public are reassured that those measures are both proportionate and effective.

The public interest in favour of maintaining the exception

47. The Council submit that the nature of the potential harm that could be caused by disclosure of the withheld information is an important factor, even if the chance of that harm occurring is relatively low.
48. The Council has taken into account the nature of the issues it has identified, and the potential serious consequences of disruption being caused to services should the withheld information be disclosed.
49. The Council has considered the public interest in the issue of the subject matter of the information released in fulfilment of the EIR request (Low Traffic Neighbourhoods) and the specific information that has been withheld. It submits that the public interest in the issue of the withheld information does not outweigh the arguments expounded by the Council

for its decision to withhold the specific information that has been redacted.

50. The Council also submits that the information in question would not greatly add to the public understanding of the subject matter, nor would it help inform debate.

The Commissioner's conclusions

51. The Commissioner considers that this is a case where there is a small likelihood of the information being used to undermine the Council and related services, but that in the event that that were to occur, the consequences would be extremely serious. He has taken this point into account in his analysis of the public interest arguments.
52. The Commissioner recognises that the likelihood of emergencies occurring which will require the use of the LTNs is real and significant.
53. He also accepts that some campaign groups can and will research and organise themselves prior to taking action in some circumstances.
54. The complainant's argument that it is in the public interest for the public to have access to the withheld information in order to reassure them that plans exist, and that the planning was robust, does have weight.
55. However, there is a risk that identifying the steps which would be taken in specific scenarios, would provide valuable information for any parties wishing to subvert or undermine the response. In effect, publishing the planning and implementation of those plans in order to prove that they are appropriate and robust might serve to actually undermine the robustness of those plans in certain circumstances.
56. Whilst the risk of such concerted steps being taken against the Council and related services may not be huge, the repercussions of this could be significant and ultimately lead to situations endangering public health and safety.
57. The Commissioner recognises that the information itself may appear to be relatively anodyne for the most part. However, its potential for usage in the 'wrong hands,' would lead to a significant weakening of the Council's and related services ability to react to emergencies and to continue to provide that service to the public.
58. Regarding the balance of the public interest, the Commissioner considers there to be a very significant public interest in ensuring that the UK's national security is not harmed. Furthermore, in the Commissioner's view disclosure of this information would not be likely to

provide any further particular insight into the matters which are the focus of the complainant's complaint.

59. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions. As stated in the Upper Tribunal decision *Vesco v Information Commissioner* (SGIA/44/2019):

'If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure...' and 'the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations' (paragraph 19).'

60. It is the Commissioner's view that the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), considers that the Council was correct to apply Regulation 12(5)(a) to withhold the information in this instance.

Regulation 13(1) - personal data

61. Regulation 13(1) of the EIR provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.
62. In this case the relevant condition is contained in regulation 13(2A)(a)1 . This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
63. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data, then regulation 13 of the EIR cannot apply.
64. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

65. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual."

66. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
67. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of the individual.
68. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
69. The withheld information in this case is that of employees of third-party organisations as well as the Councils own employees. The focus of the complaint is 'who said what to who, and why'.
70. Having considered the withheld information, the Commissioner is satisfied that this information both relates to and identifies the employees concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
71. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the EIR. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
72. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

73. Article 5(1)(a) of the GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."

74. In the case of an EIR request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair, and transparent.
75. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

76. In addition, if the requested data is special category data, in order for disclosure to be lawful and compliant with principle (a), it also requires an Article 9 condition for processing.

Lawful processing: Article 6(1)(f) of the GDPR

77. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that "processing shall be lawful only if and to the extent that at least one of the" lawful bases for processing listed in the Article applies.

78. The Commissioner considers that the most applicable lawful basis is Article 6(1)(f):

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"¹.

79. In considering the application of this lawful basis in the context of a request for information under the EIR, it is, therefore, necessary to consider the following three-part test:-

i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;

ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;

¹ Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, regulation 13(6) EIR (as amended by Schedule 19 Paragraph 307(7) DPA) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted"

iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

80. The Commissioner considers that the test of necessity under stage (ii) must be met before the balancing test under stage (iii) is applied.

(i) **Legitimate interests**

81. In considering any legitimate interest(s) in the disclosure of the requested information under the EIR, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.

82. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

83. In this case, the complainant considers that the Council's decision – to implement LTN's – was not arrived at on the basis of persuasive evidence and expertise, and therefore, the Council has made uninformed decisions, which may place individuals at risk.

84. The complainant's concerns pertain to the loss of a life which they believe may have been prevented, and a letter from the LAS stating their objections to the Council in July 2020.

85. Their request therefore sought to uncover the contents of the discussions between the Council and the emergency services which may have influenced their decision. They consider that the withheld information would shed light on some or all of these matters and would open the Council up to scrutiny.

86. However, having reviewed the contents of the withheld information, the Commissioner is satisfied that it sheds no further light on the complainant's wider concerns, and is centred around the concerns of dealing with the day-to-day implementation of the services involved.

87. The Commissioner therefore considers that a legitimate interest in the disclosure of the information exists only in exploring some of the general reasoning behind the Council's decision making relating to the LTN's. There can be no legitimate interest in shedding light on the complainant's wider concerns since the withheld information is not related to them.

88. The Commissioner is, however, satisfied that there is a legitimate interest in the disclosure of the information, in understanding the Council's general reasoning to some extent.

(ii) Is disclosure necessary to meet the legitimate interest?

89. "Necessary" means more than desirable, but less than indispensable or of absolute necessity. Accordingly, the test is one of reasonable necessity, and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the EIR must therefore be the least intrusive means of achieving the legitimate aim in question.

90. The Commissioner notes that, while the Council provided information initially, due to the redacted information, it may be difficult to fully gauge how the specific decisions were arrived at.

91. However, the Council has argued that it met the legitimate interest by providing information about the LTN's, and the fact that the redactions related to communications between third parties dealing with sensitive information about the requirements of the emergency services.

92. In this case, although the Council has refused to disclose a copy of the unredacted information, it has provided the complainant with guidance regarding previously disclosed information and the rationale behind their decision.

93. The Commissioner's decision is therefore that disclosure is not necessary to meet the legitimate interest in disclosure.

94. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest in disclosure, he has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing, and it is unlawful. It therefore does not meet the requirements of principle (a).

The Commissioner's view

95. The Commissioner has therefore decided that the Council was entitled to withhold the information under regulation 13(1), by way of regulation 13(2A)(a).

Right of appeal

96. 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

97. 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.
98. 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

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