

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 8 March 2023

Public Authority: National Highways
Address: Bridge House
1 Walnut Tree Close
Guildford
Surrey GU1 4LZ

Decision (including any steps ordered)

1. The Commissioner's decision is that National Highways is entitled to withhold the requested information associated with the M4 to Dorset Connectivity Strategic Study under regulation 12(4)(d) of the EIR as it relates to material in the course of completion. It is not necessary for National Highways to take any remedial steps.

Request and response

2. The complainant made the following information request to National Highways (NH) on 13 October 2022:

"I am writing under the Freedom of Information Act 2000 to request the following information from National Highways with regard to the agency's work with the Western Gateway Subnational Transport Board. Please may you provide me with either a paper or electronic version of the "paperwork" identified in the following statements:

On the 21st August Councillor Ray Bryan, Portfolio Holder for Highways, Travel and the Environment, Dorset Council, stated on the

Ofcom licensed radio station 'This is Alfred' based in Shaftsbury, Dorset,

"I have got sight of the paperwork that the officer group recommendation is that we do not continue with the A350 work"

On 12th October 2022 in a letter Cllr Bryan confirmed that the "paperwork" both exist and is held by National Highways..."

3. Having initially considered the request under FOIA, NH's final position was to withhold the requested information under regulation 12(4)(d) of the EIR.

Reasons for decision

4. The request concerns information about a road scheme and, as such, is environmental information that is covered by the EIR. NH correctly applied the EIR to the information when it reconsidered the request at internal review.
5. This reasoning covers NH's application of regulation 12(4)(d) to information within scope of the complainant's request. The withheld information is a presentation - 'M4 to Dorset Coast Strategic Connectivity' - the findings from which are intended to inform a subsequent report.
6. Regulation 12(4)(d) of the EIR states 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.
7. Regulation 12(4)(d) is class-based, which means that it is engaged if the information in question falls within its scope. If the information falls into one of the three categories, then the exception is engaged. It is not necessary to show that disclosure would have any particular adverse in order to engage the exception. However, regulation 12(4)(d) is subject to the public interest test.
8. In its submission to the Commissioner, NH has explained that it is relying on regulation 12(4)(d) for the following reasons:
 - The study [that informs the presentation] is part of an M4 Dorset South Coast assessment, which is part of an ongoing wider study.

- The slides were presented to a Steering Group in the context of a safe space for open conversations and emerging thinking; they were not the presentation of any conclusion or decision.
 - Releasing the presentation in its current format (ie not as the report) without wider information or context could prejudice the study's findings in due course.
 - It is part of a larger and wider study; the associated report and evidence are not complete but, when they are, they will be made available to the public on NH's website.
 - The withheld information along with other studies (NH has referred to a "wider western gateway discussion") create a conclusion that may not reflect the final outcomes of the study.
 - Disclosing the presentation could have a chilling effect on the way NH uses steering groups in the future. NH would not be able to set out its emerging thinking and would not be willing to share thinking with partners. That would only be done at the end of the study once the wider technical work has been complete.
 - A minister will consider the strategic policy decisions ie which corridor should form the north/south link. This includes the investment decision on the connectivity changes that would be needed for the M4 to Dorset, taking account of the geography.
 - The studies should be completed in the next two months.
9. The Commissioner is satisfied that, at the point of the request, the requested presentation could be categorised as information relating to material in the course of completion; that "material" being the wider M4 to Dorset Connectivity Strategic Study, which the Commissioner understands is running from 2020 to 2025. As such, the Commissioner has decided that NH was entitled to apply regulation 12(4)(d) of the EIR to the information it is withholding. He has gone on to consider the associated public interest test.

Public interest test

10. In its correspondence to the complainant, NH identified the following public interest factors for disclosure:
- There is a clear public interest in the M4 to Dorset Strategic Study and in disclosing the study's recommendations.
 - There is a general public interest in public bodies' work being transparent and open to scrutiny.

- The information has been shared with other public bodies that are part of the M4 Dorset Strategic Study Steering Group. The information is not intended to be released into the wider public domain. The Cabinet Member for Highways, Travel and the Environment simply referenced "this work" during engagement with the 'This is Alfred' radio station.
- There is a public interest now in releasing the information which sets out the emerging recommendations on the A350 road.

11. NH identified the following public interest factors against disclosure:

- The information released to the Steering Group sets out a range of matters, including emerging thinking on the road corridors, their development and underpinning technical work. This is work in progress and does not reflect an agreed or approved recommendation from government.
- Disclosing this information will impact on the integrity of wider, more detailed activity as it does not set out the full technical work undertaken to date, work in progress or the full recommendations of the study. As such, releasing it may be misleading and give an inaccurate impression because it does not provide the full picture.
- The information shared with the Steering Group provides a safe space to consider emerging thinking on road corridors and to formulate policy. Releasing the information would harm this space and moreover, impact on the integrity of the decision-making process.
- Publishing this incomplete and unfinished material into the public domain would distract the public debate and is likely to create secondary issues as the public could draw incorrect conclusions based on the disclosed information.
- The findings of the study will be made publicly available in 2023. This will confirm recommendations regarding the A350 based on all the evidence and the Government's wider recommendations for the strategic study.

12. The Commissioner acknowledges that there is always a general public interest in disclosing environmental information. In determining where the balance of the public interest lies the Commissioner has therefore given due weight to the presumption in favour of disclosure under regulation 12(2) of the EIR. He has also taken account of the specific public interest in transparency and accountability about decisions that may have widespread effects on communities and the environment. Infrastructure projects of the scale being considered by the M4 to Dorset

Connectivity Strategic Study will concern people because of those effects.

13. However, while they have an interest in that Study and the related information they have requested, the complainant has not raised concerns about the Study that are unusual or of special significance.
14. In the absence of any extraordinary concerns about the Study, the Commissioner considers that the timing of the request is key here. At the time of the request, the overarching M4 to Dorset Connectivity Strategic Study, which the requested information will inform, was still 'live' and remains live to date.
15. The Commissioner considers there was greater public interest in NH and its Steering Group having the 'safe space' needed to discuss and reach decisions associated with the M4 to Dorset Study away from public scrutiny and distraction. The information in the presentation concerns "a work in progress" and does not reflect a final or agreed recommendation or decision. The Commissioner agrees with NH that it is not in the public interest to disclose information that does not present a final position as it might mislead the public. It could also cause NH and its Steering Group to be distracted by having to field questions from the public about information in the presentation. There is greater public interest, in the Commissioner's view, in NH and the Steering Group being able to focus on their remit.
16. The Commissioner is satisfied that the public interest in transparency is met to an adequate degree by the information about the Study that is already in the public domain, and the information which NH intends to publish in 2023. The Commissioner therefore finds that, on balance, there is greater public interest in maintaining the regulation 12(4)(d) exception on this occasion.

Right of appeal

17. 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

18. 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.
19. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF