

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

### **Decision notice**

**Date:** 24 August 2023

**Public Authority:** London Borough of Hackney  
**Address:** Town Hall, Mare Street  
London  
E8 1EA

#### **Decision (including any steps ordered)**

---

1. The complainant has requested the results of a traffic management survey conducted in February and March of 2022. The London Borough of Hackney ("the Council") cited regulation 12(4)(d) of the EIR as a basis for refusing the request.
2. The Commissioner's decision is that regulation 12(4)(d) is not engaged.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Disclose the raw data of the survey results.
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 the Act and may be dealt with as a contempt of court.

#### **Request and response**

---

5. On 26 January 2023, the complainant wrote to the Council and requested information in the following terms:

"Please disclose the full survey results from the 24 Feb - 23 March 2022 Consultation on Proposed Traffic Management improvements for

De Beauvoir Road (link below).

<https://consultation.hackney.gov.uk/streetscene/de-beauvoir-road/>

Please disclose the final result, and responses by post or online and additionally, if possible, by postcode/road/location."

6. The Council responded on 20 February 2023. It stated that the information was withheld under section 22 of FOIA.
7. The Council did not provide an internal review until 7 June 2023, at which point it revised its position, citing Regulation 12(4)(d) of EIR as a basis for its refusal.

### **Reasons for decision**

---

8. Regulation 12(4)(d) of the EIR states that information is exempt if it represents material still in the course of completion, unfinished documents, or incomplete data.
9. Regulation 12(4)(d) is a class-based exception. This means that there is no requirement to consider the sensitivity of the information in order to engage the exception. However, the exception is subject to the public interest test under regulation 12(1)(b), and the exception can only be maintained should the public interest test support this.
10. The Council considers regulation 12(4)(d) applies to all the withheld information. The Council has stated the data will be used to inform a summary report which is still in the process of being compiled.
11. The Council also advised it felt releasing the withheld information would increase speculation and lead to confusion and inaccuracy, and that it intended to release the report in September of 2023.
12. On the basis of the available evidence, the Commissioner is not satisfied that the withheld information relates to material in the course of completion.
13. The ICO's published guidance on this exception explains data is unlikely to be considered incomplete if a public authority is using it to inform discussion or further analysis.
14. In this case, the Commissioner is satisfied that the upcoming report was material in the course of completion at the date of the request. However, the complainant requested the raw data separate from any intended reports. Therefore that information is complete.

15. The Commissioner therefore finds the exception is not engaged, and there is no need to consider the public interest test.

### **Procedural matters**

---

#### Regulation 11 – internal review

16. Regulation 11 of the EIR covers public authorities' obligations in relation to the carrying out of internal reviews of the handling of requests for information.
17. Regulation 11(4) requires authorities to provide an internal review decision within 40 working days of the date of receipt of a request for review. In this case the complainant submitted their review request on 20 February 2023, but the Council did not carry out a review until 7 June 2023.
18. The Commissioner has, therefore, concluded that the Council has failed to comply with regulation 11(4) in this case.

## Right of appeal

---

19. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

20. 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.
21. 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 .....**

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