

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

**Date:** 8 October 2013

**Public Authority:** Transport for London  
**Address:** Windsor House  
42-50 Victoria Street  
London  
SW1H 0TL

**Decision (including any steps ordered)**

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1. The complainant has requested from Transport for London ("TfL") information regarding projected aircraft noise impacts on the local population for airport expansion options at Stansted and Thames Estuary. TfL refused to provide the information under the exception in regulation 12(4)(d) (material still in the course of completion) of the EIR.
2. The Commissioner's decision is that TfL has incorrectly applied regulation 12(4)(d) to the requested information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - To disclose to the complainant the information that it has withheld under regulation 12(4)(d) of the EIR.
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

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5. On 16 October 2012, the complainant wrote to TfL and requested information in the following terms:

*"You will see from the email exchanges below that Cllr Daniel Moylan [a member of TfL's Board] has indicated that TfL has information on the projected aircraft noise impacts on the local population for airport expansion options at Stansted and in the Thames Estuary. Could you please provide me with this information."*

6. TfL responded on 14 November 2012 and refused to provide the requested information citing the exception in regulation 12(4)(d) (material still in the course of completion).
7. The complainant requested an internal review on 14 November 2012. TfL provided the outcome of its internal review on 28 February 2013 in which it maintained its original position.

## Scope of the case

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8. The complainant contacted the Commissioner on 18 March 2013 to complain about the way his request for information had been handled.
9. The Commissioner considered whether TfL had complied with the EIR in the handling of the complainant's request.

## Reasons for decision

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### **Regulation 12(4)(d) – Material still in the course of completion, unfinished documents and incomplete data**

10. Regulation 12(4)(d) provides that:

*"12.-(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that-*

*(d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data;"*

11. TfL explained to the Commissioner that the withheld information consisted of a paper which was produced in the summer of 2012. It was intended to provide an indication of the potential number of people who could be exposed to aviation noise generated by a new hub airport at a range of different locations, and how this compared to the number of people currently exposed to aviation noise at UK airports. It provided the Commissioner with a copy of this information.
12. The Commissioner was informed by TfL that the information in question was held for the purpose of preparing the Mayor's submission to the Airports Commission, which was convened to consider the requirements and options for increasing the UK's airports capacity. However, at the time of the request, the preparation of the submission was at a comparatively early stage and the information was in a form that could not be relied on. The methodology for determining the extent of the noise impacts had not yet been finalised at that stage and, having undertaken this work, shortcomings in the original methodology were highlighted and rectified which led to the robust and credible figures which had subsequently been published in July 2013.
13. TfL went on to explain that it did not intend to publish the requested data as it was at the time because of the concerns about how robust and accurate the data was. It was regarded as a precursor to a more rigorous and accurate piece of work, based in part on the initial noise impact estimates. Since that time, the process for calculating the noise impact has been substantially revised and refined. This meant that the final figures varied considerably from the early estimates.
14. The Commissioner was informed by TfL that the paper was created purely to inform the thinking of its Airports team as to the location, sizing and orientation of the various options in the very earliest stages of their development, providing a rough estimate of what the noise impact would be likely to be based on these initial concepts. It never intended to make this public. TfL intended that it could be used internally to inform and guide the planning process. The initial noise estimates would be replaced by more accurate data once TfL's submission to the Airports Commission was complete. It considered that it was the published version that should be relied on.
15. Based on the above information, TfL considered that it was reasonable to conclude that the exception contained in regulation 12(4)(d) was engaged, in that the requested data was intended to form part of a submission to the Airports Commission that had not at that stage been finalised.
16. TfL also explained to the Commissioner that, in terms of the public interest test, it believed that disclosure was not in the public interest at

the time of the request as it would have resulted in the airport expansion debate being undermined by the publication of inaccurate data prior to the publication of the correct figures. This would have resulted, even if contextual data had been published, in the misrepresentation of the data and would have required the expenditure of significant public and private resources in response.

17. The Commissioner's guidance on the application of regulation 12(4)(d) states that

*"Data that is incomplete because a public authority is still collecting it will be covered by this, but where an authority is using or relying on data at the time of the request, then it cannot be considered incomplete simply on the basis that it may be modified or amended in the future."* (paragraph 11)

18. The guidance goes on to refer, by way of example, to a decision of the Commissioner in relation to Basildon Council (case reference number FER0321779) in which the Council had applied regulation 12(4)(d) to information about an estimate of the number of mobile homes on sites. The Council argued that this was incomplete data as it was an estimate that might be changed in the future. In finding that the exception was not engaged, the notice stated that:

*"The Commissioner was not persuaded that an estimate could be said to be "incomplete" information simply by virtue of being an estimate that may turn out to be incorrect in the future or which is subject to change. As far as the Commissioner can see, the information represented the estimation of the contractor based on the information available at that time and in view of this, the Commissioner would regard that estimation as being "complete" information."* (paragraph 51)

19. In this case the Commissioner notes that the withheld information is a paper headed *"Estimation of Noise Exposure for three airport sites: Estuary, Isle of Grain and Standsted"*. It goes on to describe the process and assumptions used in the generation of aircraft noise exposure contours for the three potential airport sites.
20. The Commissioner notes that TfL regarded the paper in question as a precursor to a more rigorous and accurate piece of work, based in part on the initial noise impact estimates contained in the paper. It was clear that TfL intended to carry out further work to produce more accurate and reliable figures in relation to estimating the potential impact of aircraft noise for the possible sites for airport expansion.

21. However, there is nothing in the paper that has been provided to the Commissioner to suggest that it was a draft or an incomplete document. It appears to be an attempt to estimate the impact of potential aircraft noise based on the information that was available at the time that it was created in order to inform TfL's initial planning. Consequently, as with the Commissioner's decision referred to above, the Commissioner would regard this as being complete information, even though it was intended that it would be replaced by more accurate information at some point in the future. He has therefore determined that regulation 12(4)(d) is not engaged and that the requested information should be disclosed to the complainant.

### **Regulation 11(4) – Time for completion of internal review**

22. Regulation 11(4) of the EIR requires a public authority to notify a requester of the outcome of internal review "*...as soon as possible and no later than 40 working days after the date of receipt of the representations.*"
23. The complainant requested an internal review on 14 November 2012. TfL did not notify the complainant of the outcome of the internal review until 28 February 2013. Consequently TfL breached regulation 11(4).

### **Other matters**

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24. The Commissioner is concerned to note that it took TfL approximately three and a half months to carry out the internal review in this case. This is considerably in excess of the maximum length of time permitted by the EIR. He expects that TfL will ensure that no similar delays occur in future.

## Right of appeal

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25. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

26. 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.
27. 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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**