

## Environmental Information Regulations 2004 (EIR)

### Decision notice

**Date:** 6 February 2018

**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 made an information request to Transport for London (TfL) for details of the Transforming Fiveways, Croydon Highway Improvement Scheme. TfL acknowledged the request but failed to provide a substantive response.
2. The Commissioner's decision is that TfL has breached regulation 5(2) of the EIR by failing to respond to the request within 20 working days.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - TfL shall comply with regulation 5(1) of the EIR by disclosing the requested information to the complainant or else issue a valid refusal notice in accordance with regulation 14.
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 (or the Court of Session in Scotland) 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. The complainant submitted a freedom of information request to TfL which asked for information regarding the Transforming Fiveways, Croydon Highway Improvement Scheme and referred to two reports entitled *Fiveways Croydon: preferred options and updated design* and the *A23/A232 Fiveways Design Proposals Croydon Cabinet Report*. The request was dated 3 September 2017 although TfL said that it received the request on 12 September 2017. The request read as follows:
- 1) *Complete scheme plans for Proposal 1 and Proposal 2 which are scalable (1:1250 minimum but ideally 1:500).*
  - 2) *The business case referred to in the Cabinet Report to include scheme costing calculations and breakdown.*
  - 3) *Confirmation (which may be in the business case) that land acquisition and statutory diversion costs are included in the business case.*
  - 4) *Land valuation assumptions (which may be in the business case).*
  - 5) *All correspondence with statutory undertakers regarding their infrastructure location, impact of Proposal 1 and Proposal 2 on their infrastructure and diversion costs.*
  - 6) *All traffic assessment work which has been undertaken to assess the benefits of Proposal 1 and Proposal 2 to include:*
    - a. *Traffic forecasting methodology including baseline traffic flows and Proposal 1 and Proposal 2 scenario traffic flows;*
    - b. *Confirmation of traffic model type;*
    - c. *Traffic model validation data including queue length data; and*
    - d. *Traffic model output summary data.*
  - 7) *All noise modelling and assessment work undertaken including reports and calculations.*
  - 8) *All air quality modelling and assessment work undertaken including reports and calculations.*
  - 9) *Confirmation that a full Environmental Impact Assessment will be undertaken for both Proposal 1 and Proposal 2.*
6. TfL acknowledged receipt of the request on 14 September 2017.

7. On 10 October 2017 TfL contacted the complainant again to say that it would not be able to respond to the request until 7 November 2017 because it needed further time to review the information.
8. On 6 December 2017 the complainant contacted TfL to ask for an update on when he could expect to receive the requested but heard nothing further.

### Scope of the case

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9. On 19 December 2017 the complainant contacted the Commissioner to complain about TfL's failure to respond to his request for information.
10. Following receipt of the complaint the Information Commissioner contacted TfL to provide them with details of the complainant's request, reminding them of their responsibilities under the EIR and asking them to respond within 10 working days.
11. Neither the Commissioner nor the complainant heard anything further from TfL.

### Reasons for decision

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#### Regulation 5 – Duty to provide environmental information on request

12. Regulation 5(1) and 5(2) of the EIR provide that:

*5.1-(1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.*

*(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.*

13. Regulation 7(1) of the EIR also allows a public authority to extend the deadline under regulation 5(2) to 40 working days where it reasonably believes that it would be impracticable to comply with the request or make a decision to refuse to do so within 20 working days. However, where regulation 7(1) applies the public authority must notify the applicant of this no later than 20 working days after receiving the request. The Commissioner notes that whilst TfL referred to the need to

extend the deadline for responding to the request to 40 working days, it failed to say if it was relying on regulation 7(1).

14. In this case TfL failed to issue a substantive response to the complainant within the 20 working day deadline or indeed the later 40 working day deadline. The Commissioner considers that TfL breached regulation 5(2) in its handling of the request.

## Right of appeal

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15. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

16. 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.
17. 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** .....

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