

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

Date: 2 August 2021

Public Authority: Royal Borough of Greenwich
Address: The Woolwich Centre
35 Wellington Street
Woolwich
SE18 6HQ

Decision (including any steps ordered)

1. The complainant submitted a request to the Royal Borough of Greenwich (the Council) seeking information about a consultation it had undertaken in relation to proposed traffic management measures in the borough. The Council provided the complainant with some of the information falling within the scope of the request but relied on section 12(1) (cost limit) of FOIA to withhold the remaining information. The complainant disputed the Council's reliance on section 12(1) and also questioned whether it held further information falling within certain parts of his request.
2. The Commissioner decided that the Council should have considered this request under the EIR rather than FOIA given the subject matter of the request. However, she is satisfied that the Council can rely on regulation 12(4)(b) (manifestly unreasonable) of the EIR to refuse the parts of the request to which it had previously refused on the basis of section 12(1) of FOIA. Furthermore, the Commissioner is satisfied that the Council does not hold any further information falling within the scope of the request other than that disclosed or withheld on the basis of regulation 12(4)(b).
3. No steps are required.

Background

4. Between November and December 2019 the Council asked the public to complete a survey seeking their views on two potential options to reduce traffic in west Greenwich. The Council published a response in August 2020 which analysed the responses to the survey.¹
5. Trial traffic measures to reduce traffic in west Greenwich were implemented in August 2020 under an Experimental Traffic Regulation Order. A six month public consultation was also launched allowing feedback to be provided based on people's experiences of the trial.
6. Following the completion of the consultation the Council is currently in the process of analysing the responses and intends to make a decision on the next steps, including any changes to access, in due course.²

Request and response

7. The complainant submitted the following request to the Council on 27 August 2020:

'Please respond to the following request West Greenwich Traffic Management – Engagement Analysis Report (August 2020)

I) The %/number of residents and businesses within the area who rejected both options 1 and 2 giving a break-down of each street by number of residents opposed to both?

II) The reasons given by residents and businesses within the area rejecting both schemes with a break-down by street?

III) The reasons why comments by respondents who objected to both options and who opposed the closure of roads to local traffic were omitted in the survey report?

¹ https://www.royalgreenwich.gov.uk/downloads/file/4713/engagement_analysis

²

https://www.royalgreenwich.gov.uk/news/article/1681/trial_to_reduce_traffic_in_west_greenwich_to_begin_on_20_august

https://www.royalgreenwich.gov.uk/info/200266/roadworks_and_traffic/2075/greenwich_livable_neighbourhood

IV) The %/number of residents and businesses who did not want any measures introduced?

V) The reasons given that the schemes 'will make things worse for residents' with a break-down by street in the area?

VI) Whether an assessment was made in the survey of the views of stakeholder groups supporting people with disabilities and long term conditions, including the names of specific groups and a summary of any comments made?

VII) The number of motorist groups consulted on the options and a summary of their comments and views?

VIII) The total cost of the Bespoke Transport Consulting Group and how this was funded?

IX) Detailed information on the Council's appeals process and procedure for residents and businesses opposed to the Hills and Vales road closures seeking reversal.'

8. The Council responded on 25 September 2020 and explained that it could not provide the information sought by question 1 because it estimated that it would cost £1,062.50 to extract and compile the information needed to answer this part of the request and this exceeded the cost limit of £450. It therefore sought to refuse this question on the basis of section 12(1) of FOIA. The Council also explained that it could not answer question 2 within the cost limit. In response to question 3, the Council explained why the engagement analysis report did not include the comments from each individual respondent. Again, the Council explained that it could not answer questions 4 and 5 within the cost limit. In response to question 6 the Council explained that no stakeholder group supporting people with disabilities identified itself as a respondent to the engagement. In response to question 7, the Council explained that the engagement was open to all via its website and that no motorist group identified itself as a respondent to the engagement. In response to question 8 the Council explained that the total cost was £9,450 and this was funded by Transport for London. In response to question 9, the Council explained that objections do not apply to an Experimental Traffic Regulation Order and that any comments will be acknowledged and considered in the Council's review.
9. The complainant contacted the Council on 30 September 2020. He challenged its reliance on section 12(1) of FOIA to refuse to comply with questions 1, 2, 4 and 5. He argued that the Council should have figures of residents/business who rejected both options by street name with any comments and that such information would have been collated in order to compile the report published in August 2020. He also asked the Council to explain why the stakeholder groups identified at questions 6

and 7 of his request were not approached or invited to comment. Finally, in relation to question 9 he argued that the information provided by the Council regarding the review process, appeals procedure and complaints feedback was not sufficiently detailed.

10. The Council informed the complainant of the outcome of the internal review on 30 October 2020. With regard to its reliance on section 12(1) of FOIA, the Council explained that the analysis undertaken was intended to inform its designs and allow decision makers to understand the range of views expressed by respondents. The Council explained that breaking the results down in the way suggested by his request would not have been an effective way of doing this. Therefore, the Council explained that the only way to respond to the parts of the request which had been refused on the basis of section 12(1) was to process the raw data and it stood by the cost for doing so which had been set out in its initial response. The Council noted that the complainant's queries about the stakeholder groups appeared to be new questions rather than ones seeking to challenge its initial response to the request. However, it provided an explanation as to why such stakeholder groups were not consulted. Finally, the Council explained that no further information could be provided about the appeals process as no such appeals procedure was required in relation to an Experimental Traffic Order. However, the Council addressed what it considered to be his follow up question for information about the review procedure for such orders.

Scope of the case

11. The complainant contacted the Commissioner on 12 November 2020 in order to complain about the Council's handling of his request. The complainant raised the following grounds of complaint:
12. Firstly, he challenged the Council's position that providing the information sought by questions 1, 2, 4 and 5 of his request would exceed the appropriate cost limit of £450 and in turn that section 12(1) of FOIA applied to these parts of the request.
13. Secondly, he argued that the Council had failed to adequately address his follow up question about whether stakeholder groups had been consulted. More specifically he argued that the Council's response that '*sample sizes are generally too low to elicit a significant response from relatively small groups*' did not answer the question on whether the views of people with disabilities and long term health conditions, groups or individuals, were consulted on or even taken into account in informing the Council's decisions.

14. In the Commissioner's view given the subject matter of this request, ie responses to a proposed traffic management changes, the Council should have considered this request under the EIR rather than under FOIA. This is because the information sought by the complainant, although focusing on the results of a survey, is information on measure, namely traffic management measures, which are likely to affect the state of the environment. In the Commissioner's view the requested information is therefore environmental information under regulation 2(1)(c) of the EIR. As result she has considered the Council's handling of this request in line with the obligations placed upon it by the EIR rather than FOIA.

Reasons for decision

Complaint 1

15. Although the Council refused to provide the information sought by requests 1, 2, 4 and 5 on the basis of section 12(1) of FOIA, as explained above the Commissioner considers that this request should be considered under the EIR. The relevant exception under that legislation is regulation 12(4)(b) which provides that a public authority may refuse to disclose environmental information if the request for information is manifestly unreasonable. There is no definition of 'manifestly unreasonable' under the EIR, but in the Commissioner's opinion manifestly unreasonable implies that a request should be obviously or clearly unreasonable. One such way a request could be manifestly unreasonable is if a public authority is able to demonstrate that the time and cost of complying with the request is obviously unreasonable.
16. As the Commissioner's guidance on regulation 12(4)(b)³ explains, whilst the section 12 cost provisions in FOIA are a useful starting point in determining whether the time and cost of complying with the request is obviously unreasonable, they are not determinative. Under the section 12 cost provisions the appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for public authorities such as the Council. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours.

³ <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

17. However, as noted the section 12 provisions are not determinative in deciding whether a request is also manifestly unreasonable. Furthermore, in assessing whether the cost or burden of dealing with a request is 'too great' under the EIR, public authorities will need to consider the proportionality of the burden or costs involved and decide whether they are clearly or obviously unreasonable.
18. This will mean taking into account all the circumstances of the case including:
 - the nature of the request and any wider value in the requested information being made publicly available;
 - the importance of any underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue;
 - the size of the public authority and the resources available to it, including the extent to which the public authority would be distracted from delivering other services; and
 - the context in which the request is made, which may include the burden of responding to other requests on the same subject from the same requester.

The Council's position

19. In support of its position that complying with the request would exceed the appropriate cost limit the Council made the following points in its responses to the complainant:
20. The refusal notice explained that the information provided by each of the 850 respondents to the survey falling within the scope of questions 1, 2, 4 and 5 of the request had not been provided in a standard format and therefore it was unable to run a report to extract the requested information. The Council explained that respondents were also able to provide free text responses and there would be no way of checking whether such responses contained information relevant to questions 1, 2, 4 and 5 of the request beyond reviewing each response, extracting the information and preparing a report.
21. The Council estimated that it would take one officer 3 minutes per response to locate and extract the information. It therefore calculated, that under FOIA, the estimated time to complete the response would be $850 \times 3 \text{ minutes} = 42.5 \text{ hours} \times \text{£}25 \text{ per hour} = \text{£}1,062.50$.
22. In the internal review response the Council explained that the consultation responses were not broken down in the manner sought by the request as this was not necessary for compiling of the Engagement Analysis Report. Rather, the Council explained that the analysis undertaken was designed to inform its designs and allow decision makers to understand the range of views expressed by respondents and that breaking the results down in the way described in the request would not have been an effective way to do this. The internal review concluded that processing the raw data to provide the information would be a significant task and it remained of the view that the cost indicated in the original response was accurate.
23. The Commissioner asked the Council whether it had undertaken a sample exercise to determine the cost estimate of 3 minutes. In response the Council explained that the approximate time of three minutes was estimated by the officer who had processed the raw data for the Council's own analysis. This officer therefore had considerable and, at that time, recent experience of working with that dataset and used that experience to assess the time required. However, the Council explained that the officer who located and extracted the information had left the Council and it was not able to confirm if a sample exercise was undertaken.
24. With regard to the criteria set out above at paragraph 18, the Council argued that the request is for an alternative analysis of results of an engagement exercise that had already been published in another form, namely in the Engagement Analysis Report (the document at footnote

- 1.) The Council explained that this report was designed to provide an easily digestible summary of how people felt and why.
25. The Council considered this is to be a more useful resource for interested stakeholders and provided more insight than the less processed / less fully analysed data.
26. The Council argued that on the basis that a significant volume, of arguably higher quality information, is already publicly available, the Council did not consider that the requested information would have significant wider value if extracted.
27. The Council also argued that it was important to note that the request is for data from an initial engagement exercise on a proposed scheme. Since this was undertaken the Council has moved on to implement the scheme under an Experimental Traffic Management Order.
28. The Council emphasised that this required a six month consultation period to understand people's real experience with the traffic measures after they were in place. The Council explained that the consultation is on this implemented measures closed in January 2021 and this meant that a more up-to-date and larger dataset will soon be available, on a more developed version of the scheme, and that results of this consultation will be published in due course. The Council argued that this would further limit any wider benefit of the information requested, if extracted.

The complainant's position

29. The complainant argued that in order to compile the Engagement Analysis Report, the Council would have requested some form of data from respondents whether by street name, postcode etc. He therefore suggested that the Council should have figures of residents and businesses who rejected both options by street name with any comments. He suggested that this would have been collated in order to compile the report and thus rejected the Council's estimate that complying with the request would take 42.5 hours.
30. The complainant noted that the Council spent £9,450 on a public engagement exercise funded by Transport for London. He emphasised that on the basis of this engagement, local streets were closed in August 2020 to local residents who drive via the Experimental Traffic Order and this had seriously inconvenienced people with a long term health condition or a disability. He argued that the Council should be accountable for its decisions so that residents are privy to all the information used in reaching their conclusions and are able to challenge the outcome at the 6 month review stage. He argued that the engagement report published in August 2020 does not stand up to scrutiny if the information requested is refused.

31. Finally, the complainant argued that the Council has not given any indication in its response of the method of data collection and appears to be withholding information from the public domain. He emphasised that without providing a breakdown of responses by street, this report lacks credibility as the methodology, which has not been revealed by the Council for collecting the data used to reach the road closures outcome, is fatally flawed.

The Commissioner's position

32. The Commissioner considers that the complainant's grounds of complaint require her to consider a number of questions. Firstly, does the Council already hold the survey responses in a format which it could easily use to fulfil the complainant's requests? Secondly, if not, would fulfilling these requests take the time that the Council has alleged? Thirdly, in light of this, is the request one that can be correctly categorised as being manifestly unreasonable under the EIR?
33. With regard to the first question, the Commissioner notes that the methodology the Council used to analyse the survey responses is described on page 5 of report. The report describes the use of a 'coding framework' in order to analyse the information given in the free text boxes of the survey responses (and thus the source of at least some of the information sought by the complainant). The Commissioner is not clear how this coding framework, and the analysis created under it and set out in the remainder of the report, could be used to answer all parts of questions 1, 2, 4 and 5 of the request. This is confirmed by the Council's position that the only way to fulfil these requests would be to analyse the raw data itself. Based on the description of the methodology set out in the report, the Commissioner has no reason to dispute the Council's position. The Commissioner is therefore satisfied that the Council does not already hold recorded information which could be used to easily fulfil questions 1, 2, 4 and 5 of the request.
34. Turning to the second question, the Commissioner considers an average of 3 minutes per response to extract and compile the requested information sought by questions 1, 2, 4 and 5 to be a reasonable estimate. Whilst the Commissioner notes that the Council cannot confirm whether a sample exercise was undertaken, she considers that the fact the estimate was provided by an officer who had direct experience of working on the project adds to the credibility of the estimate. She therefore accepts that the Council's estimate that it would take approximately 42.5 hours to fulfil the request is a reasonable one.
35. As noted above, the FOI cost limit is not determinative with regard to whether a request is manifestly unreasonable, albeit it can provide a useful starting point. In the circumstances of this case the Commissioner notes that the estimated time it would take to fulfil the request would be

more than twice the time limit for section 12(1) of FOIA. On this basis the Commissioner is prepared to accept that complying with the request would place a significant burden on the Council.

36. With regard to the factors set out above at paragraph 18, the Commissioner accepts that there is wider value in the disclosure of the requested information as the complainant – and potentially other residents – want a greater understanding of the nature of the survey responses, or rather a different understanding of the survey responses than provided by the Council's own analysis. With regard to the importance of the issue, the Commissioner recognises the impact that local traffic measures can have on the day-to-day lives of residents within communities, especially, as the complainant suggests, those with a disability or long term health conditions. The Council's analysis of the survey results was clearly not the only possible one – as evidenced the information sought by questions 1, 2, 4 and 5 of the complainant's request. Consequently, for the reasons discussed above the Commissioner accepts that there is a value in the disclosure of the information sought by questions 1, 2, 4 and 5.
37. However, the Commissioner is mindful that a balance needs to be struck between the burden placed on the Council and the benefits of processing a request for such information. (In striking this balance the Commissioner notes that it is important to remember that her role is limited to considering the circumstances as they existed at the point that a request is submitted, in this case on 27 August 2020.) The Commissioner considers the analysis report published by the Council to be a detailed one and one that provides a sound insight into the survey responses. The Commissioner also notes that the requested information only concerns analysis of *potential* proposals to the traffic measures in the area. In contrast, the Commissioner is conscious that the final decision in relation to any changes to traffic measures will take into account the public's responses to the six month consultation which ran from August 2020 to January 2021 at the same time as traffic measures were actually in place. In the Commissioner's view this arguably reduces the value of processing the request for the information sought at questions 1, 2, 4 and 5 because the final decision as to whether to proceed with the traffic measures will be based, amongst other factors, on the results of later public consultation. In others, in the Commissioner's view the value of disclosing the requested information in August 2020 is arguably diminished by the forthcoming public consultation on the traffic measures that would actually be in place, as well as the availability of the Council's own analysis of the survey results which had already been published.
38. Taking the above into account, the Commissioner is satisfied that the Council has demonstrated that the request is manifestly unreasonable and it can therefore rely on regulation 12(4)(b).

Public interest test

39. Regulation 12(4)(b) is subject to the public interest test. 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).
40. As the Commissioner's guidance on this exception explains many of the issues relevant to the public interest test will have already been considered when deciding if this exception is engaged. This is because engaging the exception includes some consideration of the proportionality and value of the request. For the reasons set out above, the Commissioner accepts that there is arguably some value in the Council fulfilling the request because it could provide a different and further insight into the public's response to the survey. However, following on from the reasons set out above, in the Commissioner's view the public interest in the disclosure of this information is outweighed by the public interest in maintaining the exception, even taking into account the presumption in favour of disclosure, given the significant burden complying with the request would place on the Council.

Complaint 2

41. This ground of complaint focused on questions 6 and 7 of the request and the related follow up question which the complainant submitted in his request for an internal review. The Commissioner's preliminary assessment of this ground of complaint was that the Council's responses to these questions appeared to provide a clear response and explanation of its position. Namely that it choose not to consult either disability or motoring stakeholder groups as part of this consultation exercise.
42. However, conscious of the fact that the right of access under the EIR (and for that matter also under FOIA) is to recorded information, the Commissioner asked the Council to confirm whether it held any recorded information relating to possible engagement of such stakeholder groups as part of the survey.
43. In response the Council explained that there was no specific decision not to engage these stakeholder groups. As a result it did not hold any recorded information of a decision not to engage such groups. In scenarios such as this where there is some dispute as to whether information falling within the scope of the request is held, the ICO,

following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request.

44. Taking into account the Council's responses to these parts of the request, and its reply to the Commissioner, she is satisfied that on the balance of probabilities it does not hold any information about a decisions to consult (or not) disability or motoring stakeholder groups as part of this consultation exercise.

Right of appeal

45. 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

46. 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.
47. 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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