

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

### **Decision notice**

**Date:** 23 November 2021

**Public Authority:** West of England Combined Authority

**Address:** 3 Rivergate  
Temple Quay  
Bristol  
BS1 6EW

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

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1. The complainant has requested information held by West of England Combined Authority (WECA) relating to plans for six strategic transport schemes in the region.
2. The Commissioner's decision is that WECA was not correct to rely on section 44 of the FOIA (prohibitions on disclosure) when refusing the request. Furthermore, whilst WECA subsequently cited regulation 12(4)(d) of the EIR (material in the course of completion), it has also failed to demonstrate why this exception is engaged.
3. As WECA failed to initially deal with the request under the EIR, the Commissioner has also found a breach of regulation 14(3) of the EIR.
4. The Commissioner requires WECA to take the following steps to ensure compliance with the legislation:
  - Disclose the withheld information set out within the documents that are listed in paragraph 12 of this decision notice.
5. WECA 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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6. On 3 August 2020, the complainant wrote to WECA and requested information in the following terms:

*This request relates to Agenda Item 12 of the WECA meeting of 15th Sept 2017 where it was agreed to commission business cases for six strategic transport schemes identified in Appendix A. The decision was published and can be viewed on the WECA site.*

*<https://www.westofengland@ca.gov.uk/meet...>*

*We would like to request the suite of reports into the business case for the following schemes:*

- 1. South East Bristol & Whitchurch. A4 - A37 Orbital Route; A37 - Bristol Link; A4 - MetroBus - Callington Rd Link; Orbital MetroBus: Park & Ride provision.*
  - 2. A4 Bristol - East Keynsham arterial corridor. Avon Mill Lane - A4 Link; Keynsham Rlwy Stn improvements.*
  - 3. Yate Strategic corridor (A4174 - Yate/CS). A432 MetroBus and strategic cycle route; A432 P&R; Yate Rlwy Stn improvements; Winterbourne Frampton Cotterell By Pass.*
  - 4. A38 (J16, Almondsbury to Falfield). MetroBus and strategic cycle route to Thornbury (and Buckover) including A38 P&R; Charfield Rlwy Stn reopening; M5 J14 Improvements.*
  - 5. Ring of P&R around Bristol. M32 P&R; A4018 P&R; A38(S) P&R.*
  - 6. Bristol Urban living package. Walking and cycling package including strategic cycle routes; Greater Bristol Bus Network 2; City Centre movement.*
7. On 3 September 2020, WECA issued a refusal notice, citing section 44(1)(a) of the FOIA.
8. On 12 October 2020, the complainant requested an internal review and on 20 November 2020, WECA provided its response, upholding its original decision.

## Scope of the case

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9. The complainant contacted the Commissioner on 9 December 2020, to complain about the way her request for information had been handled.
10. The withheld information provided by WECA for the Commissioner's consideration amounts to over 100 separate documents. They contain varied types of information, including maps, plans, proposed layouts, statistical data, technical notes and assessments, worksheets, study reports, and detailed optional assessment reports.
11. The complainant has advised the Commissioner that she has found that Bath and North East Somerset Council (B&NES) has published two Option Assessment Reports which provide a full response to part 1 and 2 of her request to WECA.
12. The Commissioner has considered the information already disclosed by B&NES, the terms of the complainant's request, her representations, and all the withheld information. She is of the view that only eight of the documents contained within the withheld bundle provided for her consideration are relevant to the request. These are as follows:

Part 1 of the request:

South East Bristol and Whitchurch Transport Package, Option Assessment Report

Part 2 of the request:

A4 Bristol to East Keynsham Corridor Study – Option Assessment Report

Part 3 of the request:

A432 Yate Corridor Strategic Transport Schemes, Option Assessment Report

Part 4 of the request:

A38 Thornbury Corridor Strategic Transport Schemes, Option Assessment Report

Part 5 of the request:

A38(S) Park & Ride – Final Draft, Option Assessment Report  
Bristol A4018 Park & Ride Study – Final Draft, Option Assessment Report  
M32 Park & Ride – Final Draft, Option Assessment Report

Part 6 of the request:

Urban Living (Greater Bristol Bus Network 2) – Final Draft, Option Development Report

13. The Commissioner has firstly considered whether the information contained within the relevant eight Option Assessment Reports falls within the scope of the EIR, or the FOIA.
14. She has then gone on to determine whether WECA was entitled to withhold this information in response to the complainant's request.

## **Reasons for decision**

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### **Correct Access Regime**

15. Information is 'environmental information' and must be considered for disclosure under the terms of the EIR, rather than the FOIA, if it meets the definition set out in regulations 2(1)(a) to 2(1)(f) of the EIR.
16. Regulation 2(1)(c) of the EIR says that any information on measures such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements or factors of the environment listed in regulation 2(1)(a) and 2(1)(b) will be environmental information.
17. The Option Assessment Reports listed in paragraph 12 of this decision notice contain detailed information and various proposals for improvements and changes to the current transport infrastructure within the region. They include details of options and proposed plans and layouts for bus, cycle and road routes, as well as consideration of matters such as air and noise quality, and traffic congestion.
18. It is the Commissioner's opinion that this information relates to a measure (the proposals/plans) likely to affect the elements set out within regulation 2(1)(a), or designed to protect those elements. As such, she is satisfied that it fits squarely into the definition of environmental information set out within regulation 2(1)(c) of the EIR.
19. There is no equivalent of section 44 of the FOIA in the EIR. Instead, regulation 5(6) of the EIR says that '*any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.*'
20. Therefore, a statutory bar in other legislation cannot prevent the disclosure of environmental information under the EIR, and the information must be disclosed unless it is exempt by virtue of an exception in the EIR themselves. However, the Commissioner is of the opinion that the existence of a statutory bar in other legislation may be relevant to engaging an EIR exception, and in the public interest.

21. WECA has advised that the documents which have been requested supported the 'Emerging Findings Transport Report', which was submitted as part of the evidence for the 'West of England Joint Spatial Plan' (the JSP).
22. It has argued that the disclosure of such information is prohibited by section 27(c) of the Town and Country Planning (Local Planning)(England) Regulations 2012 (the TCPR 2012)<sup>1</sup>, which states that when withdrawing a local plan for examination, the local planning authority must;  
  
*'cease to make any documents relating to the withdrawn local plan (other than the statement mentioned in sub-paragraph (a)) available in accordance with regulation 35.'*
23. The WECA advised that compliance with section 27(c) of the TCPR 2012, had led to the Emerging Findings report being withdrawn from the public domain, and that therefore it is unable to provide the information requested.
24. However, the Commissioner is not persuaded that a statutory bar exists in relation to the withheld information.
25. Regulation 20 of the TCPR 2012, states that before a local plan is submitted to the Secretary of State for approval, the local planning authority must make certain documents 'available'. Regulation 35 defines 'available' as that information relating to the local plan which the local planning authority should make available for inspection in normal office hours, and also on its website.
26. Regulation 27 then goes on to confirm that the local planning authority should then cease to make information 'available' once a local plan has been withdrawn, i.e., the information should no longer be available to view at its offices, and on its website.
27. It is the Commissioner's opinion that the purpose of regulation 27(c) of the TCPR 2012 is not intended to prohibit access to information, and in any event is unlikely to apply to the withheld information. This is because this information did not form part of the application, and supporting documentation, that was made 'available' as part of the process.

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<sup>1</sup> [The Town and Country Planning \(Local Planning\) \(England\) Regulations 2012 \(legislation.gov.uk\)](http://legislation.gov.uk)

28. Whilst WECA has maintained that the exemption at section 44(1) of the FOIA is engaged, in its representations to the Commissioner it also cites regulation 12(4)(d) in support of its decision to withhold certain information.
29. As a result, the Commissioner intends to consider whether WECA is entitled to rely on regulation 12(4)(d) of the EIR when withholding any of the information that is listed in paragraph 12 of this decision notice.

**Regulation 12(4)(d) of the EIR – Material in the course of completion**

30. Regulation 12(4)(d) of the EIR provides 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.
31. The aims of the exception are:
  - to protect work a public authority may have in progress by delaying disclosure until a final or completed version can be made available. This allows it to finish ongoing work without interruption and interference from outside; and
  - to provide some protection from having to spend time and resources explaining or justifying ideas that are not and may never be, final.
32. For regulation 12(4)(d) of the EIR to be engaged, the requested information must fall within one of the categories specified in the exception. It is not necessary to show that disclosure would have a particular adverse effect, but any adverse effects may be relevant to the public interest test.
33. The Commissioner considers that the fact that the exception refers to both material in the course of completion and unfinished documents confirms that these terms are not necessarily synonymous. Material which is still in the course of completion can include information created as part of the process of formulating and developing policy, where the process is not complete.
34. On 7 April 2020, the JSP was withdrawn from the examination process. WECA states that as a result, no decision could be made to adopt the JSP, and therefore, this process was incomplete.
35. WECA has confirmed that the authorities have now begun working on a new planning document for the West of England, the Spatial Development Strategy (SDS). It states that the evidence base for the SDS will require the same process as the JSP did for evidence base

preparation, and that this is an evolutionary process that will result in strategy for future planning in the region. It goes on to say that, in due course, documentation summarising its transport appraisal is expected, which will supersede the transport assessments undertaken to support the JSP.

36. WECA has referred to decision notice FER0715540<sup>2</sup>, dated 18 July 2018, in support of its decision to apply regulation 12(4)(d) to the complainant's request. It would appear that the withheld information considered in that decision notice is relevant to the same JSP that WECA has made reference to in this case.
37. WECA states that, in case FER0715540, it was accepted that a final policy document that is to be produced later may fall under the definition of 'material' that is still in the course of completion. It goes on to say that the public authority was entitled to withhold the information in order to provide some protection from having to spend time and resources explaining or justifying ideas that were not, and might never be, final.
38. WECA argues that, in this case, whilst the requested information may be contained within a document which is, in itself, complete, as the documents are intended to inform a policy process that is still ongoing, the information will still attract the exception.
39. However, the Commissioner is not persuaded by WECA's arguments that the documents that have been withheld in this case are 'material' in the course of completion. They were created in 2018 and 2019, and supported the JSP which was first submitted to the Planning Inspectorate in April 2018. The JSP was then withdrawn in 2020, before a formal decision could be made.
40. The Commissioner therefore regards the JSP process to be concluded, rather than incomplete as claimed by WECA. The fact that the information may now be used to inform a new process does not, in her opinion, allow WECA to claim that all documents relating to the JSP process should be withheld under regulation 12(4)(d) of the EIR.
41. With regard to decision notice FER0715540, at the time of the relevant information request in that case, the withheld information clearly formed part of an ongoing process, that being the preparation of the JSP for submission to the Planning Inspectorate.

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<sup>2</sup> [Freedom of Information Act 2000 \(Section 50\) \(ico.org.uk\)](https://ico.org.uk)



42. The Commissioner also regards it to be pertinent to note that WECA has also confirmed that, at the time of the complainant's request to which this notice relates, the information that has been withheld was not being considered and used to prepare the SDS.
43. With regard to the three Option Assessment Reports that have been published by B&NES, (two of which fall within the scope of the complainant's request), WECA has advised that it is aware that these were made available by B&NES in winter 2018/19, as part of a consultation plan to inform the preferred route options that were to be safeguarded in a new local plan.
44. WECA has provided little in the way of argument to the Commissioner as to why the information published by B&NES differs in any way to the withheld information.
45. Taking all relevant factors into account, the Commissioner considers that WECA has failed to sufficiently demonstrate why regulation 12(4)(d) is engaged in respect of the eight documents identified as being relevant to the request. As the exception is not engaged, the Commissioner has not gone on to consider the public interest test.

### **Procedural matters**

46. Regulation 14(3) requires a public authority to provide the requester with a refusal notice specifying the exceptions within the EIR upon which it is relying.
47. In the circumstances of this case, the Commissioner has found that although WECA originally considered this request under FOIA, it is the EIR that actually apply to the requested information. Therefore, where the procedural requirements of the two pieces of legislation differ, it is inevitable that WECA will have failed to comply with the provisions of the EIR; in particular, regulation 14(3).



## Right of appeal

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48. 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)

49. 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.
50. 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 .....**

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