

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 25 January 2023

Public Authority: North Lincolnshire Council
Address: Church Square House
30-40 High Street
Scunthorpe, DN15 6NL

Decision (including any steps ordered)

1. The complainant requested information relating to a freight strategy. North Lincolnshire Council (the "council") refused the request citing the exception for material in the course of completion – regulation 12(4)(d) of the EIR.
2. The Commissioner's decision is that the council correctly withheld the requested information under regulation 12(4)(d). He does not require the council to take any steps.

Request and response

3. On 4 March 2022, the complainant wrote to North Lincolnshire Council (the "council") and requested the following information:

"Please supply the North Lincolnshire Council 'Freight Survey' or 'Traffic Survey' (it has been identified as both) with supporting documentation as listed below.

Please provide the following,

- 1) The original outline for the document and the full remit
 - 2) The document in its unabridged entirety including executive summary and conclusions if separate.
 - 3) All the existing data used and any collected for the report.
 - 4) The questionnaire results overview, supporting the delivery of the report.
 - 5) A list of all the bodies canvassed for the report and their contribution.
 - 6) Those Statutory and related items underpinning the document and its conclusions. It would be expected items three through six would form part of the report's appendix."
4. On 9 November 2022 the Commissioner issued a decision notice which directed the council to provide a new response to the request under the EIR.¹
5. The council's final position is that the requested information is material which is still in the course of completion and subject to the exception in regulation 12(4)(d).

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022802/ic-168855-d4n8.pdf>

Reasons for decision

6. This section sets out the Commissioner's conclusions in relation to the council's application of the exception in regulation 12(4)(d) in this case.

Regulation 12(4)(d) – material in the course of completion

7. Regulation 12(4)(d) of 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.
8. 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.
9. For regulation 12(4)(d) 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 of disclosure may be relevant to the public interest test.
10. 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.
11. The council has explained that Local Transport Projects Ltd (LTP) were appointed to complete a piece of work that will be included into the council's Freight Strategy. It has confirmed that the Freight Strategy is still in development and that, once it is completed, the Freight Strategy will contribute to the Local Transport Plan which is due for publication in 2024.
12. The council has highlighted that the request seeks the full and final report relating to the freight strategy. The Commissioner understands that the relevant information held is the study carried out by LTP which forms part of the evidence the council will consider in finalising its Freight Strategy as per paragraph 11 above.

13. In light of the above, the Commissioner has concluded that the requested information relates to information in the course of completion, that it falls within the scope of the exception and that, therefore, regulation 12(4)(d) is engaged.
14. As the regulations under the EIR are all subject to the public interest test, the Commissioner has considered whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.
15. The Commissioner recognises that there is a general public interest in transparency and accountability in relation to decisions which will have an impact on the environment.
16. The council considers it necessary to have the space to think privately away from public scrutiny in relation to the creation of the Local Transport Plan that is still in the course of completion and expected to be complete in 2024. The council considers that releasing the requested information would harm this safe space that is necessary to debate what detail should be included.
17. The council also considers that releasing information relating to the undecided Local Transport Plan into the public domain would distract public debate away from the substantive environmental issues. Instead, debate would focus on secondary issues of material in the course of completion, such as whether information included at this point would be in the final version. The council considers that the resulting debate about the unfinished material would seriously impact on its resources.
18. The Commissioner is mindful that the purpose of the exception is to provide authorities with a safe space within which decisions can be made without this process being frustrated or hindered. He accepts that putting information in the public domain about speculative proposals which might never actually come to fruition may result in the effectiveness of decision making being challenged as the council may be forced to field enquiries about hypotheticals. The Commissioner considers it to be an established fact that the need for a safe space is heightened when decisions are yet to be reached.
19. The Commissioner recognises the complainant's concerns in this matter. However, is not aware of any specific public interest factors which warrant publishing the information before the Freight Strategy and Local Transport Plan is complete, at least not factors which would counterbalance the potential damage to the effectiveness of the council's deliberations in this case.

20. The Commissioner is satisfied that, at this time, the public interest in facilitating effective decision making by the council in relation to these matters is best served by maintaining the exception and withholding the information. The opportunity for public scrutiny, transparency and accountability will come when the council's deliberation process is complete.
21. The Commissioner has concluded that the council has correctly applied regulation 12(4)(d) and that the public interest favours maintaining the exception.

Right of appeal

22. 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

23. 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.
24. 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

Christopher Williams
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF