

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

### **Decision notice**

**Date:** 18 December 2023

**Public Authority:** Bristol City Council

**Address:** City Hall  
PO Box 3399  
Bristol BS1 9NE

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

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1. The complainant requested information relating to a specific footway closure. Bristol City Council (the Council) withheld information in scope of the requested under regulation 12(5)(b) of the EIR.
2. The Commissioner's decision is that the Council was entitled to rely on regulation 12(5)(b) of the EIR to withhold the requested information, and the balance of the public interest lies in maintaining the exception.
3. The Commissioner does not require any steps to be taken as a result of this decision.

## Request and response

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4. On 21 December 2022, the complainant wrote to the Council and requested information in the following terms:

“As discussed, please provide me with a copy of the current and previous applications and licences for the footway closure on Nelson Street/Quay Street.

For clarity, the footway closure I am referring to is for the footway on the south side of Nelson Street/Quay Street, west of the junction of Nelson Street and All Saints Street. The footway in question is normally available to both pedestrians and cyclists, i.e. 'shared space'. For additional clarity, I am not asking for a copy of the documentation in respect of the route from Broad Street/Bell Lane/Tower Lane through St John's Arch to Quay Street which was until recently also closed to pedestrians.”

5. On 31 July 2023, after a lengthy delay and intervention from the Commissioner the Council responded to the complainant and withheld information in scope of the request under regulation 12(5)(b) of the EIR.
6. The Council maintained its reliance on the exception at internal review on 7 September 2023 and apologised for its delayed response to the initial request.

## Reasons for decision

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7. The following analysis sets out why the Commissioner has concluded that the Council was entitled to rely on regulation 12(5)(b) of the EIR.

### Regulation 12(5)(b) – the course of justice

8. Regulation 12(5)(b) provides an exception to the extent that disclosure of the information in question would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.
9. “Would adversely affect” means that it is more probable than not, i.e., a more than 50% chance that the adverse effect would occur if the information were disclosed. If there is a less than 50% chance of the adverse effect occurring, then the exception is not engaged.
10. The exception at regulation 12(5)(b) is broad and encompasses any adverse effect on the course of justice; as such, the Commissioner

accepts that 'an inquiry of a criminal or disciplinary nature' is likely to include information about investigations into potential breaches of legislation, for example, planning law or environmental law.

11. In its submissions to the Commissioner, the Council stated:

"In this matter, the council considers that disclosure would adversely affect the course of justice due to the impact disclosure would have on the council's ability to successfully prosecute a breach of S278 of the Highways Act 1980.

A S278 agreement allows developers to enter into an agreement with the local authority to make permanent alterations or improvements to a highway, road, or footpath, as part of a planning approval. Such an agreement is legally binding and enforceable and is essential to ensure that changes to the highway, road or footpath are made in accordance with the necessary regulations and standards. With regard to Nelson Street in Bristol, works arising from the S278 agreement have not met the standards of the highway authority (i.e. the council) and as such, the council is in dispute with the developers. At present the council is seeking to resolve the issue without the need to prosecute, however due to the live nature of the matter, prosecution remains a substantial, rather than remote or hypothetical, possible outcome. The council cites IC-45186-B4K7, in which the Commissioner found that 'disclosure of the information under the EIR would undermine the court process and the jurisdiction of the court'.

### **Public interest test**

12. The Commissioner has carefully considered the arguments put forward by the Council. He recognises the legitimate public interest in disclosing information that would inform the public about decisions concerning activities that may have an impact (whether positive or negative) on the environment. In this case, the Commissioner accepts that the information withheld by the Council is that which would help it make informed decisions regarding negotiations with the developer and any potential further actions including enforcement.
13. It is the Commissioner's view that the public disclosure of such information at the time of the request, would not only inhibit the Council's ability to effectively conduct an inquiry, but would damage public confidence in such inquiries being undertaken appropriately and with due regard to the rights and expectations of involved parties.
14. The Commissioner notes that the public interest inherent in this exception will always be strong due to the fundamental importance of

the general principle of upholding the administration of justice, including not prejudicing legal proceedings. To equal or outweigh that public interest, the Commissioner would expect there to be strong opposing factors, such as clear evidence of unlawful activity or negligence on the part of the Council, or the absence of any alternative means of accessing evidence pertinent to a claim. However, no such arguments appear to be present.

15. The Commissioner's decision is, therefore, that the balance of the public interests favours the exception being maintained. This means that the Council was not obliged to disclose the requested information.
16. 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 above, in this case, the Commissioner's view is that the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(5)(b) was applied correctly.

### **Procedural matters**

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17. The public authority breached regulation 14 of the EIR as it failed to issue its refusal notice within 20 working days of receiving the request.

## Right of appeal

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18. 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@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)

19. 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.
20. 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 .....**

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