

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

**Decision notice**

**Date:** 6 September 2019

**Public Authority:** Transport for London

**Address:** 55 Broadway  
London  
SW1H 0BD

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to a temporary closure of the Rotherhithe Tunnel, including engineering report and risk assessments. Transport for London provided some summary information but refused to provide the full reports and assessments under the exception at regulation 12(5)(a) of the EIR.
2. The Commissioner's decision is that Transport for London has correctly applied the exception at regulation 12(5)(a) and that the public interest favours maintaining the exception and withholding the requested information.

**Request and response**

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3. On 24 September 2018 the complainant made a request to Transport for London (TfL) in the following terms:

*"The Rotherhithe Tunnel was recently closed over the weekend of the 14<sup>th</sup> – 16<sup>th</sup> September, and restrictions on the type of vehicles able to use the tunnel were imposed going forwards. You have released information suggesting that a defect in the ventilation system is to blame for these events. Please provide a copy of any engineering reports about the condition of the ventilation system from the past 6 months, and also any risk assessments that gave the basis for the closure and imposition of these restrictions."*

4. TfL responded on 19 October 2018 to state it would need additional time to consider the request. A full response was sent on 19 November 2018 and a summarised version of the engineering reports was provided. TfL stated that the specific information requested could not be provided due to the exception at regulation 12(5)(a) of the EIR.
5. The complainant asked for an internal review on 24 December 2018. He outlined five questions he was hoping full disclosure would answer:
  - 1) *"What exactly is the problem with the ventilation system in the tunnel, and can it be repaired in due course?"*
  - 2) *"What risks are posed to the public by the defective ventilation system necessitating the restrictions. In particular – is there additional risk of fire or air pollution?"*
  - 3) *"Why do the applied restrictions mitigate for the risks, and are they the correct mitigations / good enough for the public to feel safe?"*
  - 4) *"Why was such short notice given for the closure of the tunnel – was this simply an unexpected inspection failure requiring remediation at short notice, or more deliberate concealment of bad news?"*
  - 5) *"Could other tunnels or infrastructure be affected by the same or similar issues – is this an endemic fault in TfL's street management strategy affecting multiple areas?"*
6. TfL conducted an internal review and responded on 7 February 2019. The response provided written answers to the questions but maintained that the specific information requested should be withheld. TfL explained the detailed technical reports were created for specific internal individuals with regard to maintaining the safety and security of the Tunnel.

## **Scope of the case**

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7. The complainant contacted the Commissioner following the internal review on 7 February 2019 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of her investigation to be to determine if TfL has correctly withheld the full detailed technical reports and risk assessments on the basis of the regulation 12(5)(a) exception from disclosure.

## Background

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9. The Rotherhithe Tunnel is a road tunnel under the River Thames. The tunnel was opened in 1908 and TfL took over ownership and maintenance of the tunnel in 2001.
10. In September 2018 TfL did a detailed analysis of the ventilation system which is designed to extract smoke and dangerous fumes from the tunnel in case of a fire. This analysis showed that repair work needed to be carried out which led to the closure of the tunnel over the weekend of 15/16 September 2018 whilst work was carried out. It is this analysis which is the subject of the request.

## Reasons for decision

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### Is the information environmental information?

11. The complainant has raised concerns with both TfL and the Commissioner that the requested information may not be all or in part environmental information. The Commissioner, having viewed the requested information has considered if the request has been correctly considered under the EIR.
12. Regulation 2(1) of the EIR defines what 'environmental information' consists of. The relevant part of the definition are found in 2(1)(a) to (c) which state that it is as any information in any material form on:

*'(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*

*(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*

*(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements...'*

13. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner's opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor, etc. in question.
14. In this case, the withheld information is detailed technical information on the ventilation system of the Rotherhithe Tunnel, including information on its condition, capacity and functionality and repair work needed.
15. The Commissioner considers that the information, therefore, falls within the category of information covered by regulation 2(1)(c) as the information can be considered to be a measure affecting or likely to affect the environment or a measure designed to protect the environment. This is in accordance with the decision of the Information Tribunal in the case of Kirkaldie v IC and Thanet District Council (EA/2006/001) ("Kirkaldie").
16. In view of this, the Commissioner has concluded that TfL correctly handled the request under the EIR.

#### **Regulation 12(5)(a) – international relations**

17. Regulation 12(5)(a) provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect international relations, defence, national security or public safety.
18. In this case TfL has applied the exception on the basis of that disclosure would adversely affect public safety and national security.
19. TfL has explained that the Rotherhithe Tunnel is over a hundred years old and was built to accommodate pedestrian and horse-drawn traffic but with the rapid increase in car ownership, retrofitting, improving and maintaining the ventilation system within the tunnel has been an evolving process for several decades.
20. The TfL has stated that the reports and risk assessments identified were created as part of this ongoing review and maintenance of the tunnel to ensure that the ventilations systems remain fit for purpose, safe and effective. The reports provide, in detail, the tunnel ventilation system's smoke control capability, including areas of vulnerability. The reports also highlight various aspects of the ventilation systems in the event of fires within the tunnel.
21. The reports contain detailed graphics which would add to the information on the ventilation systems in the tunnel. TfL argues that the

information as a whole is essentially a guidebook on how the tunnel ventilation system operates in a variety of situations.

22. TfL argues that the detail in the report could be used by persons with nefarious intentions. The reports contain very detailed information and drawings of the existing ventilation system.
23. TfL considers disclosing the information would reduce the opportunity for intervention as suspicious behaviour is more likely to be detected and apprehended if an individual cannot access structural information via the internet and instead has to physically visit a site in order to view and assess the arrangements in place.
24. TfL explained that it considered for an attack to be successful an adversary will attempt to identify and then exploit any perceived weakness within a structure and the provision of the withheld information into the public domain would enable anybody motivated to conduct such an attack to consider and plan in some detail without ever needing to leave their house. This would effectively disclose precise detail as to what would be required to severely damage critical national infrastructure which would be likely to lead to economic harm, loss of life, personal injury and severe disruption to thousands of lives.
25. In discussing the likelihood of the tunnel being targeted as a result of disclosure; TfL has pointed to information which suggests that tunnels have been specific strategic targets for terrorist activity in the past<sup>1</sup>. TfL has also stated that targets for terrorism are generally those that yield a potential for mass casualties and wider disruption; attacks on public transport systems have often been priorities but in recent years this has extended to high profile bridges and other public spaces. TfL considers that limiting the publicly available information on the tunnel and its systems will make it more difficult for a motivated individual to readily access information that may make an attack easier to plan and therefore more likely to occur.
26. The concept of public safety is readily understood but "national security" is not defined in the EIR. However the term is used in other legislation including the Freedom of Information Act where section 24 of that Act provides an exemption where this is required for the purposes of safeguarding national security. The Commissioner has issued guidance

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<sup>1</sup> <https://www.theguardian.com/world/2006/dec/24/politics.terrorism>

<http://news.bbc.co.uk/1/hi/world/americas/5158518.stm>

on this exemption which provides examples of where section 24 is likely to apply. In particular, it explains that an exemption for national security would apply to information which could assist a terrorist attack.

27. The Commissioner is also mindful that terrorists can be highly motivated and may go to great lengths to gather intelligence. This means there may be grounds for withholding what seems harmless information on the basis that it may assist terrorists when pieced together with other information they may obtain.
28. The Commissioner has reviewed the withheld information and accepts that some of the information contained within it could assist anyone trying to target the tunnel. It goes into significant levels of detail about the tunnel and its ventilation systems and this information could assist anyone trying to target the tunnel, such as a terrorist or anyone with criminal intent.
29. In the Commissioner's view disclosure would give encouragement to those with ill intent or help them plan an attack. The Commissioner also recognises that disclosure would be likely to increase the confidence of any attacker even if that confidence is ultimately misguided or irrational.
30. The Commissioner considers there is a clear causal link between disclosure of the full technical reports and threats to national security and public safety. In reaching this decision the Commissioner has taken into account the fact that the UK threat level remains severe meaning an attack is 'highly likely' and there have been attacks and suspicious devices found at transport hubs and other infrastructure around the world. The Commissioner is also aware that in a number of cases terrorists have made use of 'open source' information to help plan an attack.
31. Taking all of this into account the Commissioner is satisfied that regulation 12(5)(a) is engaged in relation to the technical reports and risk assessments. The complainant had considered it unlikely that all of the information in the withheld documents would engage the exception; however on reviewing the documents the Commissioner does find the exception can be engaged to the information in full and her reasons for this are explained in a confidential annex provided only to the public authority.

*Public interest arguments in favour of disclosure*

32. The complainant considers that disclosure of the information in full would enable effective oversight of public spending on infrastructure maintenance as well as keeping the public adequately informed on dangers to public health and the environment. The complainant has also

highlighted the public interest in disclosing information which would answer questions of interest to the public and the general public interest in the accessibility of public information.

33. The complainant expanded on several of these points and highlighted that the effective management of river crossings is an important function of TfL and recent issues that led to closures of both the Rotherhithe Tunnel and Hammersmith Bridge had caused increased concern by the public that TfL was not carrying out its duties to a proper standard. Therefore disclosing the information would allow the public to be properly informed and engage on the issue.
34. Further, the complainant argued that the ventilation system in the tunnel is an important component of the tunnel's safety strategy and defect to it may prevent a risk to the lives of tunnel users if a fire or other release of toxic gas was to occur. Therefore there is a public interest to be informed of the risks when using a system that may be operating in a degraded condition. Air pollution is of great interest to the public and if the ventilation systems is not working correctly and dangerous or excessive levels of pollutant gases are present in the tunnel then the public has a right to know of dangers to their health.
35. Following the closure of the tunnel vans were prohibited from entry; the complainant considers it is in the public interest to know why this mitigation was applied.
36. TfL also recognises that given the volumes of people using the tunnel there is public interest in providing information on tunnel repairs, particularly where this has led to a temporary closure of the tunnel. Additionally, disclosure could be seen to reassure the public of the extent to which TfL are ensuring the safety of those that use the tunnel by providing TfL's findings and areas of the tunnel it is working on maintaining and improving.

*Public interest in maintaining the exception*

37. TfL considers it has met the public interest in accountability through the provision of numerous updates advising of closures, restrictions and progress updates on the status of the tunnel. It points to the current information on its website which states that:

*"In September 2018 we did a detailed analysis of the ventilation system which would extract smoke and other dangerous fumes from the tunnel in case of a fire. This analysis shows that repair work needs to be carried out urgently."*

38. TfL argues that it has made it clear the ventilation system requires repair and it does not consider that the public would be in any way more informed if it were to disclose the technical analysis other than to confirm the accuracy of its statements.
39. Conversely, TfL argues that provision of these documents into the public domain would provide highly specific detail which would be of considerable value to anyone wishing to plan or co-ordinate an attack on the tunnel. It would enable those persons the opportunity to consider the viability and assess the likelihood of success ahead of carrying out an attack meaning they will have the ability to make a very well-informed decision on the requirements needed to maximise the impact of any such attack.
40. TfL argues there is a significant public interest in not disclosing information that may be used by those who pose a threat to the well-being of individuals and the nation. Disclosure of this information would undoubtedly increase the likelihood of the threat to national security being realised and this can never be considered to be in the public interest.

*Balance of the public interest arguments*

41. The Commissioner has considered the competing arguments and accepts that there is a public interest in disclosure insofar as this would promote transparency and accountability and in particular, would allow the public to better understand the condition of the tunnel and the reasons for the restrictions put in place. However, the Commissioner is also mindful that TfL has placed as much information as it considers necessary into the public domain to explain the reasons for the tunnel closure. Therefore, the Commissioner considers that the public interest in transparency is limited although she accepts that there remains a public interest in disclosure so as to provide the full picture as to why the tunnel was closed, the work that it being carried out and the reasons for this.
42. However, this has to be balanced against the harm that would be caused by disclosure. The Commissioner takes the view that there is a strong public interest in avoiding threats to national security or disclosing information which would put people in danger. Only when there are compelling arguments for disclosure will it justify releasing information which has the potential to put the public in harms way or assist someone in preparing a terrorist act. No such arguments exist in this case and consequently the Commissioner has found that in all the circumstances the public interest in maintaining the exception outweighs the public interest in disclosure.

## Right of appeal

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43. 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)

44. 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.
45. 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 .....**

**Jill Hulley**  
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**Information Commissioner's Office**  
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