

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

**Date:** 28 October 2020

**Public Authority:** Transport East  
**Address:** c/o Suffolk County Council  
Endeavour House  
8 Russell Road  
Ipswich  
IP1 2BX

**Decision (including any steps ordered)**

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1. The complainant has requested information about an independent assessment of a proposed scheme of road building. Transport East disclosed some information in response to the request. Based on the particular wording of the request, the complainant believed that Transport East may hold further information which it had not disclosed.
2. The Commissioner's decision is that, on the civil standard of the balance of probabilities, Transport East has disclosed to the complainant all the information it holds which falls within the scope of the request.
3. The Commissioner requires no steps.

**Background**

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4. Transport East is the Sub-national Transport Body for Norfolk, Suffolk, Essex, Southend and Thurrock. The partnership provides a single voice for the region's councils, business leaders and partners on local

transport strategy and strategic transport investment priorities, working in close collaboration with the government and the rest of the UK<sup>1</sup>.

## Request and response

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5. On 16 October 2019, the complainant wrote to Transport East, asking a series of questions about its transport strategy. Transport East responded to the majority of the questions as 'normal course of business' queries which, in turn, led the complainant to ask further questions. The Commissioner has confirmed with the complainant that only the following question in his email of 16 October 2019 would be considered in this decision notice:

*"I understand that Transport East Chairman sent a letter to the DfT [Department for Transport] outlining its proposed LLM [Large Local Majors] and MRN [Major Road Network]<sup>2</sup> projects for consideration under RIS 2 [Road Investment Strategy 2]<sup>3</sup> dated 30th July 2019. I have seen the draft copy as an attachment to the agenda for a TE [Transport East] meeting on 21st October, but not the final copy sent to DfT.*

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*The draft letter stated the programme of LLM and MRN projects outlined is supported by a REB [Regional Evidence Base] supplied by WSP<sup>4</sup>, which was independently assessed for deliverability, fit with guidance and impact on the TE strategic objectives.*

*2 - I would like to see a copy of the independent assessment of the WSP evidence base."*

6. Transport East responded on 5 November 2019. In respect of the above request, it disclosed a weblink to a copy of the Transport East REB on its
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<sup>1</sup> <https://www.transporeast.org.uk/>

<sup>2</sup> <https://www.gov.uk/government/publications/major-road-network-and-large-local-majors-programmes-investment-planning/major-road-network-and-large-local-majors-programmes-investment-planning-guidance>

<sup>3</sup> <https://www.gov.uk/government/publications/road-investment-strategy-2-ris2-2020-to-2025>

<sup>4</sup> <https://www.wsp.com/>

website. The REB had been produced for Transport East by external consultants, WSP.

7. The complainant wrote to Transport East again on 14 November 2019, expressing dissatisfaction with this response. He pointed out that he had asked to see the independent assessment of the REB, rather than the REB itself.
8. Transport East responded on 17 December 2019. It explained that the proposal discussed in the letter of 30 July 2019 was the 'Ipswich Northern Route', which had been put forward by Suffolk County Council. It said that WSP had conducted an independent assessment of that proposal, and it attached a copy of that assessment to its response.
9. The complainant wrote to Transport East again on 20 December 2019, disputing that what he had been sent constituted the "*independent assessment of the WSP REB*" referred to in the letter to the DfT of 30 July 2019. He described what he had been sent as "*a small extract from an appendix to a report*" and reiterated that he wanted to see the entire "Independent Assessment Report".
10. Transport East responded on 15 January 2020, as follows:

*"Firstly, there appears to be a misunderstanding. The "independent assessment" referred to in the bid to Government and earlier communications with yourself refers to the assessment of scheme proposals carried out by WSP; i.e. independent of both Transport East and individual scheme promoters. The Regional Evidence Base is a separate document prepared by WSP following guidance from the Department for Transport (DfT) and necessary to support funding bids to Government. It has not been independently assessed.*

*The independent assessment by WSP of the Ipswich Northern Route proposal is contained within Appendix 1 to our letter dated 17th Dec 2019 written in response to your FOI request of 14th Nov. All references to Appendix 1 refer to this appendix."*

## Scope of the case

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11. The complainant initially contacted the Commissioner on 7 January 2020, to complain about Transport East's handling of several aspects of his request. After receiving its email of 15 January 2020, he contacted the Commissioner again, on 28 January 2020, withdrawing some of the complaints and saying the following with regard to the copy of the independent assessment that he had requested:

*"If it is possible to force TE to either send me the rest of the Independent Assessment of the various transport projects which they claim exists and which should therefore be published on their website, or to admit that it does not exist, that would now be the best result from my point of view."*

12. The Commissioner agreed with the complainant that, going forward, her investigation would focus on whether, on the civil standard of the balance of probabilities, Transport East holds information which it has not disclosed to him, or whether it has disclosed to him all the information it holds with regard to *"a copy of the independent assessment of the WSP evidence base"*.

## Reasons for decision

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### Is the information environmental information?

13. Environmental information must be considered for disclosure under the terms of the EIR rather than the FOIA. Regulation 2(1)(c) of the EIR defines 'environmental information' as any information on:

*"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 [2(1)](a) and (b) as well as measures or activities designed to protect those elements."*

14. The request in this case is for information about a proposed scheme of road building. The Commissioner is satisfied that the requested information is on a measure that would, or would be likely to, affect the elements listed in regulation 2(1)(a) and is, therefore, environmental information within the meaning of regulation 2(1)(c).

### Regulation 5(1) – Duty to make environmental information available on request

15. Regulation 5(1) of the EIR states that *"a public authority that holds environmental information shall make it available on request."* This is subject to any exceptions that may apply.
16. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time a request was received, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information was not held, and any other reasons offered by the public authority to explain why the information

was not held. She will also consider any reason why it is inherently likely, or unlikely, that the requested information was not held.

17. For clarity, the Commissioner is not expected to prove categorically whether the information was held, she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities. This is in line with the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency (EA/2006/0072)* in which it stated that: "*there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records*". It clarified that the test to be applied as to whether or not information is held was not certainty but the civil test of the balance of probabilities.
18. It is also important to note that the Commissioner's remit is not to determine whether information should be held, but only whether, on the balance of probabilities, the requested information was held by Transport East on the date the request was received.

#### *The complainant's position*

19. The complainant understands the term 'independent assessment' as referring to an impartial review of the proposals, conducted by a person other than WSP, who is unconnected with the wider project the proposals pertain to.

#### *Transport East's position*

20. Transport East explained that there was no 'independent assessment' in the manner understood by the complainant. It explained that the information falling within the scope of the request was held by Essex County Council on behalf of Transport East, to help manage a submission for funding to central government in support of Major Roads Network funding, and for the development of future transport strategy. It explained:

*"There was some confusion here in [the complainant's] original query around the nature of two separate documents. The first was the Regional Evidence Base, the second, a list of schemes for Major Road Networks (MRN) (including the Ipswich Northern Route).*

*[The complainant] understood that there had been an assessment of the Regional Evidence Base (REB), and asked for this assessment. However, there was not an independent assessment of this, as the REB is an evidence base, not a proposal, or decision.*

*When [the complainant] subsequently clarified his query, we provided him with the independent assessment of the Ipswich Northern Route*

*scheme, carried out by WSP; i.e. independent of Transport East and Suffolk County Council (the scheme promoter).*

*This was provided in response to follow up questions to the initial request.*

*The final response from Transport East dated 20/01/2020 explains the confusion between the Regional Evidence Base and the independent assessment of the list of MRN schemes. This letter also highlighted the key points that the scheme was assessed against and noted that the environmental impacts of the Ipswich Northern Scheme would require further consideration as the proposal was developed."*

21. Transport East clarified that the REB and MRN papers were complete, stand alone documents, and that no 'independent assessment' of the type understood by the complainant had been carried out. All of the documents required and relevant to the request were to hand for officers, and has been disclosed to the complainant. At the time of the request, the REB and MRN papers represented current or very recent work that had not been archived. The scheme was not subsequently pursued, meaning that environmental assessments had not yet taken place. The scheme was subsequently cancelled, so there were no further assessments.
22. It reiterated that it held no other information which fell within the scope of the request.

#### *The Commissioner's decision*

23. It is clear that, for the purposes of this request, the complainant and Transport East do not share the same understanding of the term 'independent assessment' as it relates to the scheme proposals. However, Transport East has clearly stated that no independent assessment of the type specified by the complainant was conducted in respect of the proposed scheme. This appears to address one of the points the complainant wished the Commissioner's investigation to clarify, in paragraph 11, above.
24. Transport East has disclosed both the REB and the assessment of the Ipswich North Route, to the complainant. It is the Commissioner's view that Transport East has disclosed to the complainant all the information it holds which fell within the scope of his request. She is satisfied from its explanation that it does not hold an independent assessment within the meaning specified by the complainant and thus that it has complied with its obligations under regulation 5(1) of the EIR with regard to the request.

## Right of appeal

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25. 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)

26. 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.
27. 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 .....**

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