

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

Date: 3 January 2025

Public Authority: Transport for London
Address: 5 Endeavour Square
London
E20 1JN

Decision (including any steps ordered)

1. The complainant has requested information relating to Project Detroit. The above public authority ("the public authority") relied on regulation 12(5)(d) of the EIR to withhold the information.
2. The Commissioner's decision is that regulation 12(5)(d) of the EIR is engaged and that the balance of the public interest favours maintaining the exception. The public authority's handling of the request breached regulations 11 and 14 of the EIR.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 30 December 2023 the complainant requested information of the following description:

"I have questions about Project Detroit:

1. What is the current annual cost of the contract that Detroit will replace?
2. Have attempts been made to negotiate a renewal price of that contract?
3. If they have, what is the quoted price to keep it running?
4. If attempts have not been made, why haven't they?

5. Assuming a formal decision has been made not to renew or seek to renew the contract in 2026, please provide a copy of the official record of that decision and of the internal documents that recommended not renewing and explaining the rationale for that decision.
 6. On Detroit how much of the total resource (in terms of cash (£ and %) and headcount (£, numbers of staff and %) and physical infrastructure (£ and %)) is dedicated to the pay per mile element of the project?"
5. On 23 February 2024, the public authority responded. It provided some information and stated that it did not hold some information.
 6. The complainant requested an internal review on the same day. In particular, he argued that the public authority would hold more information within the scope of element 5. The public authority sent the outcome of its internal review on 10 May 2024. It revised its position. It now accepted that more information was held, but it relied on regulation 12(5)(d) of the EIR to withhold it.
 7. On 17 July 2024, the complainant resubmitted part 5 of his request, but accepted that the public authority could withhold any information covered by legal privilege. The public authority responded to that request on 8 August 2024. It again relied on regulation 12(5)(d) of the EIR to withhold the information.

Reasons for decision

8. As it is information relating to various types of road user charging, the Commissioner believes that the requested information is information on a measure affecting the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.
9. Regulation 12(5)(d) of the EIR allows a public authority to withhold information to withhold information whose disclosure would adversely affect the confidentiality of formal proceedings.
10. In order to be engaged, the information must relate to a set of formal proceedings and those proceedings must be covered by a duty of confidence with a basis in law.
11. [Section 100A of the Local Government Act 1972](#) allows a "principal council" to exclude the general public from meetings at which it intends to discuss "exempt information." Section 100E of that Act extends the same protection to committees and sub-committees of a principal council. Section 100J further extends this protection to meetings of the

public authority, its committees and sub-committees. Exempt information is defined in Schedule 12A to the Act.

12. The document in question was considered at a meeting of the public authority's Programmes and Investment Committee and the part of that meeting during which this document was discussed was closed to the public by virtue of section 100A.
13. The Commissioner does not need to determine whether the information in question met the Local Government Act definition of "exempt information" (though he has no reason to believe it didn't). The focus of this exception is on the proceedings, not the information. It is sufficient to note that the proceedings were conducted in private.
14. Because the proceedings were closed to the public by virtue of section 100A, the Commissioner is satisfied that they were subject to a duty of confidence provided for by law. This is consistent with the ruling of the Upper Tribunal in [Chichester District Council v Information Commissioner](#).
15. The Commissioner must next consider whether disclosing the withheld information would have an adverse effect on the confidentiality of those proceedings.
16. Whilst it is true that the document in question does not record the Committee's deliberations in those proceedings, the Commissioner nevertheless considers that its disclosure would adversely affect their confidentiality.
17. The document was not an ancillary piece of information. It was key to this part of the meeting and would have formed the central theme of any discussions that followed.
18. In the Commissioner's view, the document could not be disclosed without giving a detailed insight into the proceedings, seriously compromising their confidential nature. Disclosure would therefore adversely affect the confidentiality of the proceedings.

Public interest test

19. Even where disclosure would adversely affect the confidentiality of proceedings, the information must still be disclosed unless the balance of the public interest favours maintaining the exception. The public authority must also apply a presumption in favour of disclosure.
20. The complainant explained to the Commissioner that Project Detroit related to the system underpinning road user charging systems in London – including the Ultra-Low Emission Zone.

21. However the complainant was also concerned that the system could be easily adapted to allow the public authority to adopt other charging systems, such as a pay-per-mile system throughout London's road network. He explained that his particular interest was to establish what further uses the public authority had in mind for this system.
22. The public authority explained that it was important that it had a safe space in which to discuss procurement decisions. Those decisions needed to be based on a thorough and candid assessment of the potential risks. Disclosing the information would lead to a lower degree of candour and therefore poorer decision-making.
23. The Commissioner challenged the public authority to explain why a meeting, held more than two years prior to the request and discussing work that, in some instances appears to be underway or even complete, still needed to be kept confidential.
24. The public authority explained to the Commissioner why the withheld information remains relevant today and why the confidentiality of that meeting should therefore still be preserved. The Commissioner accepts those arguments, but is unable to reproduce them in this notice.
25. The Commissioner would note that he saw no reference, within the withheld information, to any future scheme beyond those that the public authority is already known to operate (or is known to be introducing).
26. The Commissioner recognises that the meeting in question was held some time ago and that the public interest in preserving its confidentiality will not remain high indefinitely. However he is satisfied that, at the point the request was responded to, even bearing in mind the presumption in favour of disclosure, the balance of the public interest favoured maintaining the exception.

Procedural matters

27. The public authority breached regulation 14 of the EIR as it failed to issue a refusal notice, citing all the exceptions on which it came to rely, within 20 working days of receiving the request.
28. The public authority breached regulation 11 of the EIR as it failed to carry out a reconsideration (internal review) within 40 working days of receiving the complainant's representations seeking an internal review.

Right of appeal

29. 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

30. 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.
31. 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

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