

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

### **Decision notice**

**Date:** 11 November 2013

**Public Authority:** Royal Borough of Greenwich

**Address:** Town Hall  
Wellington Street  
Woolwich  
London SE18 6PW

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

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1. The complainant requested information regarding the Royal Borough of Greenwich's (RBG) proposed response to Transport for London's (TfL) river crossings consultation.
2. The Commissioner's decision is that RBG has correctly applied the exception at regulation 12(4)(e) (internal communications) but incorrectly decided that the public interest test favoured maintaining the exception.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose the 'TfL Consultation on New River Crossings in East & South-East London' report dated 26 November 2012
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 7 December 2012, the complainant wrote to RBG and requested information in the following terms:

*"Could you please send me the evidence given by officers to the leader of the council, and to the Labour Group meeting on 26 November, which informed their decision to launch the Bridge The Gap campaign on river crossings."*

6. RBG responded on 4 January 2013 to state that it would need further time to respond, although it did not provide a reason why. On 30 January 2013 RBG issued its refusal notice and stated that it considered the information was exempt under exception 12(4)(e) and that the public interest test favoured maintaining the exception.
7. Following an internal review RBG wrote to the complainant on 1 March 2013. It stated that it agreed with the original refusal notice.

## Scope of the case

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8. The complainant contacted the Commissioner on 7 April 2013 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of the case to be whether RBG is correct that regulation 12(4)(e) applies and that the public interest test favours maintaining the exemption.

## Reasons for decision

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### Environmental Information

10. The Commissioner considers that the information meets the definition of environmental information as per regulation 2(1)(c):

*"2 (1) In these Regulations –*

*"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other 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;*

*(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;”*

11. The information concerns measures to develop land for new transport links, and so the Commissioner is satisfied that it is environmental and should be considered under the EIR rather than the Freedom of Information Act 2000.

### **Regulation 12(4)(e) – internal communications**

12. Regulation 12(4)(e) of the EIR states:

*“For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—*

*(e) the request involves the disclosure of internal communications.”*

13. Regulation 12(4)(e) is a class-based exemption, meaning for the exemption to apply the Commissioner is only required to consider whether the information meets the definition provided.
14. As the exception comes under regulation 12 the Commissioner will apply the public interest test, and will be mindful that as per regulation 12(2) there is a presumption in favour of disclosure.

### Internal communications

15. The Commissioner considers that the concept of a communication in this context is broad and will encompass any information someone intends to communicate to others, or even places on file (including saving it on an electronic filing system) where others may consult it. An internal communication is also a communication that stays within one public authority (but includes communications between government departments).
16. The withheld information relates to a report to provide RBG’s Labour Group (the controlling group on the council) with information about the options for the coming TfL consultation and the proposed position the Group should take.
17. The Commissioner’s view is that as this is a report to be communicated only to other people within RBG it can be considered as internal

communications. Therefore regulation 12(4)(e) applies. He has now gone on to consider the public interest test for this exception.

#### Public interest arguments in favour of maintaining the exception

18. There is an argument to allow public authorities safe space to debate issues and reach decisions away from external distractions. The Commissioner considers that this argument is greatly enhanced when it relates to a live issue, that is, a matter that is still on-going where a definitive decision has not been made.
19. In its submissions to the Commissioner RBG argued that the TfL consultations are on-going so the issue is still live, and as the report relates to a matter that is live the argument for safe space carries significant weight.
20. RBG also put forward the argument in its internal review that if the private space to debate issues was undermined then those officers involved "may be deterred from speaking freely" in future discussions "because of a fear that discussion would be disclosed to the public during a period where the information is still of relevance".
21. However, the Commissioner has given little weight to this argument in the circumstances of this case. The Commissioner requires a higher level of proof than something which "may" occur, and notes that this argument was not put forward in RBG's submissions to the Commissioner's investigation. Furthermore, regarding unrelated future issues and discussions, in the absence of further or specific evidence or arguments the Commissioner considers the view that disclosure may lead to a 'chilling effect' to be a speculative one.

#### Public interest arguments in favour of disclosing the information

22. The report concerns the position the Labour Group should adopt for the river crossing consultation, and also how it should conduct its communications strategy to advertise its position to the public. Whilst it does have a direct relevance to the future live consultations that are taking place, the purpose of the report itself is to devise a position for the consultations. This decision has been made, and indeed it was being advertised by RBG before the complainant made his request<sup>1</sup>. Therefore the Commissioner considers that whilst the report does directly relate to

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<sup>1</sup> See edition 227, 4 December 2012 – <http://edition.pagesuite-professional.co.uk//launch.aspx?eid=804012af-ea32-40f3-b325-5417e28195ef>

an issue that is still live, the decision the report is concerned with has already been made and is not considered to be live. This diminishes the weight afforded to the safe space argument put forward by RBG, and also has further implications for other arguments in favour of disclosure such as the need for transparency and informing public debate on a live issue.

23. There is an inherent argument for transparency and accountability in any spending of public money, and the Commissioner considers that this is relevant for a campaign designed to influence public debate on an important subject. Furthermore, whilst RBG is not bearing the brunt of the costs for the new river crossing it still has significant influence over how the project evolves, and this has serious ramifications for the people in the borough. This increases the weight afforded to transparency as it is viewed as having significance not only because of the public money spent by RBG, but also for the implications it has on a future transport project.
24. In researching the project the Commissioner found that there is a strong objection to RBG's position. Evidence of this can be found on-line, such as a petition with over 400 signatories.<sup>2</sup> In the Commissioner's view this shows there is a legitimate public debate around the subject and also public support for learning how RBG reached its position. The Commissioner considers that this is especially pertinent given the consultations for the river crossing project are still on-going. The report not only provides further information on how RBG reached its proposed position but also a reasoned analysis on the work that would be involved. The Commissioner's view is that this report would help inform the public debate at a crucial point of the development of the river crossing project.

#### Balance of the public interest test

25. In reaching his decision, the Commissioner recognised valid arguments both for maintaining the exception and also for disclosing the information. He also considers that the timing of the request is vital, given that it was made after the decision was reached by the Labour Group to adopt and promote its position on the river crossings.

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<sup>2</sup> <http://www.change.org/en-GB/petitions/mayor-of-london-greenwich-council-and-newham-council-reject-plans-for-a-silvertown-tunnel-3rd-blackwall-tunnel>

26. Whilst the Commissioner acknowledges the argument for safe space, he considers that this is significantly diminished by the fact that the report relates to a decision that has already been made. In contrast to this, the debate for the river crossings is still on-going, and the contents of the reports are considered to be of value to the public debate surrounding the matter. This, in combination with the arguments for transparency and accountability mean that the Commissioner's decision is that the public interest test favours disclosing the withheld information. The Commissioner therefore requires RBG to disclose the report in order to meet its obligations under the EIR.

## Right of appeal

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27. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

28. 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.
29. 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 .....**

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner's Office**  
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**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**