

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

**Date:** 21 July 2023

**Public Authority:** West Yorkshire Combined Authority  
**Address:** Wellington House  
40-50 Wellington Street  
Leeds  
LS1 2DE

**Decision (including any steps ordered)**

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1. The complainant has requested information on the assessments made by West Yorkshire Combined Authority (the Combined Authority) about several projects and information on how the assessments were used to make decisions on pausing some of the projects. The Combined Authority provided a spreadsheet but stated no further information was held.
2. The Commissioner's decision is that on the balance of probabilities, the Combined Authority holds further information within the scope of the request.
3. The Commissioner requires the Combined Authority to take the following steps to ensure compliance with the legislation.
  - The Combined Authority must issue a fresh response to the request following searches aimed at identifying all information held within the scope of the request.
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 19 December 2022, the complainant wrote to the Combined Authority and requested information in the following terms:

“The Inflation: Transport Programme report that was approved at the Combined Authority meeting on 08 December 2022 stated the following at para 3.1: and 3.2:

“3.1 Working collaboratively with district partners, the CA and district partners have identified projects to be paused and pipelined based on the following criteria:

- Financial viability
- Deliverability
- Strategic fit and suitability against sustainable travel. West Yorkshire current strategic priorities give a focus to more sustainable travel options.

3.2 Working jointly with our Partner Councils, the assessment has been undertaken for each project within TF and TCF against this criterion.”

Therefore could you please sent [sic] me the detailed assessment that was undertaken for each project with particular regard to sustainable travel and how this was taken into account when determining which projects to pause and pipeline and which to continue to deliver.”

6. The Combined Authority responded on 11 January 2023 explaining the criteria used for reviewing each project.
7. Following an internal review the Combined Authority wrote to the complainant and added to its response by providing the sustainability scores for each project that were used to inform the decisions taken on which projects to pause.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 15 March 2023 to complain about the way their request for information had been handled.

In particular that the Combined Authority held additional information that had not been provided.

9. The Commissioner considers that the scope of his investigation is to determine if the Combined Authority holds additional information in scope of the request.

## **Reasons for decision**

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10. Regulation 5 of the EIR requires that a public authority that holds environmental information shall make it available on request. This is subject to any exclusions or exceptions that may apply.
11. Regulation 12(4)(a) of the EIR says that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
12. In scenarios where there is some dispute between whether the public authority holds relevant information, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
13. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.
14. The Commissioner asked the Combined Authority a number of questions to ascertain if further information was held.
15. The complainant had asked for the detailed assessment undertaken for each project with particular emphasis on information relating to sustainable travel and how this was factored into decision making. The complainant did acknowledge that the Combined Authority had provided a spreadsheet with RAG (red, amber, green) ratings for the sustainable travel element of the 'detailed assessment' but argued this did not address the part of the request asking for information as to how "this was taken into account when determining which projects to pause".
16. In short, the complainant argued that the Combined Authority had failed to provide the other criteria used in the decision making process as well as an explanation as to how all of the criteria were taken into account and a fully formed decision made.

17. As such the Commissioner asked the Combined Authority if it held similar information as the RAG rating spreadsheet for the other criteria ie financial viability, deliverability, strategic fit, as it did for sustainability. The Commissioner also asked if any overarching document was held that sets out how decisions were made or what weighting was given to each criteria, or if policy documents or minutes of meetings where the criteria were discussed might be held.
18. The Combined Authority stated it had provided all the information requested that was held. It explained the document that outlines the RAG rating status of the Transport Scoring on Sustainable Travel is an exhaustive list of information which is held by the Combined Authority.
19. Furthermore the Combined Authority stated that the request for a "detailed assessment that was undertaken for each project, and for detail of how sustainable travel was taken into account while determining which projects to pause and which to continue to deliver" is information that is not held by the Combined Authority.
20. The Combined Authority emphasised that the internal review of the request was undertaken by its Director of Delivery who is the strategic director with responsibility and oversight of the relevant workstreams. The Combined Authority therefore argued that additional documentation that has not been provided cannot exist without the knowledge of both the Director responsible and the Service Area responsible for delivery.
21. On a final note the Combined Authority stated:

"[it] has provided all information which specifically answers the requests which it holds in a reportable format. As part of Combined Authority workstreams, many meetings take place however these do not always have recordings or minutes."
22. The Commissioner understands that the complainant is not convinced that they have been provided with all the information falling within the scope of their request. They argue the spreadsheet sent only supplies the RAG ratings for the Sustainable Travel element of the detailed assessment but the request asked "how this was taken into account when determining which projects to pause". As such the complainant believes information on the other criteria used in the decision making process is required and an explanation as to how all these criteria factored in to the decisions, is required to fulfil the information request.
23. It is not the Commissioner's role to establish what information a public authority should hold, or whether it has a requirement, statutory or otherwise to hold certain information. Nor will the Commissioner undertake a forensic examination of all records held by a public authority if it is not proportionate to do so. The Commissioner's role is to

make a judgement on whether information is held on the civil standard of the balance of probabilities.

24. In making a decision in this case the Commissioner has referred back to the wording of the request and particularly that the request stemmed from a Transport Programme report that set out that financial viability, deliverability, and strategic fit and suitability against sustainable travel were the criteria used to determine which projects to pause and pipeline. The report also stated an assessment had been undertaken for each project against these criteria.
25. Whilst the request did ask for a particular focus on information relating to the assessments undertaken with regard to sustainable travel, it was not exclusive to this and sought information relating to the assessments undertaken against all the criteria and information on how this was taken into account when making decisions.
26. The Commissioner accepts the spreadsheet provided may be the extent of the information held with regard to the actual assessment against the criteria but it is not clear if further information may be held that could form part of the information on how the assessment influenced the decisions made.
27. The arguments from the Combined Authority on this are limited and do not suggest that any detailed searches have been carried out. The public authority suggested all information in a 'reportable format' had been provided which the Commissioner considers to be somewhat vague. In addition to this the Combined Authority did acknowledge many meetings take place and do not **always** have minutes. This would suggest some meetings would be minuted, even if these minutes are more informal and sent in an email.
28. It may be that there is no recorded information held that details discussions on how the assessment informed the decisions, but it seems reasonable to expect the Combined Authority would carry out searches to establish this. The Commissioner would expect a public authority to use keywords to search emails and, given this relates to projects, to search electronic folders for any relevant information.
29. Therefore, the Commissioner's decision is that on the balance of probabilities the Combined Authority holds further information within the scope of the request and so the exception provided by regulation 12(4)(a) (information not held) is not engaged.
30. The Commissioner requires the Combined Authority to issue the complainant with a fresh response to the request following searches aimed at identifying all the information held within the scope of the request. All information falling within the scope of the request should

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either be disclosed to the complainant or an adequate refusal notice should be provided.

## Right of appeal

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32. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**