

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 2 August 2023

Public Authority: Greater London Authority
Address: City Hall
London
SE1 2AA

Decision (including any steps ordered)

1. The complainant has asked about the environmental standards of the Mayor of London's cars. The above public authority ("the public authority") relied on regulation 12(4)(a) (information not held) and regulation 13(1) (personal data) of the EIR.
2. The Commissioner considers that, on the balance of probabilities, the public authority does not hold the information requested and regulation 12(4)(a) is engaged.
3. The Commissioner did not, therefore, find it necessary to consider whether regulation 13 had been correctly applied.
4. The Commissioner also finds that public authority did not properly discharge its duty under Regulation 10(1) of the EIR and hence has breached that regulation.
5. The Commissioner does not require the public authority to take any further steps.

Background

6. Central London operates an Ultra Low Emission Zone ("ULEZ") on its roads. Vehicles entering the ULEZ must comply with certain environmental standards relating to the emissions they produce. Vehicles that do not comply with these standards must pay a charge.

The broad aim is to make it more expensive to drive the most polluting vehicles through the city centre – thus discouraging such activity. A failure to pay the charge can result in a Penalty Charge Notice (PCN).

7. The ULEZ currently covers only the central area of the city between the north and south circular roads. The scheme has been controversial and the current Mayor of London, Sadiq Khan, has been keen to expand the scheme, despite objections from multiple London Boroughs.
8. On 28 July 2023, the High Court approved the expansion of the ULEZ scheme across all London boroughs from 29 August 2023.

Request and response

9. On 13 February 2023, the complainant wrote to the public authority and requested information in the following terms:
 - "a) Does the Mayor of London, drive or is driven in a ULEZ compliant vehicle and disclose the number of vehicles used by him which are (i) ULEZ compliant (ii) non ULEZ compliant?
 - "b) Of the vehicles that are non-ULEZ compliant, how does this support Mayor's ULEZ policy on the current operational and ULEZ Expansion?
 - "c) Is the Mayor subject to issuance of PCNs for using non-compliant vehicles? If so, how many PCNs have been served on him and of this, how many were settled and provide proof thereof?."
10. The public authority responded on 2 March 2023. It refused to confirm or deny that the information was held. It relied on section 31(3) and 38(2) of FOIA as its reasons for doing so. It upheld this stance following an internal review.
11. On 10 May 2023, the Commissioner issued a Decision Notice to the public authority concluding that the request ought to have been dealt with under the EIR, that part b) was not a valid request for recorded information, and the public authority was not entitled to rely on regulation 12(6) or regulation 13 of the EIR as its basis for refusing to respond to the request. The Commissioner required the public authority to provide a fresh response to the complainant confirming or denying

whether it held the information requested in parts a) and c) of the request (IC-222668-Z6M1)¹.

12. On 10 July 2023, the public authority provided a fresh response to the complainant refusing parts a) and c) of the request relying on regulation 12(4)(a) of the EIR (information not held) and regulation 13(1) of the EIR (personal data).

Scope of the complaint

13. On 11 July 2023, the complainant contacted the Commissioner to raise a complaint about the public authority's fresh response dated 10 July 2023. The complainant is concerned that the Mayor of London is being given preferential treatment in respect of the ULEZ compliance of the vehicles in which he travels.
14. The scope of this decision notice is to determine whether regulations 12(4)(a) and 13(1) of the EIR have been correctly applied by the public authority.

Reasons for decision

Is the requested information be environmental?

15. Regulation 2(1) of the EIR defines environmental information as being information 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);

¹ [ic-222668-z6m1.pdf \(ico.org.uk\)](#)

- (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)...as well as measures or activities designed to protect those elements;
16. The request seeks information about whether the vehicles the Mayor has use of comply with the ULEZ scheme. The ULEZ is a measure designed to have an environmental impact (i.e. on the air and atmosphere) and this information would be information on that measure (whether particular vehicles would or would not have to pay the charge). It is therefore environmental information.

Are all parts of the request valid?

17. As previously determined, only parts a) and c) of the request are valid because they seek information that if they were held, would be held in recorded form.

Regulation 12(4)(a) – information not held

18. 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.
19. 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.
20. In scenarios where there is some dispute about 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.
21. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public 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.
22. In its fresh response to the complainant dated 10 July 2023, the public authority explained to the complainant that, as it did not supply the vehicles in which the Mayor travels, it was unable to confirm whether the vehicles were ULEZ compliant. The public authority also stated that

it did not hold any information as regards to any PCNs which may have been issued to the Mayor.

23. The complainant argues that, irrespective of whether the public authority supplies the vehicles in which the Mayor travels, the public authority should hold the information requested because the public authority is responsible for the ANPR cameras which record information about whether vehicles are ULEZ compliant or not, and then issues PCNs accordingly. Therefore, the vehicles in which the Mayor of London travels would be picked up on the ANPR cameras and PCNs issued (if non-compliant) just like any other vehicle.
24. The Commissioner notes that the ULEZ scheme is operated by Transport for London ("TFL"). TFL is a statutory body created by the Greater London Authority Act 1999 and is responsible for most aspects of London's transport system. The TFL website explains the way to check whether a vehicle is ULEZ compliant by entering the registration number². If the vehicle is not ULEZ compliant, the daily charge of £12.50 is payable to TFL and TFL also issue any PCNs if the daily charge is not paid.
25. Following contact from the Commissioner, the public authority explained that a separate organisation outside the public authority is entirely responsible for the vehicles in which the Mayor travels and, as a consequence, the public authority does not hold any information relating to such vehicles (including registration numbers) to confirm whether any of the vehicles are ULEZ compliant. The public authority confirmed to the Commissioner that it had carried out checks to ensure that no such information was held in diaries or emails.
26. The public authority also explained to the Commissioner that, as the Mayor is not the registered keeper of the vehicles in which he travels, any PCNs would not be issued to the Mayor personally. Any such PCNs would be issued to the registered keeper of the vehicle and the public authority does not hold any information as to the identity of the registered keeper(s) of the vehicles in which the Mayor travels.
27. 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. It is not the Commissioner's role to establish what information a public authority should hold, or whether it has a

² [Check your vehicle \(tfl.gov.uk\)](https://www.tfl.gov.uk)

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 the information is held on the civil standard of the balance of probabilities.

28. Based on the evidence available to him, the Commissioner is satisfied that the public authority has carried out adequate searches, which would have been likely to locate information falling within the scope of the request. Based on the searches undertaken and the other explanations provided, as referred to above, the Commissioner is satisfied that, on the balance of probabilities, the public authority does not hold any information falling within the scope of the request.

Regulation 13(5A)

29. Regulation 13(5A) of the EIR allows a public authority to refuse to confirm or deny that information is held if providing a confirmation or a denial would unlawfully reveal personal data.
30. In respect of part c) of the request, the public authority initially argued that providing a confirmation or denial that the information was held in respect of any PCNs issued to the Mayor would, in itself, disclose personal data about the Mayor. As previously, the public authority provided no details of any assessment it might have made of any legitimate interest in issuing a confirmation or a denial.
31. However, the public authority has now explained to the Commissioner that neither the Mayor nor the public authority is the registered keeper of the vehicles in which he travels and so any PCNs would not be issued to the Mayor personally and would therefore not be his personal data. It would instead be the personal data of the registered keeper(s) of the vehicles. Further, the public authority explained that it held no information as to the identity of the registered keeper(s) of the vehicles in question nor any information regarding PCNs issued to such vehicles.
32. The Commissioner has therefore not found it necessary to consider whether the public authority was able to rely on regulation 13(5A) of the EIR to refuse to confirm or deny that the information is held as the information requested is not the personal data of the Mayor and the public authority does not hold the information requested.

Procedural Matters

33. Regulation 10(1) of the EIR states:-

“Where a public authority that receives a request for environmental information does not hold the information requested but believes that another public authority or a Scottish public authority holds the information, the public authority shall either—

(a) transfer the request to the other public authority or Scottish public authority; or

(b) supply the applicant with the name and address of that authority,”

34. The Commissioner does not encourage public authorities to transfer information requests, especially without the explicit consent of the requester – who may not wish to have their personal data transferred to another authority. However, where a public authority believes that another public authority holds relevant information and it does not transfer the request, it must inform the requester of the name and address of that public authority.

35. The public authority has explained to the Commissioner that another organisation may hold some of the information requested.

36. The Commissioner finds that the public authority breached regulation 10(1) of the EIR by not informing the requestor of the name and address of the public authority which it believes may hold the information.

37. Right of appeal

38. 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

39. 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.
40. 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

Michael Lea
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