

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

Decision notice

Date: 30 August 2023

Public Authority: Transport for London
Address: 5 Endeavour Square
London E10 1JN

Decision (including any steps ordered)

1. The Commissioner's decision is first, that the requested information about Cycleway 9 evaluation data is environmental information that should be considered under the EIR. Second, the request can be categorised as a manifestly unreasonable request under regulation 12(4)(b) of the EIR.
2. Transport for London isn't obliged to comply with the request and it's not necessary for it to take any corrective steps.

Request and response

3. In wider correspondence to the complainant about Cycleway 9 (C9), on 11 May 2023, Transport for London (TfL) had said:

"It will be for Hounslow Council to make a decision on the future of the experimental Cycleway in Chiswick. The Council will consider three factors. These are:

- Monitoring of the effects of the scheme
- The responses received to the public consultation
- The responses received to the Traffic Order

To assist in the decision making, TfL will provide Hounslow Council with a range of data: this will include cycling levels, bus journey times, general traffic journey times, collision data and the outcomes of our consultation. The monitoring data will provide relevant baselines including the time period of the original temporary scheme as well as prior to the pandemic i.e. 2019.”

4. The complainant made the following information request to TfL on 11 May 2023:

“Please can you then send me all the data you are sending to LBH [London Borough of Hounslow] and to LBHF [London Borough of Hammersmith and Fulham].”

5. TfL responded on 25 May 2023 and advised that it was relying on section 22 of FOIA to withhold the information as it was intended for future publication.
6. The complainant requested an internal review the same day and TfL provided one on 9 June 2023. TfL first acknowledged that the information requested is caught by the EIR and not FOIA. It then confirmed that it considered that the request was manifestly unreasonable under regulation 12(4)(b) of the EIR and, as such, refused to comply with it. It noted, however, that it did still intend to publish the information that the complainant has requested.
7. TfL explained further why it considered regulation 12(4)(b) was engaged in correspondence to the complainant on 3 July 2023. This, and its internal review response, are detailed below.

Reasons for decision

8. To address a point raised by the complainant in correspondence to TfL on 25 June 2023, this reasoning first considers whether the request is covered by the EIR rather than FOIA. The Commissioner will then consider TfL’s application of regulation 12(4)(b) to the complainant’s request (or the FOIA equivalent if appropriate).

Is the requested information environmental information?

9. The requested information concerns a plan for a new cycleway for London Borough of Hounslow, which it’s hoped will encourage more cycling and walking. A consequence of the cycleway will be to reduce the number of cars on the road, reducing pollution, and to improve human health through less pollution as well as through more physical activity.

Given that it will involve construction, there will also be some temporary effects on the environment associated with that work

10. The Commissioner is satisfied that the requested information can be categorised as environmental information under regulation 2(1) of the EIR. That's because the information concerns (a) the state of the elements of the environment (such as air, atmosphere, land), (c) measures likely to affect those elements and (f) the state of human health and safety.
11. TfL is therefore correct to handle the request under the EIR, rather than FOIA.

Regulation 12(4)(b) – manifestly unreasonable request

12. Under regulation 12(4)(b) of the EIR a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
13. Regulation 12(4)(b) is subject to the public interest test and regulation 12(2) states that the public authority shall apply a presumption in favour of disclosure. There's no such provision under FOIA.
14. As TfL has noted in its internal review response, the inclusion of the word "manifestly" in regulation 12(4)(b) means that there must be an obvious or clear quality to the unreasonableness. The purpose of the exception is to protect a public authority from exposure to a disproportionate burden or an unjustified level of distress, disruption or irritation, in handling information requests. This exception can be used when the cost of compliance with the request(s) would be too great or is vexatious. In assessing whether the cost or burden of dealing with a request(s) is 'too great', a public authority is required to consider the proportionality of the burden or costs involved and decide whether they are clearly or obviously unreasonable.
15. This means taking into account all the circumstances of the case including:
 - the nature of the request and any wider value in the requested information being made publicly available
 - the importance of any underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue
 - the size of the public authority and the resources available to it, including the extent to which the public authority would be distracted from delivering other services; and

- the context in which the request is made, which may include the burden of responding to other requests on the same subject from the same requester.
16. TfL goes on to make the case that the request is manifestly unreasonable in its internal review. It said it had liaised with its Lead Sponsor for "IDP [Infrastructure Delivery Plan] Programme Sponsorship" about the data to be provided to London Borough of Hounslow (LBH). This would include (but wasn't limited to) cycling levels, bus journey times, general traffic journey times, collision data and the outcomes of a consultation. TfL said that some of this information is already publicly available, which it had advised the complainant previously.
 17. TfL confirmed that it considered the remainder of the requested information engaged regulation 12(4)(b) because providing this information would impose unreasonable costs on it and require an unreasonable diversion of its resources.
 18. TfL says in its review that the data that the complainant has requested is still in its basic raw format. It hasn't yet been analysed and configured into a disclosable format – either for LBH's consumption or for the general public. Due to the volume of data that still needs to be extracted and analysed, TfL said it would be a significant task to undertake this at an earlier than anticipated stage and within a shorter than planned timeframe, in order to respond to the complainant's request. This in turn would impose significant and unjustified staff resource at short notice. It would divert them away from their core roles of maintaining a busy transport network.
 19. TfL noted that the complainant is aware that the data they've requested will be published in the coming months separately by TfL and also LBH and will be fully available for public scrutiny.
 20. TfL also noted concerns the complainant had expressed regarding "public confidence", "illegal manipulation of the data" and "safety concerns" [about C9]. TfL said that it was unable to comment on those statements but didn't believe that adding additional pressure to TfL staff in order to provide the data to the complainant at short notice would help C9 opposition arguments. This was because any final decisions will still fall to LBH Cabinet. Once LBH Cabinet makes its decision, Councillors can ask for the decision to be called in for further review via the Oversight and Scrutiny Panel, if necessary. Additionally the public has an appeals mechanism via a Judicial Review. All safety concerns would be considered in full as part of a consultation and TfL said it will publish in full all the data that will be provided to LBH as well as the consultation results.

21. TfL reiterated that all the data that it will provide to LBH to feed into its decision making will be published separately by TfL as part of a planned publication schedule this summer.
22. TfL then confirmed that its FOI Case Management Team adheres to the Commissioner's guidance on applying section 14(1) under FOIA. This is one of the indicators that the Commissioner measures against when considering if a request has an "obvious or clear quality of unreasonableness" under regulation 12(4)(b) of the EIR. The Commissioner describes this as, "The effort required to meet the request will be so grossly oppressive in terms of the strain on time and resources, that the authority cannot reasonably be expected to comply, no matter how legitimate the subject matter or valid the intentions of the requester".
23. Additionally, TfL noted, the Commissioner's guidance advises that consideration is given to whether the request -
 - Imposes a burden by obliging the authority to sift through a substantial volume of information to isolate and extract the relevant details; and/or
 - Creates a burden by requiring the authority to spend a considerable amount of time considering any exemptions and redactions.
24. TfL confirmed that it considers that all of these elements are met in this case. TfL said it was making no judgement on the motive of the request but was focussing on the burden created. As it had advised, the requested information can't be easily extracted and provided and doing so would be a huge task for what is a limited resource.
25. TfL concluded its internal review by directing the complainant to similar complaints brought to the Commissioner in which he'd decided that regulation 12(4)(b) was engaged.
26. As noted, TfL wrote to the complainant again on 3 July 2023, in response to queries they'd raised about the internal review. TfL confirmed the following:
 - In the coming weeks TfL will begin to analyse the information to provide information to LBH. The team that will lead this piece of work is currently actively engaged in delivering a major overhaul of traffic signal software in London and delivering vital safety assessments and improvements to London's roads. To analyse and compile the data earlier than planned to respond to the request, rather than as part of the pre-agreed resourcing schedule, would

require the team to immediately stop working on those essential projects to free up the necessary staff time and resource.

- Extracting the raw data and analysing it now to respond to the request would essentially mean TfL has to undertake the same task twice. Once, to address the request now and again, at a later date, to provide the most up to date data to LBH. As well as the diversion and burden to staff, this would impose additional costs on TfL and isn't justifiable in the current financial climate.
- The information needed to undertake the data analysis isn't as readily available as the complainant may believe.
- The complainant's original request asked for cycling numbers, cycle accidents and bus journey delays. A collision dashboard is freely available to the public. This allows people to look at individual collision points across the road network and to make their own assessments of the road danger of particular streets or corridors. TfL has already provided the complainant with these links. The dashboard uses data from the Stats19 dataset and uses information on collisions that are reported to the police. The dashboard provides a summary of information on the collision point itself. However it isn't a form of analysis as it doesn't provide significant detail about the circumstances of each collision, including elements that are sensitive or confidential (that data isn't public).
- TfL's engineers will analyse that collision data to understand key safety indicators that the C9 scheme will seek to address, or any collision patterns that may be relevant to the scheme once operational. This process requires the Stats19 dataset to be reviewed and validated by the police before undertaking the analysis, so that TfL can be confident that the data is as accurate as possible. This means that the validation process takes time and therefore the dataset only becomes available periodically. The analysis will take into account numerous elements such as geographical location, vehicle types, manoeuvres, time of day, weather conditions and other contributory factors. This so that the collision points that are relevant to the scheme and worthy of further investigation can be identified. As the most recent data available on the dashboard is raw and hasn't been through this validation process, it's indicative only. As a result, collision numbers and characteristics may be subject to change once the validation and analysis processes are complete. This process takes a specialised engineer up to two weeks to complete - plus the further time required for others to also validate their assessments - therefore in excess of 100 hours of staff resource.

- Regarding bus journey data, the relevant data needs to be extracted from TfL's data sources. Appropriate baseline and post scheme period need to be included, as well as the manual removal of periods when it's known the planned or unplanned events which influence the performance of the network. This data needs to be tabulated and validated before all relevant Network Performance managers provide their assessments and explanations of any changes, compared to the appropriate thresholds. This process will take up to seven days to complete - approximately 49 hours of staff resource.
- Regarding cycle flows, there is some data already in the public domain via published FOI requests. However the process that will be needed for TfL's planned disclosure of data to LBH, and subsequent publication, will be to validate the data, then select the most appropriate count lines and undertake checks of that data. Following this TfL will need to calculate the cycle kms for each section as well as for the full route, complete all necessary comparisons before tabulating the data, and then seek the final commentary and validation from the appropriate data analyst. TfL expects that this process will take approximately two or more full days to complete - approximately 14 hours or more of staff resource.
- TfL has yet to start any kind of analysis of the raw data and has no plans for an advanced preview as part of the publication schedule. TfL's intention is to provide LBH with the data towards the end of August 2023 with the view to publishing in full on TfL's website in early September 2023. But there are no confirmed specific dates set.
- The complainant has the option of submitting a new request in approximately mid-August.
- TfL appreciates the complainant's concerns about how the data will influence any final decisions LBH makes. However the fact still remains that any final decisions are LBH's responsibility and not TfL's. TfL simply provides LBH with the required data for its considerations on the future of C9. TfL can't comment on the complainant's unsubstantiated assertions about a manipulation of the data or, as they have stated, "a stitch up between TfL and LB Hounslow".
- To comply with the request would take in excess of 163 hours of staff time. Therefore TfL maintains that regulation 12(4)(b) is appropriately engaged.

27. Responding to that correspondence the same day, the complainant said,

“From what you have written, I appreciate that a lot of work is planned and it would make sense not to have to do it twice.

So, I would be willing to withdraw my appeal to ICO on this basis but only if TfL were to undertake to deliver it to me in a matter of a day or two after it has gone to LBH. This would be reasonable as the report would have been written and no extra work would be required from TfL”

The Commissioner’s view

28. TfL has confirmed to the Commissioner that it plans to publish the requested information to a planned timetable when the raw data has been analysed. TfL anticipates that preparing the information for disclosure now would take more than 150 hours and be a major distraction for its small team. The complainant has themselves acknowledged, “that a lot of work is planned”.

29. Furthermore, if it were to prepare and disclose the information now in order to comply with the complainant’s request, TfL would need to do a similar exercise a second time in order to provide up to date information to LBH. And the complainant has also acknowledged that “it would make sense not to have to do it twice”.

30. Having considered all the circumstances, the Commissioner is satisfied that the request is manifestly unreasonable under regulation 12(4)(b) of the EIR. It’s perfectly reasonable for TfL to publish the information to its planned timetable. It’s unreasonable for TfL to have to bring this work forward; burden and distract its team; and repeat the exercise at a later date in order to comply with the complainant’s request.

Public interest test

31. In their request for an internal review, the complainant discussed, amongst other things, public confidence, honesty and integrity, possible “illegitimate manipulation” of the data, quality of decision making and public safety.

32. In their complaint to the Commissioner, the complainant has said that they strongly suspect that the data they’ve requested will show the C9 route has failed on all the key metrics; that cycle safety hasn’t improved, cycle numbers haven’t increased substantially; and that congestion has increased dramatically. The complainant also considers that C9 is very unpopular.

33. In addition, the complainant considers that there is prior evidence of TfL being “untrustworthy” and that they are being stonewalled. The complainant said that TfL’s untrustworthiness is also evident two pieces of correspondence from 2021 that they sent to the Commissioner. In one piece of correspondence an individual raises queries about temporary cycle lanes on Chiswick High Street and TfL addresses them. In the second, ‘OneChiswick’ puts comments and concerns about the ‘C9T’ cycleway to LBH Cabinet. The Commissioner hasn’t been able to identify anything obviously untoward about TfL in this correspondence.
34. For its part, in its correspondence to the complainant TfL has confirmed that it’s fully aware of the importance of accountability. There’s a strong accountability argument for releasing information that enables the public to satisfy themselves that TfL has the appropriate mechanisms in place and has conducted thorough research on the matter of public safety.
35. However, TfL maintained that the time it would take to provide all the information the complainant has requested would divert a disproportionate amount of resources from its core functions.
36. TfL said it had considered the public interest in the early disclosure of this data in relation to allowing members of the public to be better informed in their decision making when responding to the C9 consultation. However, the consultation period closed in March. Therefore, any urgency in disclosing this data earlier than the planned publication is somewhat negated. Disclosure at this juncture wouldn’t now provide any added value to individuals as their responses will have already been submitted and recorded prior to the end of the consultation in March.

Balance of the public interest

37. The Commissioner is satisfied that the public interest favours maintaining the regulation 12(4)(b) exception. A public consultation on C9 was run, and this closed in March 2023, before the complainant submitted their request. And the requested information will be published at a future date – possibly quite soon – which also satisfies the public interest in public authorities being open and transparent. The complainant may be sceptical about TfL, but they haven’t made a compelling case that the requested information has such a significant, wider and immediate public interest that it warrants placing unreasonable demands on TfL to analyse, prepare and publish a second set of material ahead of its planned schedule for publication. As TfL is planning to publish the raw data as well, this should assuage any concerns about data manipulation, or TfL’s broader integrity, that the complainant has – although the Commissioner does not consider that the complainant has substantiated those concerns.

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

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