

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

**Date:** 10 September 2024

**Public Authority:** London Borough of Sutton  
**Address:** Civic Offices  
St Nicholas Way  
Sutton  
SM1 1EA

**Decision (including any steps ordered)**

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1. The complainant submitted a request to the London Borough of Sutton (the Council) seeking information about changes to parking restrictions at a particular location. The Council disclosed some information to the complainant but withheld additional information on the basis of regulations 12(5)(f) (interests of the person who provided the information to the public authority) and 13(1) (personal data) of the EIR. The complainant disputed the application of these exceptions and also argued that the Council was likely to hold further information. During the course of the Commissioner's investigation the Council located additional information part of which it disclosed and part which it sought to withhold.
2. The Commissioner's decision is that:
  - On the balance of probabilities the Council has now located all of the information it holds falling within the scope of the request.
  - The information which the Council is seeking to withhold is exempt from disclosure on the basis of regulations 12(5)(f) and 13(1) of the EIR.

- However, given its delays in handling this request the Council breached the procedural requirements contained at regulations 5(2) and 14(2) of the EIR.
3. The Commissioner does not require further steps.

## Request and response

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4. The complainant submitted the following request to the Council on 26 May 2023:

"Living in Chiltern road I would like to understand the justifications, aims, evidences for the proposals, & expected outcomes/improvements for the proposed changes in times for the single yellow lines in Chiltern Road which already cover both am & pm periods. I am disappointed that I could find this information nowhere in the consultation proposals & this is a fundamental requirement for an informed response."

5. The Council responded on 27 November 2023 and stated that:

"As has been previously highlighted to you in Communication with the Parking Strategy Team, the proposed changes to the yellow line operation times on Chiltern Road (8am-10am and 2.30pm - 5pm) have been designed to coincide with the Harris Academy (School) opening and closing times. The current hours of operation (10am-11am and 2pm-3pm) do little to control parking during the busy school opening and closing periods.

The proposals were developed and discussed with ward councillors before being sent out. The options went through a round of informal consultation, where there was support for the proposals and then progressed to the statutory Traffic Management Order (TMO) process."

6. The complainant contacted the Council on 1 December 2023 and sought an internal review on the basis that the response did not provide the information sought by his request.
7. The Council informed him of the outcome of the internal review on 30 January 2024. The Council provided him with two documents:
- A flyer headed "Parking Proposals for your street".
  - A letter sent to residents dated 25 May 2023 headed "Proposed parking changes for Belmont".
8. It also disclosed a summary of both the responses received during the informal and formal consultations. The Council explained that the

specific responses were considered to be exempt from disclosure on the basis of regulations 12(5)(f) (interests of the person who provided the information) and 13 (personal data) of the EIR.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 15 March 2024 to complain about the Council's handling of his request. He disputed the application of the exceptions cited. He also believed that the Council would hold further recorded information falling within the scope of his request. He specifically referred to an 'Impact analysis of proposals' and the 'officers report of site visit' not being disclosed to him.

## **Reasons for decision**

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### **Does the Council hold any further information falling within the scope of the request?**

10. In his initial letter to the Council the Commissioner noted that although this request did not seek specific information or documents by name, the complainant explained that the purpose of his request was to 'understand the justifications, aims, evidences for the proposals, & expected outcomes/improvements for the proposed changes'. The Commissioner explained that in his view an objective reading of this request would therefore capture any recorded information held by the Council about the intentions of the scheme, evidence for the changes and expected outcomes.
11. The Commissioner acknowledged that some information had been located, but that the complainant had specifically referred to two documents, namely an 'Impact analysis of proposals' and the 'officers report of site visit' that he expected the Council to disclose in response to his request. The Commissioner sought confirmation from the Council as to whether either of these documents has been located. Furthermore, the Commissioner also asked the Council to explain the steps it had taken to locate recorded information falling within the scope of the request and an explanation as to why such searches would have been sufficient to locate all such information.
12. In response the Council explained that the two specific documents identified by the complainant were not held. The Council explained that there is no impact analysis report and whilst a site visit took place, no formal report was created. Rather the Council explained that during the

site visit, visual observations were made that would have been incorporated into the development of the scheme.

13. With regard to steps taken to locate information, the Council explained that it had collaborated with the Parking Strategy Team, which was responsible for leading the consultation. The Council noted that this team possesses comprehensive knowledge of all documents and materials related to the consultation, including the responses received.
14. Having considered this response, the Commissioner contacted the Council again and acknowledged its position that it did not hold the two specific documents specified by the complainant. The Commissioner also acknowledged that the Parking Strategy Team who led on the scheme have been consulted to locate any information relevant to this request. However, the Commissioner highlighted that aside from the consultation responses (withheld on the basis of regulation 12(5)(f)) the only other documents which had been located are those previously disclosed to the complainant, namely the proposed parking changes letter of 25 May 2023 and a parking poster.
15. The Commissioner explained to the Council that he expected it to hold some internal information about why it originally decided to propose these parking changes, prior to it contacting residents via the parking changes letter of 25 May 2023. For example, evidence to suggest that there was a parking problem that needed addressing and analysis as to why the proposals could address this. The Commissioner explained that in his view, such information, if held, fell within the scope of the request.
16. The Commissioner therefore asked the Council to consider again whether it held any further recorded information falling within the scope of this request.
17. In response, the Council explained to the Commissioner that it had located a number of further emails and associated documents relevant to this request. Some of these emails were from a member of the public, some between Council officers and some with local councillors. The Council explained that it considered some of these emails to be exempt from disclosure in full on the basis of regulation 12(5)(f) (ie emails from a member of public), but that it was prepared to disclose the remaining information, redacted on the basis of regulation 12(5)(f) and regulation 13, to the complainant. The Council did so on 30 July 2024.
18. In cases such as this where there is some dispute as to whether all of the information falling within the scope of the request has been located, the Commissioner, following the lead of a number of Information

Tribunal decisions, applies the civil standard of the balance of probabilities.

19. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any further information which falls within the scope of the request.
20. In applying this test the Commissioner considers the results of the searches undertaken by the public authority and/or other explanations offered as to why all of the information has been located.
21. In view of the further searches undertaken by the Council during the course of his investigation, and the nature of the information that has now been located, the Commissioner is satisfied that on the balance of probabilities the Council has located all of the information it holds falling within the scope of this request. The Commissioner has reached this finding as he considers the located information, when taken with the information previously located during the processing of the request, provides a coherent record of the process by which the parking proposals in question were developed. For similar reasons the Commissioner is also satisfied that Council does not hold the two specific documents identified by the complainant.

**Regulation 12(5)(f) - Interests of the person who provided the information to the public authority**

22. Regulation 12(5)(f) of the EIR states that:

“a public authority may refuse to disclose information to the extent that its disclosure would adversely affect...

...f) the interests of the person who provided the information where that person

(i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;

(ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and

(iii) has not consented to its disclosure;”

23. The information which the Council has withheld on the basis of this exception consists of, firstly, the responses to the informal and formal consultations (ie the information located at the internal stage) and secondly, the information located during the Commissioner’s

investigation. This latter information consists of email correspondence with a member of the public about the proposals.

### *Consultation responses*

24. With regard to limb (i) of the exception, the Council explained that in a public consultation process, individuals are invited to submit their views and comments voluntarily. They are not legally required to participate or to provide specific information.
25. With regard to (ii), the Council explained that the consultation materials did not indicate that responses would be made public. The respondents did not provide their information with the expectation that it would be disclosed. Since participants were not informed that their information would be disclosed into the public domain, the Council argued that they would reasonably expect their comments to remain confidential.
26. With regard to (iii), the Council explained that the consultation process did not include obtaining explicit consent for its disclosure.
27. In terms of the impact of disclosure, the Council argued that a participant may have shared detailed concerns about specific traffic patterns near their home. While not directly identifiable, the context could reveal their identity subjecting them to unwanted attention or scrutiny, and thus impacting on their privacy. The participants' confidentiality may also be breached if the information is disclosed. The Council explained that the consultation process did not make clear that responses would be disclosed publicly, leading participants to believe their responses were confidential. In the Council's view disclosure would breach this implied confidentiality, damaging the trust between the public authority and the participants.
28. With regard to the criteria set out at (i) to (iii) of the exception, taking into account the Council's submissions, the Commissioner is satisfied that these are met.
29. In terms of whether disclosure of the consultation responses would adversely affect the individuals who made them, the Commissioner agrees that such individuals may not be directly identifiable from them, assuming name and contact details were removed. However, the Commissioner also agrees that given the context, ie a parking consultation in a relatively small area, and the specific nature of at least some of the consultation responses, disclosure of the responses themselves may well lead to individuals being identified. The Commissioner accepts that such a consequence would plausibly result in such individuals being the subject of unwanted attention or scrutiny, and invasion of their privacy, and moreover would undermine the implied

confidentiality between the Council and the individuals. As result, the Commissioner is satisfied that disclosure of the consultation responses would adversely affect the interests of those who provided such responses.

*Email correspondence*

30. In terms of the criteria (i) to (iii) the Council explained that the member of the public in question provided their views voluntarily. They were not legally required to participate or to provide specific information to the Council. The Council also explained to the Commissioner that having consulted the individual in question they advised that their comments were made on the assumption that they would remain confidential, and that they believed they were liaising with the Council in a free and frank fashion.
31. In terms of the consequences for the individual who provided the information, the Council explained that these were similar to those identified above in relation to the consultation responses, namely that disclosure would compromise their privacy and potential subject them to unwanted attention or scrutiny. The individual also informed the Council that disclosing the email correspondence would make them less inclined to share their views and opinions on future projects.
32. For similar reasons as those set out above in respect of the consultation responses, the Commissioner is satisfied that disclosure of the email correspondence would adversely affect the interests of the individual in question.

**Public interest test**

33. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions.
34. The Council acknowledged the importance of transparency. However, it argued that the public interest favoured maintaining the exception and withholding the consultation responses given the adverse effects on participants, such as compromising their privacy, deterring future participation, and eroding trust in the process. It also noted that the complainant had been provided with a summary of the consultation responses.
35. For similar reasons the Council argued that the public interest favoured maintaining the email correspondence. It emphasised that it relies on candid and open feedback from the public to make well-informed decisions. If individuals fear that their correspondence may be made public, it may inhibit their willingness to contribute valuable insights and

perspectives, which are crucial for effective public participation in environmental matters. This protection ultimately fosters a more engaged and cooperative relationship between the Council and the community, which is in the broader public interest.

36. The Commissioner agrees that it is important for the Council to be transparent about how, and why, it has taken decisions about proposals such as this which can have a direct impact on residents. In the Commissioner's view the disclosure of information located by the Council and disclosed to the complainant in July 2024, goes some way to achieving this (and to a lesser extent as does the disclosure of the summary consultation responses at the internal review stage). However, the Commissioner acknowledges that disclosure of the consultation responses themselves, and as well as the email correspondence, would provide the public with a further and more detailed insight into the issues considered by the Council.
37. Nevertheless, the Commissioner accepts that the public interest arguments in favour of maintaining the exception identified by the Council attract significant weight.
38. Therefore, whilst the Commissioner has been informed by the presumption in favour of disclosure, he is satisfied that, on balance and for the reasons given above, the exception has been applied correctly.

### **Regulation 13 – personal data**

39. The Council explained that it had withheld the names of names and contact details of junior officers on the basis of regulation 13(1) of the EIR. It has also withheld similar information about members of the public that had contacted it about the parking proposals.
40. Regulation 13(1) provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.
41. In this case the relevant condition is contained in section 13(2A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
42. It is common practice for a public authority to argue that the names and contact details of junior officials are exempt from disclosure under FOIA and the EIR on the basis that disclosure would contravene the principles set out in Article 5 of the GDPR. Furthermore, unless there are very case specific circumstances, the Commissioner accepts that the names and



contact details of the junior officials are exempt from disclosure on the basis of regulation 13(1) of the EIR. This is in line with the approach taken in the Commissioner's section 40 guidance (the equivalent personal data exemption in FOIA).<sup>1</sup> Therefore, in this case the Commissioner adopts the reasoning set out in these previous decision notices which found that the personal data of junior officials was exempt from disclosure.<sup>2</sup>

43. Furthermore, the Commissioner is also satisfied that disclosure of similar information about the members of the public would be a breach of data protection principles as it would result in the disclosure of personal information about them that they would not expect to be made public. That is to say, when they submitted consultation responses to the Council or contacted it provide submissions on the parking proposals, they would not expect their identities to be disclosed. In addition, as discussed in the context of regulation 12(5)(f), the Commissioner is satisfied that disclosure of such information would infringe the privacy of such individuals. Such information is therefore also exempt from disclosure on the basis of regulation 13(1) of FOIA.

## Procedural matters

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### Delays in handling the request

44. Regulation 5(2) requires a public authority to respond to an EIR request within 20 working days. Similarly, regulation 14(2) explains that if a public authority is relying on an exception to withhold information, a refusal notice stating this should be issued within 20 working days of the request.
45. In this case the Council took 6 months to issue its initial response to the request, in which it disclosed some information, and this delay therefore represents a breach of regulation 5(2). Furthermore at the internal review notice stage additional information was disclosed, with some located and some withheld. This delayed disclosure and delay in issuing the refusal notice constitutes a breach of regulations 5(2) and 14(2). As

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<sup>1</sup>

[https://ico.org.uk/media/fororganisations/documents/1187/section\\_40\\_requests\\_for\\_personal\\_data\\_about\\_employees.pdf](https://ico.org.uk/media/fororganisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf) see page 12

<sup>2</sup> IC-114449-B7P7 <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022310/ic-114449-b7p7.pdf> paragraphs 49-71, IC-110922-T9R1 <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022447/ic-110922-t9r1.pdf> paragraphs 39-62

does the Council's further belated disclosure (and withholding) of information in July 2024, ie the information which was only identified during the course of the Commissioner's investigation.

## Right of appeal

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46. 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)

47. 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.
48. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Jonathan Slee**  
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**Information Commissioner's Office**  
**Wycliffe House**  
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