

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

**Date:** 19 September 2024

**Public Authority:** Cabinet Office  
**Address:** 70 Whitehall  
London  
SW1A 2AS

**Decision (including any steps ordered)**

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1. The complainant has requested, from the Cabinet Office, information about the allocation of funds for the Network North project. The Cabinet Office refused to disclose the requested information, on the basis of sections 21(1) and 35(1)(a) of FOIA (the 'information accessible to applicant by other means' and 'formulation of government policy, etc' exemptions respectively). The Cabinet Office has also told the Commissioner that if the request falls under the EIR, the requested information is excepted from disclosure under regulation 12(4)(e) of the EIR (the 'internal communications' exception).
2. The Commissioner finds that the request falls under the EIR; regulation 12(4)(e) is engaged, but the public interest favours disclosure; and the Cabinet Office breached regulations 14 and 11, because its refusal notice didn't cite the exception it came to rely on and because the Cabinet Office took more than 40 working days to provide the outcome of its internal review.

3. The Commissioner requires the Cabinet Office to take the following steps<sup>1</sup> to ensure compliance with the legislation.
  - Disclose the withheld information (ie all of the information in the four PDF documents that the Cabinet Office sent to the Commissioner, labelled as the withheld information), subject to any appropriate redactions for personal data.
4. The public authority must take these steps within 30 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 FOIA and may be dealt with as a contempt of court.

### **Request and response**

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5. On 20 December 2023, the complainant made the following request for information from the Cabinet Office:

"I am writing to formally invoke [FOIA] and seek access to information held within the Cabinet Office pertaining to the allocation of funds for the "Network North" project. This request specifically encompasses any associated decisions to redirect funds originally designated for the North towards projects in London.

... I wish to refine the scope of this request as follows:

1 All pertinent documents, including but not limited to memos, reports, and official statements, which directly pertain to the determination of fund allocation for the "Network North" project. I am particularly interested in documents elucidating the explanations, justifications, and criteria underpinning the decision-making process.

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<sup>1</sup> The Commissioner expects the public authority to take appropriate precautions to protect any personal data when disclosing information in a spreadsheet or similar format; <https://ico.org.uk/for-organisations/eir-and-access-to-information/information-commissioner-s-office-advisory-note-to-public-authorities/>

- 2 Comprehensive details concerning the global budget allocated for the "Network North" project, presented without an intricate breakdown, with the aim of comprehending the magnitude of funding allocation.
- 3 Any internal evaluations or impact studies that are explicitly linked to the decision-making process concerning the allocation of funds for the "Network North" project. These should elucidate the potential repercussions on transportation projects in the North ...".
6. The Cabinet Office responded on 23 January 2024, refusing to disclose the requested information on the basis of sections 21(1) and 35(1)(a) of FOIA.
7. Following an internal review the Cabinet Office wrote to the complainant on 27 March 2024, maintaining its original position.

### Scope of the case

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8. The complainant contacted the Commissioner on 20 March 2024 to complain about the way their request for information had been handled.
9. It's clear from the complainant's initial complaint and subsequent correspondence that they dispute section 35(1)(a) of FOIA. The complainant also said that they "**do not contest information that is truly available in the public domain**" [sic], and that their ICO complaint "**is specifically about the information we requested that is NOT in the public domain**" [sic].
10. They originally complained that the Cabinet Office failed to provide an internal review (the Cabinet Office subsequently provided one).
11. They're concerned about government "redirecting funds intended for other regions to London", and about funds "being redirected to London for road repairs".
12. During the Commissioner's investigation, the Cabinet Office told the Commissioner that if the request falls under the EIR rather than FOIA, the requested information is excepted from disclosure under regulation 12(4)(e) of the EIR. It provided its submissions on regulation 12(4)(e), for the Commissioner's consideration.

13. The Commissioner has assessed this case under the EIR, as he explains further in the next section of this decision notice.
14. The Cabinet Office's submissions indicate that, in addition to the withheld information that the Cabinet Office sent him, the Cabinet Office holds a copy of the information published on the internet via the two links<sup>2</sup> it provided to the complainant in its initial response. As the complainant has said they aren't complaining about information that's in the public domain (see paragraph 9 above), the Commissioner has excluded that information from the scope of the case. Instead he'll focus on information that isn't in the public domain.
15. The Commissioner therefore considers that the scope of this case is to decide whether the Cabinet Office is entitled to withhold the requested information under regulation 12(4)(e) of the EIR. He'll also consider any relevant procedural matters.
16. The Cabinet Office sent the Commissioner four PDF documents, labelled as the withheld information. The Cabinet Office's submissions indicate that the information in those four PDF documents is being withheld in its entirety, in this case. The Commissioner is satisfied that all of the information in those four PDF documents is within scope of the request.

## Reasons for decision

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### Is the requested information environmental?

17. Regulation 2(1) of the EIR defines environmental information as being:
  - "... any 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

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<sup>2</sup> <https://assets.publishing.service.gov.uk/media/65294b416b6fbf0014b75641/network-north-transforming-british-transport.pdf> and <https://www.gov.uk/government/publications/highways-maintenance-funding-allocations/local-highways-maintenance-additional-funding-from-2023-to-2034>

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);
  - (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;
  - (d) reports on the implementation of environmental legislation;
  - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
  - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c) ...”.
18. In this case the complainant requested information about the allocation of funds for the Network North project. The Commissioner has recently published a decision notice<sup>3</sup> regarding a case involving a request (made to a different public authority) for information about the Network North project. In that decision notice, the Commissioner determined that information that would provide detail about the decision-making processes around the project is environmental information falling under the EIR. He’s therefore satisfied that the requested information in the present case too is environmental information. He directs readers to his

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<sup>3</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2024/4030378/ic-290470-h7f2.pdf>

reasoning in IC-290470-H7F2 (paragraphs 9 – 12), rather than repeat it here.

### **Regulation 12(4)(e)**

19. Regulation 12(4)(e) provides that a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications.
20. The exception is subject to the public interest test. A public authority can only withhold the information if the public interest in maintaining the exception outweighs the public interest in disclosing the information.
21. Regulation 12(2) provides that a public authority must apply a presumption in favour of disclosure.
22. As the Commissioner's guidance on this exception<sup>4</sup> explains, a wide range of internal documents will be caught by the exception.
23. Having seen the withheld information in this case, the Commissioner is satisfied that the exception is engaged. The withheld information comprises internal documents not shared outside government.

### **Public interest test**

24. The complainant believes that "the public interest in transparency, particularly in the allocation and potential redirection of funds from the North to projects in London, strongly favours disclosure".
25. The complainant's other various comments in favour of disclosure relate to issues such as accountability and public engagement and participation, especially in relation to projects with "profound implications for regional development and equality". They've summarised their arguments for disclosure by describing them as "rooted in enhancing public understanding, fostering informed debate, and promoting governmental transparency and accountability".

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<sup>4</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-12-4-e-internal-communications/what-are-internal-communications/>

26. The complainant highlighted journalistic material that, they said, shows government's failure to meet levelling-up commitments; and other articles about money being spent in London as part of Network North.
27. They've also argued that the decision to reallocate funds has already been announced, as have key aspects of the Network North policy.
28. The Cabinet Office provided submissions on regulation 12(4)(e), arguing that the public interest factors it considered in respect of section 35(1)(a) of FOIA are relevant to consideration of regulation 12(4)(e) too; and that the factors in favour of disclosure are outweighed by those in favour of maintaining the exception.
29. In favour of disclosure, the Cabinet Office told the complainant that disclosure:

"may facilitate transparency and strengthen the accountability of government, by allowing the public to see how decisions have been made and potentially contribute to the policy-making process, particularly in the context of a high-profile and high-value project such as ... Network North, which affects a large number of people".
30. Against disclosure, the Cabinet Office indicated to the complainant that the withheld information comprises highly sensitive, unfinished internal communications, setting out risks and unannounced schemes; it's essential that civil servants freely have conversations and provide advice to Ministers; the documents are still being used to formulate and develop live government policy, and officials need a safe space away from public scrutiny to do so; and said "officials would be reluctant to provide free and frank advice ... if they felt that this information would be routinely placed into the public domain ahead of any final decisions".
31. It alluded to Network North as a recent decision; referred to "ongoing discussions and decisions around implementation ... and the development of Network North policies"; and said "We are in the early stages of planning next steps, including delivery timelines, for many of these schemes".
32. It also said:

"To reassure you, every penny of the £19.8 billion committed to the Northern leg of HS2 [High Speed 2, the UK's high-speed rail network] will be reinvested in the North; every penny of the £9.6 billion

committed to the Midlands leg will be reinvested in the Midlands; and the full £6.5 billion saved through our rescoped approach at Euston will be spread across other parts of Great Britain ...”.

33. At internal review stage, the Cabinet Office emphasised that key information has already been published to explain how funds have been allocated to the various regions.

### **Public interest test – the Commissioner’s position**

34. The Commissioner has carefully considered the arguments of both parties, the withheld information (ie all of the information in the four PDF documents that the Cabinet Office sent him, labelled as the withheld information) and the circumstances of the case.
35. He finds that the public interest favours disclosure, and below he explains why (taking care not to reveal submissions that the Cabinet Office provided confidentially, or details of the withheld information beyond what the Cabinet Office itself has revealed to the complainant).
36. The Commissioner’s guidance on the public interest test in the context of regulation 12(4)(e)<sup>5</sup> notes that:
- public interest arguments should focus on the protection of internal deliberation and decision-making processes;
  - arguments should always relate to the content and sensitivity of the information, and the circumstances of the request; and
  - arguments about protecting internal deliberation and decision-making often relate to preserving a safe space in which to debate issues away from external scrutiny, and preventing a ‘chilling effect’ on the exchange of free and frank views in future. Their weight will vary from case to case, depending on the timing of the request and the content and context of the particular information in question.

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<sup>5</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-12-4-e-internal-communications/the-public-interest-test/>



37. It's clear that in this case, the Cabinet Office's arguments focus on 'safe space' and 'chilling effect' arguments.
38. The Commissioner's guidance acknowledges that public authorities need a safe space to develop ideas, debate live issues and reach decisions away from external interference and distraction, and notes that the need for a safe space is strongest when the issue is still live.
39. However it also explains that even where an issue is still under consideration, the public interest doesn't **always** favour maintaining the exception, regardless of the sensitivity of the information.
40. The guidance highlights a case (albeit involving section 35(1)(a) of FOIA) involving the Department of Health, and a request for information relating to a policy that had recently been published. Some of the information related to policy initiatives that were still being worked on:

"The Tribunal considered that the department's argument came close to suggesting that where policy formulation or development was still live ... the public interest balance must always come down in favour of non-disclosure in the absence of something akin to wrongdoing within government. It rejected the argument".
41. The guidance also notes that regulation 12(4)(e) (like section 35(1)(a) of FOIA) can potentially capture a very wide range of information; and the danger of non-sensitive information being withheld without any good cause.
42. The Commissioner considers that the above case example is relevant to the present case. Here, the request relates to Network North, a policy that the Cabinet Office (in its own comments to the complainant) has described as a recent decision, where key information had already been published to explain how funds had been allocated. The Cabinet Office has emphasised the need for a safe space, and mentioned "unannounced schemes", documents "still being used to formulate and develop live government policy" and "ongoing discussions and decisions around implementation".
43. Whilst the Cabinet Office has described the withheld information as "highly sensitive", the Commissioner doesn't consider that the withheld information is particularly sensitive, even in respect of the "unannounced schemes" he understands the Cabinet Office is referring

to. In forming this view, the Commissioner also had regard to the information that had already been published at the time of the request.

44. Regarding the Cabinet Office's 'chilling effect' arguments, the Commissioner's guidance explains that, in his view, chilling effect arguments don't automatically carry much weight, and why:

"Firstly, since FOIA and EIR were introduced in 2005, public officials now recognise that it is not possible to guarantee the confidentiality of their advice or deliberations. Secondly, civil servants and other public officials are expected to be impartial and robust when giving advice, and not easily deterred from expressing their views by the possibility of future disclosure".

45. The weight of chilling effect arguments depends on the circumstances of each case (including the timing of the request); whether the issue is still live; and the content and sensitivity of the information. In this instance, the Commissioner doesn't afford much weight to chilling effect arguments, given the timing of the request; information that had already been published about Network North; his view that the withheld information isn't particularly sensitive; and the nature of the Network North project, a "a high-profile and high-value project ... which affects a large number of people".
46. The Commissioner's guidance on the public interest in disclosure, in the context of regulation 12(4)(e), explains that whilst there will always be some public interest in disclosure, its weight will vary depending on eg the profile and importance of the issue; and that other factors in favour of disclosure include the number of people affected by a proposal. Here, the public interest in disclosure of information about a significant project like Network North has considerable weight, in the Commissioner's view.
47. The Commissioner notes the complainant's concern about "redirection of funds from the North to projects in London" and similar concerns expressed in the articles that the complainant highlighted. He appreciates that the Cabinet Office has reassured the complainant that "every penny of the £19.8 billion committed to the Northern leg of HS2 will be reinvested in the North". Furthermore, he found an article indicating that £235 million to be spent on roads in London comes from

£6.5 billion saved in respect of Euston railway station, in London<sup>6</sup>. However it's clear that there were public concerns about money being redirected to London, and the Commissioner considers that further transparency (throwing more light on the matter) is in the public interest. His guidance notes that the weight of the public interest in disclosure depends on eg the extent to which the information will inform public debate. In this case, the withheld information will inform public debate, in the Commissioner's view. The guidance also notes that even if the information doesn't add to public understanding, disclosing the full picture always carries weight because it removes any suspicion of 'spin'.

48. On balance, and having regard to the presumption in favour of disclosure under the EIR, the Commissioner finds that the public interest in disclosure has greater weight.

### **Procedural matters**

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49. The Commissioner finds that the Cabinet Office breached regulation 14 of the EIR, because its refusal notice didn't cite the exception it came to rely on.
50. He also finds that the Cabinet Office breached regulation 11 of the EIR, because it took more than 40 working days to provide the outcome of its internal review.

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<sup>6</sup> <https://news.sky.com/story/government-sparks-anger-and-ridicule-with-multi-million-network-north-road-project-for-london-13034791>

## Right of appeal

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51. 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)

52. 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.
53. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Daniel Kennedy**  
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