

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 26 September 2024

**Public Authority:** Bolton Borough Council  
**Address:** Town Hall  
Bolton  
BL1 1RU

#### **Decision (including any steps ordered)**

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1. The complainant requested information from Bolton Borough Council ("the Council") regarding inspections, reported defects and repairs on a specific road. The Council withheld the requested information under regulation 12(5)(b) of the EIR (course of justice).
2. The Commissioner's decision is that the Council is entitled to withhold the requested information under regulation 12(5)(b) of the EIR.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 23 February 2024, the complainant wrote to the Council and requested information in the following terms:

"I am requesting under the Freedom of Information Act all inspection reports for the last 12 months for Athlone Ave in Astley Bridge Bolton.

This should include the inspector/s whom inspected this carriageway what defects were identified and what actions requested and at what priority.

I also request how many reports of defects were reported to the Highways Department in that 12 month period on Athlone Ave.

I am also requesting any repairs that were carried out along this Avenue.”

5. The Council responded on 25 March 2024. It refused to provide a copy of the requested information, citing regulation 12(5)(b) EIR as its basis for doing so. It stated that if the information were to be disclosed there is the potential for the information to be used for fraudulent claims and that disclosure would hinder the Council in tackling fraud and protecting the public purse from fraudulent claims.
6. Following an internal review the Council wrote to the complainant on 4 April 2024. It maintained its original position.

## Reasons for decision

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### Regulation 12(5)(b) – the course of justice

7. Regulation 12(5)(b) of the EIR states that information is exempt if disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry or a criminal or disciplinary nature. Regulation 12(5)(b) is a broad exception with the course of justice including but not restricted to information attracting Legal Professional Privilege (LPP). The purpose of the exception is to ensure that there should be no disruption to the administration of justice.
8. In its submissions to the Commissioner, the Council provided the following arguments as to why it considers the exception to be engaged:

“The basis on which the exception was applied was that the information is available to the complainant through an application in civil proceedings. The council is of the view that the complainant is using the EIR to circumvent the normal Civil Procedure Rules for discovery on cases going before the court. Disclosure of relevant information in respect of proceedings is covered by part 36 of the Civil Procedure Rules and the court must decide whether or not information is relevant to the proceedings. Placing information into the public domain via an EIR request would be outside of the legal process and therefore likely to be unfair. It could undermine the proceedings and the rights of the parties to a fair trial.

The Council believes that the disclosure of the withheld information would have an adverse effect on the course of justice because it would undermine the process of law. Information which the complainant would need in connection with the claim would already be made available through the court processes by way of the Civil

Procedure Rules and the EIR should not be used to undermine the jurisdiction of the Civil Procedure Rules. In addition to this aspect a disclosure of the information would be likely to provide data which would be of assistance to potential fraudsters to make fraudulent claims against the Council. For example, dates of safety inspections and complaints are used for the purposes of validating claims and therefore public disclosure of safety inspection dates could facilitate fraudulent claims.”

9. In a previous decision made by the Commissioner on a similar case, decision notice [IC-45186-B4K7](#), the complainant had asked Birmingham City Council for copies of safety inspections on a specific road. Proceedings were underway about these specific inspections. The authority argued that disclosure of relevant information about proceedings is dealt with by part 36 of the Civil Procedure Rules and the court must decide whether the information requested is relevant to those proceedings. It suggested that placing this information into the public domain outside the legal process would be likely to be unfair and be likely to undermine the proceedings and a fair trial. The Commissioner found that disclosure of the information under the EIR would undermine the court process and the jurisdiction of the court, which has the power to determine what may be disclosed, and when, during the proceedings. The Commissioner concluded that legislation, by way of the Civil Procedure Rules, has provided a process for disclosure of information; so the EIR should not be used to undermine the jurisdiction of these rules, which would adversely affect the course of justice.
10. During the course of his investigation the Commissioner asked the Council to confirm whether the complainant has made a claim against the Council. The Council confirmed that complaint has made a claim against Council for damage to their car.
11. The Commissioner finds that the exception under regulation 12(5)(b) is engaged with respect to the requested information in this case for the same reasons as set out in decision notice IC-45186-B4K7.
12. Regarding the public interest test, in this case, the Council considered the explicit presumption in favour of disclosure under the EIR, the general principles of transparency and accountability, transparency on actions regarding safety and maintenance on the road system and the public interest in ensuring those who have sustained damage from defects have the appropriate information available to them to hold the Council to account, as factors in favour of disclosure.
13. In favour of maintaining the exception, the Council considered the potential for the information to be used for fraudulent claims and the

way in which disclosure would hinder it in tackling fraud and protecting the public purse from fraudulent claims.

14. It further argued that there is a more appropriate regime than the EIR for accessing information that is relevant to a claim. It stated that the Civil Procedure Rules provide a more appropriate regime to access information relevant to a claim and therefore a genuine claimant will not lose out due to non-disclosure under the EIR. It also stated that the courts may consider some information within this report should be withheld under the normal disclosure rules, and therefore a disclosure under EIR could undermine the decision of the court in this respect.
15. The Council's position is that the public interest in maintaining the exception outweighs that in disclosure.
16. The Commissioner agrees with the Council, his decision is that the public interest in maintaining the exception outweighs that in disclosure in this case. Paragraphs 21 to 34 of Decision Notice IC-45186-B4K7, referred to above, includes detailed analysis of the public interest in disclosing/withholding this type of information.

## Right of appeal

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17. 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)

18. 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.
19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Victoria James**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**