

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

**Date:** 1 October 2024

**Public Authority:** Somerset Council  
**Address:** County Hall  
Taunton  
Somerset  
TA1 4DY

**Decision (including any steps ordered)**

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1. The complainant requested road safety audit reports for a specified highway improvement scheme. Somerset Council (the 'Council') ultimately considered the request under the EIR. It said there had been no Stage 1 Audit and provided a copy of the Stage 2 Audit Report. It cited Regulation 12(4)(d) of the EIR (the exception for material in the course of completion, unfinished documents and incomplete data) in relation to the requested Stage 3 report. The complainant's remaining concerns centred on the withheld Stage 3 report.
2. The Commissioner's decision is that the Council was correct to handle the request under the EIR. He also finds that the Council has properly relied on Regulation 12(4)(d) of the EIR to withhold the requested Stage 3 report.
3. No steps are required as a result of this notice.

**Background**

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4. From the case correspondence submitted, the Commissioner understands that an earlier associated request was made by the complainant on 25 May 2023. The Commissioner has included it in full below as the request in the current case follows on from it:

"Taunton Area Cycling Campaign ['TACC'] has concerns about the safety of the access into the Aldi store, which crosses a cyclepath without warning signs to drivers, or other safety measures. We have been told 'The S3 [Stage 3] RSA [road safety audit] response has been received for this element of the work and no concerns were raised. Therefore no further action proposed.' We have asked to see the safety audits relating to this access, but no response to this request has been received. We have therefore decided to ask for it under a FOI request. We are requesting the Safety Audits for the whole of the Creech Castle highway improvement scheme (implemented 2022) between Hyde Lane and Hamilton Road/Bridgwater road junction."

5. The Council responded to that request on 27 June 2023 and said:

"The Safety Stage 3 Safety Audit for the Cycleway / Footway Works adjacent to Aldi which were undertaken as 'Advance Works' prior to the main Creech castle Scheme has been undertaken but the Designers Response to the Stage 3 Audit for the Advance Works has yet to be concluded / accepted by the Overseeing Organisation. I cannot therefore provide the actual report at this stage.

The information is exempt from disclosure under Section 22(1) of the Freedom of Information Act (FoIA). There is an intention to publish the information at a future date and in line with section 22(1)(c) it is considered reasonable in all the circumstances that the information should be withheld from disclosure until the date of publication."

6. It also said that the public interest test associated with section 22 of FOIA favoured maintaining the exemption.
7. Details of the road scheme pertaining to both the earlier and current requests can be found here.<sup>1</sup>
8. The Council advised that the request under consideration in this notice was submitted by the complainant on behalf of TACC, a local campaign group. The Commisisoner has been made aware that TACC has been

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<sup>1</sup> [https://www.somersetlive.co.uk/news/somerset-news/end-sight-taunton-residents-final-7276733?utm\\_source=linkCopy&utm\\_medium=social&utm\\_campaign=sharebar](https://www.somersetlive.co.uk/news/somerset-news/end-sight-taunton-residents-final-7276733?utm_source=linkCopy&utm_medium=social&utm_campaign=sharebar)

asked to engage on road safety matters through the Local Community Network.<sup>2</sup>

## Request and response

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9. On 3 January 2024, the complainant wrote further to the Council as follows:

"You may recall that I wrote to you in July as a follow up to the refusal to provide information on the Bathpool road scheme (copied below for convenience)[not reproduced in this notice]. I have not received a reply to that correspondence disappointingly. Given the time that has elapsed, could you advise please if the council has now published the road safety audits (all three stages) and if so please provide a link to the relevant webpage? If it has not, could you indicate when it is likely that the council will publish these audits? Would you also please provide a copy or link to the relevant page of the publication scheme relating to the publication of road safety audits.

If the council has not yet published the road safety audits please accept this email as a new FOI request for the road safety audits of the Creech Castle lights/Bathpool cycle track scheme. Given the length of time that has now elapsed since the scheme was completed and our view that there are significant safety deficiencies in the scheme, please note that refusal again will lead to an immediate request for review, and in all likelihood appeal to the ICO."

10. The Council responded on 23 January 2024. It stated:

"The Stage 3 RSA for this scheme are in process but the Designers Response and associated sign off is not yet completed so I am unable to provide this at present."

11. The complainant requested an internal review on 27 February 2024, stating:

"Not only has SC [the Council] declined the info but failed to answer the questions re the publication scheme. The stage 3 RSA

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<sup>2</sup> <https://www.somerset.gov.uk/local-community-networks/#:~:text=Explore%20our%202018%20Local%20Community%20Networks%20areas.%20Find%20out%20more.>

seems to have dragged on for many months, yet was used to discount our concerns with the design of this junction.”

12. Following its internal review the Council wrote to the complainant on 27 March 2024, advising that:

“The final decision of this review is that the information is not held by the Council on the basis that the Stage 3 RSA response has not yet been completed and a copy cannot be provided until this has happened. The delay with the completion of the Stage 3 RSA process is due to competing work pressures, but the aim is to get the RSA3 response completed by the end of April when it will then be reviewed prior to sign off. The service have informed me that entire process will take another couple of months to complete and a copy of the information will be provided to you directly by them when it is complete.”

### **Scope of the case**

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13. The complainant contacted the Commissioner on 30 April 2024 to complain about the way his request for information had been handled. He said:

“1. In its first response (27/6/23) the council indicated an intention to publish the road safety audit stage 3 when ready, but when we asked for evidence of that intention none was forthcoming. Repeated requests for this in the publication scheme have been ignored. We do not believe there was an intention to publish as so far as we can establish road safety audits are not routinely published. We consider the public safety concerns outweigh the need for delay, so refusal in our view was not available to the council as there was no intention to publish, and in addition did not pass the public interest test ...

2. Failure to provide the RSA stage 1 and 2 reports as requested, only referring to stage 3”.

14. The Commissioner relayed the above grounds of complaint to the Council as part of his investigation.
15. On 4 August 2024, the Council revised its position. It notified both the complainant and the Commissioner that it considered the request to fall under the EIR and was now relying on Regulation 12(4)(d) – the exception for material which is still in the course of completion, to unfinished documents or to incomplete data. The Council explained that it could not yet provide the RSA stage 3 report as the design organisation and overseeing organisation have still to respond. The

Council said a realistic timescale to provide the requested information would be "at least early 2025".

16. On 8 August 2024, the complainant set out his view of the Council's revised position for the Commissioner, who relayed his points in full to the Council. The main points were:
  - The complainant objected to the citing of Regulation 12(4)(d) of the EIR, and in particular, the Council's approach to the public interest test.
  - He raised concerns about the Council stating that the Stage 3 Audit report would not be complete until 2025.
  - He said the Council had failed to respond to the Stage 1 and Stage 2 Audit reports part of his request.
  - He also said it was not clear why the Council "has shifted the request from FOIA to the EIR regime".
17. On 20 August 2024, the Council responded and said it would write to the complainant with an updated response.
18. On 2 September 2024, the Council wrote to the complainant. It provided its complete public interest test and balancing exercise considerations in relation to Regulation 12(4)(d) of the EIR, and replied to the various comments submitted by the complainant. The Council confirmed that there had been no Stage 1 Audit report, explaining that it is not always required to undertake a Stage 1 audit. It provided a copy of the Stage 2 Audit report and apologised for its oversight in not providing this earlier.
19. The complainant provided his further comments on 7 September 2024, which included his concern about the Council's public interest test balancing exercise. He queried why the Council had not released the amended scheme details referred to in the Stage 2 Audit report.
20. On 10 September 2024, the Commissioner relayed the Council's reply to the complainant, namely:

"Any discourse with the length of time that the process has taken cannot be dealt with under EIR and the requester has previously been advised to make a complaint.

I can confirm that the stage 2 audit report is a full disclosure of what is held. The date is on page 4. The date on page 1 is indeed blank.

The fact that [the complainant] states that without further information he is unable to understand the Stage 2 Audit, supports the argument laid out in relation to the Stage 3 report which is yet unfinished. These are technical documents.

I am unable to comment on the scheme change.”

21. On 11 September 2024, the complainant raised concerns about the Council not having released the technical scheme drawings. Following further exchanges, the Council confirmed that the complainant had not previously requested copies of the technical drawings and suggested that this would constitute a new request; it confirmed that these drawings are not part of the requested RSA audit reports.
22. Consequently, the Commissioner updated the complainant and advised him to submit a new request should he require the technical drawings. He explained that this aspect would not form part of his current investigation as the technical drawings are out of scope.
23. Therefore, in this case, the Commissioner has considered whether the Council was entitled to rely on Regulation 12(4)(d) in relation to the requested Stage 3 Audit report.

## **Reasons for decision**

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### **Is the requested information environmental?**

24. 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);
  - (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;
  - (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).
25. The Commissioner has had sight of the withheld Stage 3 Audit report. As it is information relating to incomplete road safety audits, the Commissioner believes that the requested information is environmental information in line with Regulations 2(1)(a), (b) and (c) of the EIR. This is because it relates to road safety audits (a measure) following improvements to the construction of a road which impacts the state of the landscape and is a factor, or plan, affecting the landscape. For procedural reasons, he has therefore assessed this case under the EIR.

**Regulation 12(4)(d) – material in the course of completion, unfinished documents and incomplete data**

26. Regulation 12(4)(d) of the EIR provides that a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents, or to incomplete data.
27. Regulation 12(4)(d) is a class-based exception which means that, if the information falls within its scope, then the exception is engaged. It is not necessary to demonstrate that disclosure would have any particular adverse effect in order to engage the exception. However, Regulation 12(4)(d) is subject to the public interest test.
28. The Commissioner understands that the objective of the road safety audit process is to provide an effective, independent review of the road safety implications of engineering interventions for all road users. Full details of the audit process are set out in the GG119 Road Safety Audit document.<sup>3</sup> The 'Overseeing Organisation' (in this case Highways England), initiates the RSA process at all stages, allowing time for all parties to complete the full RSA process.

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<sup>3</sup> <https://www.standardsforhighways.co.uk/tses/attachments/710d4c33-0032-4dfb-8303-17aff1ce804b?inline=true>



29. Pages 18 and 19 of the document detail the stages of the RSA process, including the production of the RSA report and the later RSA response report. A stage 1 audit should be undertaken at the completion of preliminary design; a stage 2 audit should be undertaken at the completion of the detailed design stage and a stage 3 RSA should be undertaken when the highway scheme construction is complete. The stage 4 RSA is an evidence-led review of road traffic collisions that have occurred in the vicinity of the highway scheme post opening.
30. At stages 1, 2 and 3 the aim is to identify relevant road safety matters and communicate these in the form of road safety audit problems and recommendations. At stage 4 the aim is to communicate road safety audit problems and recommendations based on collision data analysis.
31. The road safety audit response report is defined as:

"A report produced by the design organisation following road safety audit stages 1, 2 and 3. The report includes both a design organisation and Overseeing Organisation response to each problem and recommendation raised in the road safety audit report. NOTE 1: The road safety audit decision log is part of the road safety audit response report. NOTE 2: The road safety audit response report is produced collaboratively by the design organisation and Overseeing Organisation. NOTE 3: A road safety audit response report is not produced for stage 4 road safety audits." (page 11)
32. In this case, the Council's position is that the requested Stage 3 Audit report is still in the process of completion because it has not yet been through the Design or Overseeing organisation stage. It explained that the report is a technical document with the requirement for at least one member of the Road Safety Audit team to hold a certificate of competency. The designer's response is also a technical one and does not involve consultation or engagement of third parties. Any recommendation has to be signed off by the overseeing organisation.
33. The Commissioner's guidance<sup>4</sup> sets out how the phrase 'material still in the course of completion' should be interpreted, namely:
  - For this limb to be engaged, either the requested information itself must be still in the course of completion, or the requested

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<sup>4</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-124d-eir/#whatisinformation>



information must 'relate to' material which is still in the course of completion.

- With regard to 'material', this must have a physical existence; it cannot be something that does not physically exist, like a project, an exercise, or a process. An overarching project cannot engage the exception even if it is not complete, but each individual document may do if it has not yet been completed.
- Finished or complete information that 'relates to' material in the course of completion may be covered by this limb of the exception.

34. More specifically, the guidance explains that in order to rely on this aspect of the exception, a public authority must:

- identify the material that is actively being worked upon; and
- be able to explain why, and how, the information you wish to withhold relates to it; and
- consider whether the requested information is a separate and independent piece of work in its own right.

35. It is important to recognise that the exception will not automatically apply to all information that can be linked to material that is still in the course of completion. If the information is a separate, independent, and complete piece of work in its own right, the information will not fall within this limb of the exception.

36. In its submissions to the Commissioner, the Council said:

"The council is required to follow the Design Manual for Roads and Bridges when carrying out a Road Safety Audit. The Road Safety Audit subject to this request follows the standards which are detailed in guidance GG119.

As this process is live and has yet to go through all of the parts of the Road Safety Audit process, the council has determined that the material in the Road Safety Audit Report is still in the course of completion, and that the Road Safety Audit is unfinished. Whilst elements of the road safety report has [sic] been carried out and reported on, the material contained within it has yet to inform the Road Safety Audit response report. The report is only part of a whole and contributes to decisions that have yet to be made.

The public would expect an audit report to have gone through all stages of an audit process before it is deemed complete and subsequently published.”

37. The Council has also argued that:

“In releasing the material contained within the document without it having gone through all the stages of the process is likely to lead to unnecessary presumptions as a review of any problems identified and decision on final actions has yet to be made. This is likely to cause extra work for the council in managing expectations, and may delay the process further in dealing with increased communication and questions.”

38. The Commissioner has seen the withheld requested report and acknowledges that the process of gathering and consulting on information for the report is still ongoing. He accepts that the Stage 3 RSA report is an unfinished document, is therefore in draft and that the exception at Regulation 12(4)(d) is engaged.

### **Public interest test**

39. Regulation 12(1)(b) requires that where the exception under Regulation 12(4)(d) is engaged, a public interest test should be carried out to ascertain whether the public interest in maintaining the exception outweighs the public interest in disclosing the information.

40. The Commissioner is mindful of the provisions of Regulation 12(2) of the EIR which state that a public authority shall apply a presumption in favour of disclosure.

### **Arguments in favour of disclosing the requested information**

41. The complainant submitted that:

“In its balancing exercise, the Council argues that the issue isn't of significant public concern. However we have over 700 supporters and the fact that we have raised it, is not insignificant.”

And

“The Council has the stage 3 audit report, but refuses to release it pending the designer's response. We consider that the public interest, on grounds of risk to public safety involving risk of death or serious injury to cyclists, outweighs the council's concerns about designer response. They could release the information with a suitable caveat for the designer response.”

42. The Council submitted the following arguments:

- “The disclosure would increase the transparency and accountability of the decision-making process regarding road safety.
- The Local Campaign group would satisfy themselves that the Road Safety Report is silent on the concerns they raise. (However this potentially would not alleviate any concerns they have).”

### **Arguments in favour of withholding the requested information**

43. Against disclosure of the requested withheld information, the Council argued that:

- “The public would expect an Audit to be completed in full and all the stages and information shared when it is complete.
- The public are likely to appreciate being given full and complete information that allows them to make informed decisions.
- The public are more likely to understand the risks and benefits of the proposed scheme and how they have been assessed and addressed by the Road Safety Audit team, designers and overseeing organisation when the report has completed all its stages.
- The premature release of any problems and suggested recommendations will cause an increase in communications and lead to misunderstandings about what has been identified and recommended.
- This would not be in the public interest because it could lead to confusion about what is to happen in this project, and any enquiries generated from release prior to completion is likely to mean that staff will need to spend time dealing with those enquiries instead of completing this and other major highway scheme audits.”

### **Balance of the public interest**

44. The Council submitted:

- “The release of incomplete and provisional information could mislead the public and stakeholders about the actual issues and solutions for the project, and create unnecessary confusion and controversy.
- Extra weighting is given to the premature release of the information which could compromise the integrity and quality of

the audit process, which requires a high level of technical expertise and oversight, and could undermine the confidence and trust of the public and stakeholders in the final outcome.

- It is our view that as this is a live programme, that the public interest in favour of disclosure is low, as the information is not of significant public concern, and the public interest in favour of maintaining the exception is high, as the information is sensitive, provisional, and technical.”
45. The Commissioner recognised the need for transparency and accountability, and accepts that TACC represents a not insignificant group of individuals with a keen interest in this issue.
  46. However, on researching ‘Road Safety’ and ‘Aldi Taunton’, nothing appears online to suggest that there are major concerns from the wider general public.
  47. The Commissioner notes that the Council has confirmed that the withheld report is silent on the junction concerns that TACC has raised, such that any premature release would not add anything on this topic.
  48. He is also mindful of the need for the audit process to be completed before any release of the requested report and has taken into account that a premature release of an incomplete report is not in the public interest for the reasons set out above.
  49. Whilst the Commissioner has been informed by the presumption in favour of disclosure inherent in the EIR, he is satisfied that, having considered the arguments above, the exception has been applied correctly.
  50. It follows that the Commissioner finds that the Council was entitled to rely on Regulation 12(4)(d) of the EIR to withhold the Stage 3 RSA report.

## **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.

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