

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

**Date:** 24 October 2024

**Public Authority:** Birmingham City Council  
**Address:** Council House  
Victoria Square  
Birmingham  
B1 1BB

**Decision (including any steps ordered)**

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1. The complainant has requested information from Birmingham City Council ("the council") relating to a decision not to remove barriers from two parking bays in an area of the city. The council said that no relevant information is held by it.
2. The Commissioner's decision is that the council does not hold the requested information.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 7 September 2023, the complainant wrote to the council and requested information in the following terms:

"I would like to understand the decision process that led to the Council leaving the barriers in place, which illegally blockaded these parking bays on Kings Heath High Street once the temporary TRO had ended. I would like to see copies of all correspondence, including emails, between Council Officers and the two Brandwood and Kings Heath Ward Councillors, that led to these barriers being left in situ from November 2021 onwards."

5. The council responded on 6 November 2023. It refused the request, citing section 12 of FOIA (appropriate limit).

6. The complainant requested an internal review on the same day. He argued that:

"I will remind you that my Freedom of Information requested to the decision to leave the High Street parking suspended after November 2021, when the Temporary Traffic Regulation Order (TTRO) had lapsed. It does NOT relate to the decision to suspend the parking bays in May 2020 under a TTRO which your response implies you were seeking documentation on and probably explains the excess cost estimate."

7. Following an internal review the council wrote to the complainant on 23 November 2023. It maintained its position.

8. The complainant made a complaint to the ICO, and on 20 May 2024 the Commissioner issued a decision notice which required the council to consider the request under the EIR rather than FOIA<sup>1</sup>. The council provided its response on 14 June 2024. It disclosed further information to the complainant, however the complainant asked it to again review its response as the information it had disclosed did not respond to the request which he had made.

9. The council responded on 19 June 2024 confirming that it does not hold any further information falling within the scope of the complainant's request for information.

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2024/4029771/ic-272460-y4w4.pdf>

## Scope of the case

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10. The complainant contacted the Commissioner on 19 June 2024 to complain about the way their request for information had been handled.
11. The complainant considers that the council will hold information falling within scope of the request.

## Reasons for decision

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### Regulation 12(4)(a) – information not held

12. Regulation 5(1) of the EIR requires that a public authority must make environmental information available upon request. If information is not held by an authority at the time that it receives the request, it is able to apply Regulation 12(4)(a) to state that that is the case.
13. The council argues that no relevant information is held by it. The complainant, however, considers that the council will hold relevant information falling within the scope of the request.
14. In scenarios where there is some dispute between the amount of information held which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
15. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).
16. For clarity, the Commissioner is not expected to prove categorically whether the information is held.
17. In such cases, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to search for relevant information, and will take into account any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.

### The complainant's position

18. The complainant argues that the council will hold relevant information falling within the scope of his request.
19. The complainant said that the background to their request relates to the suspension of parking bays in order to widen the pavement to allow social distancing during the covid pandemic.
20. These barriers were subsequently removed from all of the parking bays apart from the two relevant to the request. The complainant said that in 2021, two local councillors announced that these parking bays remained suspended as the intention was to permanently remove them and extend the pavement outwards. The councillors continued to say this until August 2023. However, this was not the case, and, at the public's expense, the parking bays continued to be suspended by the council without the relevant TTRO for them to do so.
21. The complainant argues that the councillors must have communicated with relevant officers prior to making these statements. The complainant argued that the only other alternative would be that the councillors had merely spoken with officers prior to making their statements, but that that was unlikely.

### The council's position

22. The council argues that after carrying out proportionate, adequate and relevant searches, it has not located any information falling within the scope of the request.
23. It said that it has previously informed the complainant that no such communication exists:

"As has been explained to the requestor via the complaint process, there was no intention on the part of the council to leave the barriers in place longer than they were supposed to be - it was an oversight between teams/officers during project handover. There can be no email evidencing the 'decision' if no one knew this mistake had been made (at the time).

The correspondence located via the search was shared with the requestor in an effort to demonstrate that we had been both thorough and transparent in our response to his Freedom of Information request. However, ultimately the situation remains that such an email as the requestor is looking for does not exist."

24. It confirmed that if relevant information were held, it would be held in electronic form.

25. It said that fourteen officers were identified as possibly having been involved in the project, and these officers were given instructions to search their archives for relevant information. It confirmed, however, that no relevant information was located.
26. The council also described the searches which it had carried out in order to locate any relevant information. It said that in order to determine if any email correspondence was held that met the given time period, address and content parameters, a refined search of email archives was carried out using key parameters (which it described to the Commissioner). It confirmed, however, that no information was located relating to *'the decision to continue to suspend the High Street parking bays after the Temporary Traffic Regulation Order (TTRO) ended on 25th November 2021.'*

#### The Commissioner's conclusion

27. The Commissioner has both party's arguments in conjunction with the request.
28. Whilst the complainant believes that the council will hold relevant information, the council has provided an explanation why that is not the case. It has also carried out appropriate and proportionate searches of relevant sections of its electronic files and emails, and has consulted with relevant officers, but it has been unable to locate any information falling within the scope of the complainant's request.
29. There is no contradictory evidence available to the Commissioner that indicates the council's position is wrong.
30. On this basis the Commissioner has concluded that, on the balance of probabilities, the council does not hold the requested information.

#### **Public interest test**

31. Technically, Regulation 12(4)(a) contains a public interest test. However, the Commissioner cannot conceive of a public interest argument that would require a public authority to disclose information that it does not hold.

## Right of appeal

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33. 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)

34. 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.
35. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Ian Walley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**