

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 24 October 2024

**Public Authority:** Royal Borough of Kingston Upon Thames  
**Address:** Guildhall 2  
High Street  
Kingston-upon-Thames  
Surrey  
KT1 1EU

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

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1. The complainant has requested information relating to communications surrounding traffic flow. Royal Borough of Kingston Upon Thames (the council) disclosed some of the information but withheld the remainder under regulation 12(4)(b) (manifestly unreasonable requests) and 12(4)(e) (internal communications) of the EIR.
2. The Commissioner's decision is that the council was entitled to withhold the requested information under regulation 12(4)(b) and he does not require any further steps to be taken.

#### **Request and response**

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3. On 23 February 2024, the complainant wrote to the council and requested information in the following terms:
  - 1) All documents, correspondence and emails (including from Councillors) discussing traffic flow in New Road and Kings Road since January 2022.
  - 2) Any recordings/ minutes/ briefing related to the decision made on the Kings Road/ New Road traffic flow on 6th June 2023.

- 3) All documentation relating to the consultation on traffic flow on New Road, Park Road and Tudor Road held in 2019.
4. The council responded on 26 February 2024 and provided some of the information falling within the scope of the request. In relation to points two and three it provided links to meeting minutes of 27 March 2019, 6 June 2023 and a link to information about recordings of Committee meetings. However, it withheld information relating to the complainant's request at point one, on the basis that responding to that request would be manifestly unreasonable.
5. The complainant submitted an internal review request on 27 February 2024 in which they made a refined request as follows:
  - 1) I would like a proper response to my request.
  - 2) In the interim I would like the immediate release of non-email documentation e.g. in particular the safety study undertaken.
  - 3) If you intend to reject this request again then I would like the release of all external emails (which is presumably a much smaller number) whilst I consider whether to appeal to the ICO
6. They also suggested that in addition to the search terms already used, the council should add the scheme number to narrow the scope of the search. The complainant argued that it is hard to see that it would take more than 20 minutes per inbox and that a search of 29 inboxes is well below the 18 hours appropriate cost limit.
7. Following an internal review the council wrote to the complainant on 25 April 2024. It stated that it has had extensive discussions with its officers within the Highways Team and determined that to comply with the request would be manifestly unreasonable. It maintained its original position to rely on regulation 12(4)(b).
8. The council explained that the scheme is subject to an Experimental Traffic Management Order which can take up to 18 months maximum. It says that during this time it undertook a formal consultation and community engagement. It argued that to carry out the search using the key words as suggested by the complainant would not necessarily provide all the required information. However, it maintained that to restrict the search terms to "Kings Road" and "New Road" would lead to a large number of additional emails that would not all necessarily relate to this traffic scheme.
9. It also relied on regulation 12(4)(e) to withhold internal communications stating that its officers and members need a safe space to develop plans, scope the work, discuss options and reach decisions on the scheme.

10. In relation to the request for external emails, the council stated that to disclose the external emails would be manifestly unreasonable. It added that it would carry out the same searches as with the original request and hence to do so would take in excess of 18 hours to complete.
11. In relation to the complainant's refined request at point 2, the council disclosed the Stage 1 Road Safety Audit of August 2023 and stated that there was a further report which was also under preparation and had not yet been completed. It withheld this under regulation 12(4)(d) (material in the course of completion) of the EIR. The Council also provided links to two Committee meetings held on 1 November 2018 and 22 January 2019.

### **Scope of the case**

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12. The complainant contacted the Commissioner on 28 April 2024 to complain about the way their request for information had been handled.
13. On 16 August 2024 the Commissioner requested further submission from the council to support its decision to rely on the above-mentioned exceptions.
14. In its submission the council stated that the Road Safety Audit which was withheld under section 12(4)(d) was now available for disclosure and could be disclosed to the complainant. On 15 October 2024, the council disclosed the Road Safety Audit to the complainant.
15. In relation to remainder of the information the council has relied on regulation 12(4)(b) and 12(4)(e) to withhold the information.
16. The Commissioner considers that the scope of his investigation is to determine whether the council was entitled to withhold the information by virtue of regulations 12(4)(b) and 12(4)(e) of the EIR.

### **Reasons for decision**

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

17. The Commissioner agrees that the requested information is environmental information falling within the scope of regulation 2(1)(a) of the EIR as it relates to measures and activities affecting the elements of the environment and therefore the council were right to consider this under the EIR access regime.

## **Regulation 12(4)(b)- manifestly unreasonable requests**

18. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable. A request can be refused as manifestly unreasonable either because it is considered to be vexatious, or because of the burden that it would cause the public authority.
19. There is no definition of “manifestly unreasonable” under the EIR, but in the Commissioner’s opinion, manifestly unreasonable implies that a request should be obviously or clearly unreasonable. One such way a request could be manifestly unreasonable is if a public authority is able to demonstrate that the time and cost of complying with the request is obviously unreasonable.
20. Regulation 12(4)(b) of the EIR exists to protect public authorities from exposure to a disproportionate burden in terms of the amount of time and resources that a public authority has to expend in responding to a request. In effect, it is similar to section 12(1) of the FOIA, where the cost of complying with a request exceeds the appropriate limit.
21. As the Commissioner’s guidance<sup>1</sup> on regulation 12(4)(b) explains, whilst the section 12 cost provisions in FOIA are a useful starting point in determining whether the time and cost of complying with the request is obviously unreasonable, they are not the only consideration. Under the section 12 cost provisions the appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (‘the Fees Regulations’) at £450 for public authorities such as Kingston. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours.
22. However, as noted the section 12 provisions do not alone determine whether a request is manifestly unreasonable. Furthermore, in assessing whether the cost or burden of dealing with a request is ‘too great’ under the EIR, public authorities will need to consider the proportionality of the burden, or costs involved and decide whether they are clearly or obviously unreasonable.
23. This will mean taking into account all the circumstances of the case including:

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-12-4-b-environmental-information-regulations-manifestly-unreasonable-requests/>

- 1) the nature of the request and any wider value in the requested information being made publicly available.
  - 2) the importance of any underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue.
  - 3) the size of the public authority and the resources available to it, including the extent to which the public authority would be distracted from delivering other services; and
  - 4) the context in which the request is made, which may include the burden of responding to other requests on the same subject from the same requester.
24. Where a public authority claims that regulation 12(4)(b) is engaged due to cost, it should provide the requester with advice and assistance where reasonable to help them refine the request so that it can be dealt with within the appropriate cost limit. This is in line with the duty under regulation 9(1) of the EIR.
25. During the internal review the council explained that the scheme is subject to an Experimental Traffic Management Order which can take up to 18 months maximum. It says that during this time it undertook a formal consultation and community engagement. It argued that to carry out the search using the key words as suggested by the complainant would not necessarily provide all the required information. However, it maintained that to restrict the search terms to 'Kings Road' and 'New Road' would lead to a large number of additional emails that would not all necessarily relate to this traffic scheme.
26. The council has argued that a large number of individual and shared inboxes would need to be reviewed including Officer, Councillor, Street Space, Committees, Traffic Design, Traffic Management and so on. It says that it will need to review the search per inbox and screen remove any personally identifiable information and also secure permissions for Members' emails to be released. It added that the data would then need to be collated, and any duplicates removed. It says it will take in excess of 18 hours to complete the task.
27. In its submission to the Commissioner, the council stated that due to the broad nature of the search terms, it is required to search across all relevant mailboxes within the council to allow a complete response to be provided.
28. The Council originally provided the Commissioner with estimates prepared by a senior member of the Highways Team whose experience regarding traffic flow informed its understanding of the scale of the task involved with the request. The Commissioner did not accept those

estimates as representing a realistic view of the nature or scale of the task involved. In its second submission to the Commissioner, the council ran searches using the search terms "New Road" and "King's Road".

29. It says that the number of search results returned was 191,251 emails across 4293 accounts. It states that the Highways team operates a shared service across two councils which means the search results recovered covers Kingston and Sutton councils. The council has informed the Commissioner that it is unable to limit the search to one organisation, and this significantly increases the volume of information and adds to the complexity of the search.
30. To see the documents revealed by the search, the council says, it must export the results. After an hour and 20 minutes of doing so, it had exported only 3823 documents, which could potentially fall within the scope of the complainant's request. It maintains that the issue remains that the broad nature of the search terms requires that it searches across all relevant mailboxes and if it is required to conduct a full comprehensive search, this would impose a disproportionate burden on it.
31. In a subsequent submission requested by the Commissioner, the council informed him that it carried out another search on its Google drive for documents as opposed to emails, using the same search terms. It says that the Google search produced 18,494 documents across all mailboxes. It maintains that to comply with the request for information would be manifestly unreasonable.

## **Public interest test**

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### **Arguments in favour of disclosure**

32. The council has considered the public interest arguments in favour of the disclosure of the information. It says that disclosure will promote transparency in decision making regarding the road scheme. It recognises that the road scheme has environmental implications, and the public has a right to access environmental information. It also states that it will increase accountability, as it will allow the public to understand the reasoning and the factors it has considered. It added that disclosure could help the community to assess the environmental consequences of the road scheme and contribute to its discussions.

### **Arguments in favour of maintaining the exemption**

33. The council argues that complying with the request will place an unreasonable burden on its resources. It states that complying with the request will divert staff from their regular duties and potentially affect

service delivery and also delay the council's response to more manageable requests. It argues that the time and effort required to search through multiple inboxes, review, redact personal information and collate the data would be disproportionately high in comparison to the benefit of disclosure. It says that the broad nature of the request might result in the disclosure of a large volume of information much of which may be irrelevant or of limited value to the public. It believes that this could confuse rather than clarify the key issues surrounding the road scheme.

### **The balance of the public interest**

34. In considering the public interest test the Commissioner must bear in mind the presumption in favour of disclosure under the EIR regime. The Commissioner has considered the arguments presented by the complainant. Whilst he understands that the complainant submitted a refined request, he understands why the broad nature of the request still prevents the council from complying with it. Given the numbers returned from the searches it is not possible to expect the council to be able to comply with the request without it imposing a significant burden on it.
35. He accepts that there is a clear public interest in the council's decision to make changes to road schemes. When balancing the public interest against the burden of complying with the request on the council, the Commissioner has given weight to information that is already in the public domain. Whilst he has considered the complainant's view that they believe that the council is withholding information, he does not consider there to be a wider value of complying with a request of this scale without it imposing a disproportionate burden on the council.
36. The Commissioner considers that in all the circumstance of this case the balance of public interest does not favour disclosure of the requested information, and that the council is entitled to rely on regulation 12(4)(b) to refuse to comply with the request.
37. As the Commissioner's decision is that the council was entitled to rely on regulation 12(4)(b), it has not been necessary to consider the council's application of regulation 12(4)(e) of the EIR

### **Regulation 9-advice and assistance**

38. Regulation 9(1) of the EIR says that a public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.
39. The council informed the Commissioner that no advice or assistance was provided to the complainant, and this was an oversight on their behalf. The Commissioner is aware that this was provided to the complainant on

15 October 2024. In this regard the Commissioner considers that the council failed to comply with its obligations under regulation 9 to provide adequate advice and assistance during the handling of the request. However, as it has now provided the advice and assistance, the Commissioner does not consider that any further steps need to be taken by the council.



## **Right of appeal**

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40. 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)

41. 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.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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