

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

**Decision notice**

**Date:** 23 October 2024

**Public Authority:** Vehicle Certification Agency  
(Department for Transport)

**Address:** Eastgate Office Centre  
Eastgate Road  
Bristol  
BS6 6XX

**Decision (including any steps ordered)**

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1. The complainant requested documents supplied by three manufacturers. The above public authority ("the public authority") provided some information but withheld three documents relating to Jaguar Land Rover. It relied on regulations 12(5)(b) and 12(5)(e) of the EIR in order to do so.
2. The Commissioner's decision is that regulation 12(5)(e) of the EIR only applies to one of the three documents, however, where this exception does apply, the balance of the public interest favours maintaining it. The Commissioner does not consider that regulation 12(5)(b) applies to either of the remaining documents.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose the two documents provided to the Commissioner in pdf format. The public authority may make appropriate redactions to comply with its data protection obligations.
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 the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 9 January 2024 the complainant requested information of the following description:
  - "[1] With respect to Article 6(1) of the ELV TA Directive, can the VCA please provide us with any three Certificates of Compliance with Annex IV with respect to any RRR Type Approval issued to any three different major vehicle manufacturers (excluding MG) for which the VCA provides RRR Type Approvals (one per manufacturer).
  - "[2] With respect to the above request, we ask that you provide us with any document provided to you with regard to the relevant RRR Type Approval by the manufacturers for the purposes of the preliminary assessment as detailed in Annex IV to the ELV TA Directive.
  - "[3] Please also provide us with respect to the request above any documents in which a manufacturer sets out their strategy with respect to an RRR Type Approval as described in Article 6(3) and 6(5) of the ELV TA Directive."
6. On 7 March 2024, the public authority responded. It provided some redacted documents relating to Aston Martin, McLaren and Jaguar Land Rover (JLR), but withheld three documents relating to Jaguar Land Rover in full, relying on regulations 12(5)(b) and 12(5)(e) in order to do so.
7. The complainant requested an internal review on 3 April 2024, focusing on the JLR documents. The public authority provided the outcome of its internal review on 29 May 2024. It upheld its original position.

## Preliminary issues

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### Scope

8. The complainant has confirmed to the Commissioner that they do not wish to challenge the public authority's decision to withhold some of the information relating to Aston Martin. They also did not wish to challenge the public authority's reliance on regulation 13 of the EIR to withhold a small amount of personal information from documents relating to each manufacturer.

9. The only matter requiring consideration is the application of regulations 12(5)(b) and 12(5)(e) to the documents concerning JLR.

**Is the requested information environmental?**

10. The Commissioner considers that the information in question is environmental. This is because it considers JLR's compliance with various pieces of retained EU law.
11. JLR supplied these documents to the public authority as part of its efforts to obtain certification demonstrating that its vehicles met the Reusability, Recyclability and Recoverability (RRR) standards. These standards are based on criteria in retained EU law designed to reduce waste and emissions.
12. The Commissioner is therefore satisfied that this is information on an environmental measure and thus environmental information. The public authority was therefore correct to deal with the request under the EIR.

**Is the requested information "on" emissions?**

13. The complainant argued (albeit without sight of the information) that the information was on emissions.
14. Regulation 12(9) of the EIR affords special status to information that is on emissions. To the extent information is on emissions, public authorities cannot rely on the exception provided at regulation 12(5)(d), (e), (f) or (g) to withhold information.
15. In order to be covered by regulation 12(9), the information in question must be on a specific emission – either past, present or future.
16. Having considered the withheld information, the Commissioner recognises that, because of its nature, there is a connection to emissions. The purpose of the directives is to reduce waste and other emissions caused when vehicles are no longer needed by their keeper.
17. However whilst the Commissioner accepts that the information is on measures designed to impact emissions, he is not persuaded that the information is on any specific emission. Consequently regulation 12(9) would not apply to this information and the public authority is not precluded from relying on regulation 12(5)(e) of the EIR to withhold it.

## **Reasons for decision**

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### **Regulation 12(5)(e) – commercial interests**

18. Regulation 12(5)(e) of the EIR allows a public authority to withhold commercial or industrial information, provided in confidence, if disclosing the information would adversely affect a legitimate economic interest.
19. The public authority has argued (and the Commissioner accepts) that the information is either commercial, industrial or both.
20. The documents in question concern aspects of JLR's strategy in respect of the vehicles that it sells, its procedures governing the supply of goods and aspects of the manufacturing or assembly processes for its vehicles. This information concerns the purchase or sale of goods, or the manufacture of products.

### **Duty of confidence**

21. The next test is that the information must be subject to a duty of confidence provided for by law. This can be due to a specific piece of legislation or the information can be covered by the common law duty of confidence.
22. The public authority has not identified any piece of law which requires the information to be kept confidential. Instead, it has argued that it is bound by the common law duty of confidence.
23. For the duty to apply, the information must be neither trivial nor in the public domain. It must also have been provided in circumstances implying a duty of confidence.
24. Clearly, the information is not trivial. The complainant has not claimed otherwise, but did argue that the information had lost any confidential status it may have had because:

"manufacturers like JLR have shared a great amount of information with each other as part of their cartel efforts."
25. In support of this claim, the complainant noted that "Major automotive manufacturers like JLR" had participated in working groups sponsored by the European Automobile Manufacturer's Association and that they used common software for recording or reporting data, or used common processes.
26. The Commissioner is not persuaded by these arguments.

27. Firstly, the complainant has, on a number of occasions when presenting this section of argument, referred to "manufacturers like JLR" or has presumed that JLR has acted as they are apparently aware others have done. The complainant has put forward no evidence that specifies what JLR has or has not done, nor on what other manufacturers do or do not know about JLR's processes.
28. Secondly, even if JLR has shared some information with some other manufacturers, no evidence has been put forward that shows that it was these documents, or the information they contain, that was shared.
29. Thirdly, the fact that multiple manufacturers may use the same software or reporting systems for recording or reporting data does not mean that they are aware of the data each other is inputting into that software, or that they necessarily follow the same process. Even if JLR does follow a specific standard process, it does not follow that its rivals will be aware of that.
30. Finally, even if the complainant were correct that JLR had shared these precise documents, that would not necessarily mean that they are in the public domain. Information which has been shared within a small group, on conditions of confidence can still retain the quality of confidence.
31. Had this latter claim been evidenced, it would have been something the Commissioner could have taken into account when determining the likelihood of an adverse effect or when assessing the balance of the public interest.
32. For information to be [in the public domain](#) it must be realistically accessible to the general public. Presumably if the information were already accessible, the complainant would not have asked for it.
33. The Commissioner therefore accepts that the information does have the necessary quality of confidence as it neither trivial nor in the public domain.
34. For the avoidance of doubt, the complainant did not provide evidence that JLR (or any other manufacturer was engaging in anti-competitive practice). However, they did refer to an ongoing investigation by the Competition and Markets Authority (CMA) into anti-competitive conduct relating to the recycling of end of life cars. That inquiry has yet to conclude and there is no official confirmation that JLR is one of the companies under investigation. The Commissioner notes that such matters fall outside his jurisdiction to determine anyway and therefore offers no opinion on JLR's business practices.
35. In order to have been provided in conditions implying a duty of confidence, a reasonable person, standing in the shoes of the recipient,

would need to have realised that the information being provided to them was being provided to them in confidence.

36. The basis for such a belief could be because the confider of the information had attached explicit conditions restricting the sharing of the information.
37. Alternatively, it could be because the nature of the circumstances, or the relationship, were such that confidentiality was implicit. A patient shouldn't need to remind their therapist that the information they provide during sessions is confidential. It is simply (and widely) understood that these are the rules under which that relationship operates.
38. It is not clear from the public authority's submissions what discussions it had with JLR immediately before and immediately after the withheld information was provided.
39. The public authority has informed the Commissioner that JLR considers the documents to be confidential. It has stated that "JLR shared them voluntarily and solely with [us] and have asked [us] not to share them further." However it is not clear whether JLR considered the information confidential when it was provided to the public authority or only when the EIR request was received.
40. Whilst the Commissioner would have preferred to have received more contemporaneous evidence about the circumstances in which the information was provided, he accepts that the information was provided in circumstances implying a duty of confidence.
41. The public authority has regulatory functions. It must decide whether particular vehicles meet certain technical standards.
42. In order to carry out this regulatory function, the public authority will clearly need access to much more detailed information about each vehicle than manufacturers are likely to make public.
43. Manufacturers are unlikely to hand over detailed information about company strategy or the design of their vehicles if they believe that the information will be published. They will (or, at least, should) be aware that the public authority is subject to both the EIR and other legal requirements, but that does not preclude information from being shared in confidence. There is a general expectation that regulators will keep sensitive information confidential unless they are required by law to share it with others.
44. In the circumstances and given the public authority's functions, the Commissioner is satisfied that it would have been reasonable for both

parties to have assumed that the information was being provided to the public authority in confidence. That is sufficient to impose a common law duty of confidence upon the public authority.

### **Adverse effect on legitimate economic interests**

45. Even where information is protected by a duty of confidence, the exception will only apply where that confidence is necessary to protect a legitimate economic interest.
46. The public authority is relying on this exception to withhold three documents. Document 1 is a spreadsheet listing all the components that make up a particular vehicle, alongside detailed information about each one's environmental impact on disposal. Document 2 is a pdf of a powerpoint presentation about JLR's strategy for dealing with vehicles at the end of their lives. Document 3 is another pdf that sets out JLR's processes for ensuring the quality of parts it receives from its suppliers.
47. The public authority informed the Commissioner that JLR had opposed disclosure of any of the documents because:

"Disclosure would harm both JLR and potentially its supplier by enabling unidentified third parties to have access to confidential and commercially sensitive information regarding JLR's internal operations and strategy."
48. In relation to the spreadsheet, the public authority argued that it would damage JLR's relationship with its suppliers and could be exploited by a supplier or competitor.
49. In relation to document 2, the public authority said that this document, if disclosed "would be exploited by JLR's competitors or third parties such as public interest groups."
50. In relation to document 3 the public authority argued that this

"contains details of the processes used by JLR to manage parts which do not meet its requirements, including reporting and dispute resolution processes used by the company...the document would be exploited...by a competitor or supplier by giving them knowledge of how the company addresses concerns with its components."
51. In the Commissioner's view disclosing document 1 would have an adverse effect on a duty of confidence protecting a legitimate economic interest.

52. The spreadsheet provides a highly detailed account of all the various components that go into making a particular model of vehicle. There is considerable technical information about each individual component.
53. The Commissioner is satisfied that this information is likely to be useful to JLR's competitors and to its suppliers' competitors, because of the high level of detail it provides about each individual component. A competitor could use this knowledge to undercut JLR or its suppliers. That in turn would harm JLR's (or its suppliers') commercial position such as its revenues, market share or ability to win contracts.
54. The Commissioner is therefore satisfied that disclosure would adversely affect the duty of confidence under which this document was provided and that that confidence protects a legitimate economic interest. Regulation 12(5)(e) is therefore engaged in respect of this document.
55. However, for the two pdf documents (documents 2 and 3), the Commissioner is not persuaded that a legitimate economic interest is being protected by the duty of confidence.
56. The information contained in document 2 is very high level and very generic. Some of the information – such as quotes from the various regulatory standards vehicles must meet – is already in the public domain.
57. The Commissioner has not seen anything particularly novel or innovative within this document. Whilst it may not be known to JLR's competitors, the Commissioner is unclear what use those competitors could make of it, even if they wished to do so.
58. In respect of public interest groups, the Commissioner is unclear what legitimate economic interest of JLR's such groups could damage. Public interest groups may well raise matters of concern about private companies – including that those companies are failing to meet environmental standards. Protection from scrutiny is not a legitimate economic interest.
59. The Commissioner does not therefore consider that the exception is engaged in relation to document 2.
60. Finally, the Commissioner turns to document 3. This pdf does provide some detail about the processes that JLR employees should follow if parts are deemed to be unusable – for whatever reason.
61. The public authority has claimed that knowledge of this process could be exploited by JLR's suppliers. The Commissioner has some difficulty understanding why this could be the case.



62. The withheld information does not reveal, for example, granular detail about the trigger points which would prompt various stages of the process. Nor does it reveal any tolerances. That would be information that suppliers could genuinely use to "game" JLR's processes in order to provide substandard items, thereby harming JLR's commercial interests.
63. In the Commissioner's experience, commercial contracts for the supply of goods and services usually set out standards which the supplier must meet and which the receiver must accept. Where the contracting parties agree that certain contractual differences will be resolved via a specific mechanism, rather than reverting to the courts, the contract will usually set out some form of dispute resolution process to apply when the supplier and recipient disagree about whether particular goods or services meet the agreed standard.
64. Much of the information in the document is information the Commissioner considers likely to be already known to suppliers as it may form part of their conditions of supply – or could be inferred from those conditions. There is some other information about how such parts should be dealt with on JLR sites or how matters should be escalated internally, but the Commissioner struggles to see how that information would be of use to suppliers – even if they were not previously aware of it.
65. Therefore, even to the extent that the contents of this document are genuinely unknown to JLR's suppliers, the Commissioner is not persuaded that those suppliers could make use of it.
66. In terms of competitors, the Commissioner again struggles to see (and no explanation has been provided demonstrating) how a competitor would be able to use the withheld information to JLR's detriment.
67. Once again, the Commissioner is not persuaded that keeping document 3 confidential is necessary to protect a legitimate economic interest. It follows that the exception does not apply to this information.

### **Public interest test**

68. In respect of document 1, the Commissioner has gone on to consider the public interest test.
69. Even where disclosure would adversely affect an economic interest, the information must still be disclosed unless the balance of the public interest favours maintaining the exception. The public authority must also apply a presumption in favour of disclosure.

70. The complainant did not accept that the exception applied, but argued that, even if it did, the public interest should favour disclosure. They argued that:

- the Reusability, Recyclability and Recoverability standards were important standards to protect the environment and the public. It was important to know how manufacturers were complying with those standards (and even more important to know if they were not); and
- for the same reasons it was important to know how well the regulator was applying those standards; and
- consumers were becoming increasingly environmentally conscious and such information would help them to make informed decisions about purchasing or leasing vehicles; and
- disclosure would provide more transparency around environmental decision-making and the public authority's work more generally; and
- the public authority should not be denying access to such information in order to maintain friendly relationships with manufacturers.

71. On the other side, the public authority pointed to the adverse effects that disclosure would cause and noted that there was a public interest in preventing those adverse effects from occurring.

### **The Commissioner's view**

72. In the Commissioner's view the balance of the public interest should favour maintaining the exception.

73. The Commissioner accepts that information that informs the public about environmental decisions is important – both as a general rule and in this particular instance. Consumers are becoming increasingly aware of the potential environmental consequences of their decisions and want to make informed choices.

74. However, the Commissioner is less persuaded that having a component by component analysis is necessary or even desirable in helping consumers to understand the choices they are making.

75. There is a strong public interest in having an independent regulator, whose job it is to conduct that detailed analysis and who can inform the public about the environmental (and other) standards that a particular

vehicle does or does not meet. That is the role that the public authority performs.

76. In order to perform that function, the public authority needs to have access to information that manufacturers would not normally share outside that organisation. If manufacturers feel they cannot trust the public authority to keep their information safe, they will minimise what they provide.
77. The complainant has (rightly) noted that the provision of this information is not entirely voluntary. Manufacturers have strong incentives to obtain type approval and the public authority can withhold such approval if the appropriate quality of information is not provided.
78. However, just because manufacturers have limited scope to withhold this information from the regulator doesn't mean that there could be no harm to the regulator from disclosure.
79. Disclosure of this information would damage the relationship of trust between the public authority and JLR. To a lesser extent, it will also damage the relationship with other manufacturers who will be concerned about the confidentiality of any of their own information in the public authority's possession.
80. Maintaining relationships of trust is not the same as currying favour. Having a relationship of trust and regulating are not mutually exclusive. On the contrary: if manufacturers believe that their regulator is fair and honest, they are more likely to co-operate with it.
81. The Commissioner is not satisfied that the public interest in transparency here outweighs the public interest in preventing harm to JLR's commercial interests or in preventing harm to the public authority's regulatory functions.
82. Therefore in respect of document 1, the exception applies and the balance of the public interest favours maintaining it. The Commissioner has had regard to the presumption in favour of disclosure, but it doesn't alter his decision.

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

83. Regulation 12(5)(b) of the EIR allows a public authority to withhold information whose disclosure would adversely affect a criminal inquiry, the right to a fair trial or the course of justice more generally.

## **The public authority's position**

84. The public authority argued that all three limbs of the exception would be engaged.
85. The public authority noted the CMA's ongoing investigation as well as that of the European Commission. It considered that it was more likely than not that this information would have been or would have needed to be provided to the relevant authorities as part of those investigations.
86. Disclosure would, the public authority argued:

"permit the public, including public interest groups...to scrutinise, analyse and pass judgement on the information in a wider climate of criticism of manufacturers' actions in respect of matters with an environmental impact."
87. The public authority argued that such disclosure would "hamper" the investigations because it could "impact the ability of the relevant authorities to conduct an assessment of the evidence before them." This impact would be the result of "allowing other parties to draw conclusions and inferences" from the withheld material.
88. The public authority also noted that the relevant authorities would be able to "clarify points of inquiry and context" that the general public would not be able to do.
89. Disclosure would also prejudice JLR's right to a fair trial, the public authority argued, because it would "incite litigation" against the company. In addition it would strip the company of the right to rely on the safeguards built into the civil litigation process by allowing access to documents that would normally require the permission of the court.
90. Finally, the public authority argued that disclosure would adversely affect the course of justice more generally. It noted that JLR was a defendant in a class action relating to NOx emissions and that this was "the sort of evidence" which would be adduced in such proceedings. The public authority argued that JLR "has a more than 50% chance of relying on the document or disclosing it on the basis that it adversely affects its own or another party's case or supports another party's case."
91. The public authority felt that disclosing the information would circumvent the proper role of the court in determining what information should or should not be disclosed.

### **The Commissioner's view**

92. The Commissioner is not persuaded that any of the public authority's arguments demonstrate an adverse effect.
93. The Commissioner notes that the only two manufacturers who have officially confirmed being under investigation by the CMA are Volkswagen and BMW – as part of court proceedings challenging the extent of the CMA's powers.
94. If JLR is not under investigation and there is no prospect of it being part of that investigation, there is no possibility that disclosure could adversely affect the inquiry. For the sake of analysing the arguments, the Commissioner has assumed that JLR has been asked for information as part of the inquiry.
95. Even if this information has been provided to the CMA already – or will be in future – the Commissioner is not persuaded that its disclosure would adversely affect that investigation.
96. As has recently been noted in respect of [water companies](#), the fact that there may be a regulatory investigation ongoing, to which the withheld information may relate, does not automatically mean that any disclosure must have an adverse effect.
97. Those working for a regulator should be robust individuals who will be guided by the evidence placed in front of them. They should not easily be swayed by public opinion.
98. Public interest groups, or the public at large, may well "scrutinise, analyse and pass judgement" on the evidence. That should not prevent the CMA from reaching a decision based upon the evidence. If JLR (or the public authority) feels that the information requires additional context in order to be understood, it is free to provide that context.
99. Turning next to the point about litigation, the public authority has not demonstrated that the information does form a part of the litigation that is ongoing or that there is a realistic prospect of litigation that would arise from disclosure. It is not sufficient for information to be "the sort of" information that would be disclosed via civil procedure rules (CPR), it must be the information that would be disclosed.
100. Even if the Commissioner were to accept that this specific information was part of ongoing litigation or likely litigation, that does not automatically mean its disclosure would adversely affect either that litigation, or the course of justice more widely.

101. The public authority has argued that the EIR should not usurp the role of the courts. Discovery in litigation can be a contentious matter and can require the court to reach a view. It is the court, the public authority argues, that should make such decisions.
102. The Commissioner notes that the Aarhus Convention, from which the EIR derive, requires that any exceptions from disclosure be construed narrowly so as to ensure the maximum disclosure of environmental information.
103. The implication of the public authority's argument is that regulation 12(5)(b) would always apply to any piece of information with the remotest connection to a process of litigation – regardless of the stage that litigation was at, regardless of the centrality of that information to the grounds of contention and regardless of its nature. That is not consistent with the Aarhus Convention.
104. It is implicit in the public authority's arguments that it recognises that JLR would disclose some of this information during litigation – either because it had been ordered to do so by a court, or because it wished to avoid such an order.
105. If there is information within the withheld documents that even JLR recognises it would be required to provide to those litigating against it, it is difficult to see how a disclosure under EIR would put JLR at a disadvantage.
106. There may well be a quantity of information within those documents that JLR considers there is a reasonable chance it would not be required to disclose under civil procedure rules. However it doesn't appear to have separated out that information from the remainder.
107. The public authority has also made no distinction between the information that JLR would be required to be disclosed under the CPR and that which either would definitely not be disclosable, or which would be arguable –therefore requiring a court to weigh in.
108. As no distinction has been drawn and no case has been made for why this information would have a significant adverse effect, the Commissioner therefore finds that the exception is not engaged. The public authority must therefore disclose the two documents (documents 2 and 3) provided in pdf format.
109. The public authority may make appropriate redactions to protect personal information.

## Right of appeal

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110. 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)

111. 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.

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

## Signed

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