

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

Date: 1 November 2024

Public Authority: Oxfordshire County Council
Address: County Hall
New Road
Oxford OX1 1ND

Decision (including any steps ordered)

1. The complainant requested road traffic information about a specific location. Oxfordshire County Council (the "Council") disclosed some information, confirmed that other information was not held and withheld other information under the exception for information in the course of completion (regulation 12(4)(d)).
2. The Commissioner considers that, on the balance of probabilities, the Council does not hold the information requested in part 1 of the request as it relates to the B4015 and that regulation 12(4)(a) of the EIR applies.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 20 March 2024, the complainant wrote to the Council and requested the following information:

"1. Traffic figures for the A4704 and B4015 approaches to the Golden Balls junction. Those figures to be consistent with and for the same threshold years as the figures quoted in the documents submitted to the current Didcot planning inquiry by the County Council, i.e., AECOM Report ES vol 1 Transport Sept '21 and update 12 Jan '24.

2. Copies any planning or transport study reports relating to Golden Balls and/or Nuneham Courtney prepared or commissioned by the County Council since March 2022."
5. The Council responded on 9 April 2024 and disclosed information in part 1 of the request. It withheld the information in part 2 under regulation 12(4)(d) (information in the course of completion).
6. On 12 May 2024 the complainant requested an internal review. The Council sent its review response on 7 June 2024. The review response confirmed that the Council had disclosed all the information held in relation to request part 1. In relation to part 2, the Council confirmed that it was maintaining its reliance on regulation 12(4)(d) to withhold the information.

Scope of the case

7. On 12 July 2024 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner confirmed with the complainant that his investigation would consider whether the Council had disclosed all the information it holds in relation to part 1 of the request as it relates to the B4015 road.

Reasons for decision

Is the requested information environmental?

9. 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);
10. The Commissioner has considered the wording of the request and notes that it is information relating to transport studies. Therefore, he believes that it is likely to be information about regulation 2(1)(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities. For procedural reasons, he has, therefore, assessed this case under the EIR.

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

- 11. The Council has stated that it does not hold the information in part 1 of the request as it relates to the B4015 road. The complainant disputes this.
- 12. Regulation 5 of the EIR requires that a public authority that holds environmental information shall make it available on request. This is subject to any exclusions or exceptions that may apply.
- 13. Regulation 12(4)(a) of the EIR says that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.

14. In scenarios where there is some dispute about whether a public authority holds relevant information, 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. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the Council to check that the information is not held, and he will consider any other reasons offered by the Council to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.

The Council's position

16. The Council confirmed that it carried out searches for relevant information in project folders, emails and shared and local drives. The Council has stated that these searches would have retrieved (if held) the information, as the modelling data relevant to the request would only be stored electronically.
17. The Council confirmed that it used a number of different search terms when looking for the information, namely: "Golden Balls, HIF1, model, paramics, B4015, A4074, AADT, 2024, 2034, with, without, daily, DN, DS, and flows."
18. The Council confirmed that the information disclosed in relation to part 1 of the request represents the only information on this matter that it currently holds.

The Complainant's position

19. The complainant has confirmed that they previously had responsibility for transport planning at the Council and, based on their experience, they do not consider it plausible that the Council would not hold the information.
20. The complainant has referred to a planning application relating to major roads that was considered at an inquiry during 2024. They have raised concerns about the Council's handling of the substantive matter and they consider that the requested information should have been held in order for the matter to be properly determined.

The Commissioner's position

21. The Commissioner understands that the complainant considers that the Council should hold information falling within the scope of their request. However, it is not the Commissioner's role to establish what information a public authority should hold, or whether it has a requirement,

statutory or otherwise to hold certain information. Nor will the Commissioner undertake a forensic examination of all records held by a public authority if it is not proportionate to do so. The Commissioner's role is to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

22. The Commissioner recognises that the complainant has insights into the subject matter of the request and he appreciates why they might reasonably conclude that the information is held. The Commissioner acknowledges that the complainant's understanding of the Council's obligations in relation to these matters may appear to provide a weighting in favour of the likelihood of the information being held. However, in the Commissioner's experience, in spite of obligations or perceived obligations, authorities will not always in reality hold information that one might expect them to hold.
23. The Commissioner is mindful that the complainant has concerns about the substantive matter, namely the Council's handling of issues relating to the roads in question. However, it is not the Commissioner's role to determine whether the Council has complied with statutory obligations as a planning authority or other matters which do not directly relate to its duties under the EIR. He considers that other remedies are available for challenging decisions made by the Council or for progressing concerns about its broader practice. The Commissioner's role here is strictly confined to the question of what information was held at the time of the request.
24. In this case, in view of its explanation of the searches carried out and its explicit confirmation that the information is not held, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold the information in part 1 of the request as it relates to the B4015.
25. 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 did not hold.

Right of appeal

26. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Christopher Williams
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF