

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

Date: 12 November 2024

Public Authority: Shropshire Council
Address: Shirehall
Abbey Foregate
Shrewsbury
SY2 6ND

Decision (including any steps ordered)

1. The complainant has requested copies of the noise and traffic model files used by Shropshire Council in its planning application for the North West Relief Road. Shropshire Council ('the Council') provided some of the requested information, and relied on regulation 12(5)(c) (intellectual property rights) to withhold information relating to instructional noise and traffic model files. In follow-up correspondence to its internal review response, the Council stated that it did not hold the noise and traffic model files.
2. The Commissioner's decision is that the Council does not hold the requested information, nor is it held on the Council's behalf. He also finds that the Council breached regulations 5(2) and 14 of the EIR by failing to disclose the requested information or issue a refusal notice within the statutory time limit.
3. The Commissioner does not require further steps.

Request and response

4. On 26 May 2022, the complainant wrote to the Council and requested information in the following terms:

"In order for the Claimant to make a proper and adequate response to the planning application, access to the noise and traffic models is required"

5. The Council responded on 9 June 2022. It stated that it intended to disclose the requested information but advised that some of the information was commercially sensitive.
6. On 29 January 2024, the Council disclosed some of the requested information but relied on regulation 12(5)(c) of the EIR to withhold the requested information relating to noise and traffic model files.
7. Following an internal review, the Council wrote to the complainant on 19 February 2024. It stated that the withheld noise and traffic model files did not constitute environmental information, but if the EIR did apply, then it maintained its reliance on regulation 12(5)(c).

Scope of the case

8. The complainant contacted the Commissioner on 25 July 2024 to complain about the way their request for information had been handled. They expressed dissatisfaction with the Council's application of regulation 12(5)(c) and it latterly stating that the requested files were not environmental information, and that it did not, in fact, hold the requested information.
9. In reviewing the complaint and the supporting documentation, the Commissioner finds that there has been some uncertainty in the interpretation of the traffic and noise model files. In its follow-up response of 29 January 2024, the Council advised that it was withholding three files under regulation 12(5)(c). The complainant referred to the withheld files as 'data input files'. The Council later clarified to the complainant that it interpreted 'data input files' to be the noise and traffic model files and explained that these files were 'instructional files' that specify certain parameters for the traffic and noise modelling software.
10. In its submission to the Commissioner, the Council stated that it did not hold the noise and traffic model files, but if it did, it considered regulation 12(5)(c) to apply.
11. The Commissioner therefore considers the scope of his investigation is to determine whether the Council holds the noise and traffic model files, and if it does, whether it was entitled to rely on regulation 12(5)(c) of the EIR to withhold them.

Reasons for decision

Is the requested information environmental?

12. 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);
13. The Commissioner notes that the Council does not consider the instructional noise and traffic model files to be environmental information. However, the files contain instructions which are used to produce information relating to potential noise and traffic levels caused by a road proposal. The Commissioner therefore believes that the requested information relates to proposals likely to affect the state of the environment falling within regulation 2(1)(b) and (c). He has therefore assessed this case under the EIR.

Regulation 5(1) – duty to provide environmental information
Regulation 3(2) – information held on behalf of

14. Regulation 5(1) of the EIR requires authorities to provide environmental information on request.
15. Regulation 3(2)(b) covers circumstances in which the information is held on a public authority's behalf by another person. When a public authority receives a request for environmental information, it is important that it considers if any information relevant to the request is held by an external third party it has dealings with.
16. In determining whether the information is held by an organisation on behalf on a public authority the Commissioner makes his decision based on the specifics of the case, and aspects such as:
 - The relationship between the information and the public authority's functions
 - Whether the public authority has access to the information
 - Whether the public authority has a degree of control over the information
17. In this case, the Commissioner needs to consider whether information is held on the Council's behalf.
18. In its submission to the Commissioner, the Council has stated that it does not hold the information requested concerning the noise and traffic model files. It explained that this information is held by WSP Consultants ('WSP'), which is the consultancy firm used by the Council.
19. The Council explained that the noise and traffic models were developed by WSP, and are based on a programme of noise and traffic surveys undertaken for neutral months in 2017. It explained that the models are not static but are like a programme that responds to the information fed into them. The Council likened the models to Excel, a programme that is used to produce spreadsheets.
20. The Council explained that the noise and traffic model files are inputted into SATURN¹. This is a suite of network analysis programmes that has six basic functions and analyses how traffic flows could change in

¹ Simulation and Assignment of Traffic to Urban Road Networks.

response to a new traffic management scheme. SATURN focuses on routes taken by drivers, so it is most suited to evaluate schemes which affect traffic movement, such as the introduction of one-way streets, banned turns, cell schemes, bus-only lanes, pedestrianisation schemes, changes in junction design, for example.

21. The Council explained that once the parameters for a particular assignment are put into SATURN (for example, traffic data, intersections, roundabouts, and turn parameters), it simulates what would happen on the ground were that to be implemented. In this way, the impact of different possible traffic management schemes can be evaluated.
22. The Commissioner agrees that the Council does not hold the SATURN software itself, but he notes that the complainant has specified the information used to produce the noise and traffic models in their request for internal review. He considers that this includes the instructional files as well as the raw data used to populate the modelling software.
23. The Commissioner notes that the Council provided the complainant with the raw noise and traffic data in its responses, and that it explained why some data was not available.
24. The Commissioner then asked the Council to provide further explanation of why it does not hold the instructional traffic model files.
25. The Council explained that WSP purchased a licence in order to use the traffic model files for its own purposes. It explained that the files themselves are 'off the shelf' and have not been created or modified for bespoke use by WSP on behalf of the Council.
26. In its submission, the Council has stated: "As regards the "traffic models" (ie the collection of traffic parameters that are fed into SATURN), this is not held by or on behalf of the Council. It was produced by WSP in order to carry out their work."
27. The Commissioner is satisfied that the Council does not have access to the traffic and noise model files itself, and that it has contracted with WSP to carry out analysis of potential noise and traffic impact due to the proposed road.
28. The Commissioner considers that if the traffic model files had been created or modified specifically for the Council's use, then there would be reason to consider them as being held by WSP on behalf of the Council. However, the Commissioner has been guided by the Council's confirmation that this is not the case. The noise and traffic model files are (according to the Council) generic and would be used by WSP regardless of the client. Therefore, the Commissioner is satisfied that

there is not a sufficient link between the information and the Council's functions. Consequently, the files not held on behalf of the Council.

29. As the requested information is not held by the Council, it is not necessary for the Commissioner to consider the Council's reliance on regulation 12(5)(c).

Procedural matters

Regulation 5(2) – time for compliance **Regulation 14 – refusal of request**

30. Regulation 5(2) of the EIR states that: "Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."
31. As noted above, the complainant submitted their request on 26 May 2022. The Council replied on 9 June 2022 and advised that it intended to disclose the requested information but it did not do so until 29 January 2024.
32. The Council initially relied on regulation 12(5)(c) to withhold some of the requested information but as it did not hold the information, it should have relied on regulation 12(4)(a) of the EIR.
33. In failing to disclose the requested information or issue a refusal notice within the statutory time limit, the Council breached regulations 5(2) and 14 of the EIR.

Other matters

34. The Commissioner has been disappointed with the engagement from the Council and the quality of its submission in respect of this complaint case.
35. The Commissioner wrote to the Council on 13 August 2024 and instructed it to provide its submissions. The Council did this on 5 September 2024. The Council did not respond to the Commissioner's questions in sufficient detail.
36. On 11 September 2024, the Commissioner requested clarification on the Council's submission. The Council was not able to provide this until 1 November 2024.

Right of appeal

37. 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

38. 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.
39. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Keeley Christine
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