

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 30 March 2016

Public Authority: Halton Borough Council

Address: Municipal Building
Kingsway
Widnes
WA8 7QF

Decision (including any steps ordered)

1. The complainant has made two requests for information about traffic flows relevant to the Mersey Gateway Project.
2. The Commissioner's decision in respect of the complainant's first request is that Halton Borough Council ("the Council") holds information from which the information sought by the complainant can be extracted and therefore the Council has breached Regulation 5(1) of the EIR.
3. The Commissioner has also decided that, on the balance of probabilities, the Council does not hold information relevant to the complainant's second request.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - The Council should issue a fresh response to the complainant regarding the formative information it holds used in creating the Traffic Model which was shared with bidders as part of the Dataroom.
5. The public authority must take these steps within 35 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

6. On 25 July 2014, the complainant wrote to Halton Borough Council and requested information in the following terms:

"...what is the estimated annual cost of this concession in terms of lost toll income?

- a) *When was the last survey done which included the origins (Halton or non-Halton) and destinations (Halton and non-Halton) of vehicles using the SJB?*

And what was the split in numbers – origin and destination both within Halton, Origin within Halton but destinations outside, Destination within Halton but Origin outside, and both Origin and Destination outside Halton. If you have got them then I would like that split between type of vehicles such as motorbikes, cars, vans of a size that qualify for the discount, and other commercial vehicles.

- b) *Similar to a) above but based on what the latest traffic model says the traffic in numbers will be over the two bridges in the first year of operation. Can you also please tell me when the model was updated."*

7. The Council sent its response to the complainant on 18 August. In respect of part b) of the request the Council stated:

"The traffic numbers during the first year of operation according to the model is 58,892 vehicles ((Annual Average Weekday Traffic) Total number of cars is 46,536, LGV is 6,840 and OGV is 5,516. (based on original Local User Discount Scheme of 300 free trips for local residents)."

- a. Having received the Council's response, the complainant made a subsequent request on 19 August. The terms of the second request are:

"1. Can I have a split of the latest figures "58,892 vehicles (Annual Average Weekday Traffic) Total number of cars is 46,536, LGV is 6,840 and OGV is 5,516." between the two bridges.

2. Can you give me the details of when and how the latest forecast of 58,892 vehicles was given to Halton councillors? If the answer to that is the figures have not been given to them, can

you give me details of whatever traffic forecast figures were last given to Halton councillors and tell me when they were given them.

3. Can I have a copy of whatever summary information or report which you have which explains why the average weekday traffic has fallen from the 74K forecast to the 59K forecast?

4. All of the above figures are for 'weekday' i.e. excluding weekends. Can you tell me what the weekend figures (split over the three types for each of the two bridges) are for a) "first year of operation according to the model" (i.e. the model that you have taken the 58,892 from) and b) the 2006 actual (as far as I can see these figures were excluded from the January 2009 report but I assume that the Council must have them).

8. The Commissioner understands that the Council responded to the complainant's second request on 12 September by providing him with a redacted copy of part of a report entitled 'Value for Money Sensitivity Tests October 2013. The Council advised the complainant that, 'we only have the AAWT flows which have been provided... we do not model weekend traffic flows, however, these could be extracted from the model but would incur a charge which you would have to bear'.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
10. In respect of his first request, the complainant informed the Commissioner that he is only pursuing his complaint insofar as it relates to the Vehicle Origin and Destination details forecast for the first year of operation – part b of his request above. The complainant asserted that the Council's position is that it does not hold this information, as it is information which can only be obtained by it being extracted from the model, for which a fee would be payable.
11. The complainant asserted that this position is implausible, as it implies that the Council – the tolls concessionaire, and the Government, do not need this information. The complainant considers that the Council's statement is also at variance with its message of 17 October 2014, when it stated that "44% of traffic is deemed as local". He believes it is not possible to see how the Council can have arrived at a relatively precise 44% figure if they only have the 20:40:40 split and do not have the information that he has requested."

12. In respect of his second request, the complainant accepts that the Council has given him information which answers part 1 of this request.

However his complaint is that the Council has not answered the second question of this request: The complainant asserts that the Council should have provided him with details of the latest forecast traffic figure – the one that had been given last to members of the Council, and that he should have been informed when they were given to the members of the Council.

13. In respect of question 3 of the second request, the Council sent the complainant a copy of a redacted report (containing over 80 pages) which it had prepared in January 2012, together with the position when the report was produced in October 2013.
14. The complainant clarified for the Commissioner that he seeks information relating to the fall in the traffic figures which were presented to the Public Inquiry in 2009 and not the changes from the document in January 2012 – which he has not seen.
15. The complainant informed the Commissioner that he is not pursuing a complaint in respect of question 4 of his second request.
16. The Commissioner has investigated the extent to which the Council holds information which falls within the description of the complainant's two requests.

Reasons for decision

17. Regulation 2(1) of the EIR defines what constitutes 'environmental information'. Subsections (a) to (c) state –

'(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 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) and (b) as well as measures or activities designed to protect those elements.'

18. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.
19. The Commissioner has considered the nature of the information sought by the complainant. He notes that the information relates to crossings of the River Mersey. In the Commissioner's opinion the information falls to be considered under the Environmental Information Regulations 2004.

Duty to make environmental information available on request

20. Regulation 5(1) of the EIR states that –

“...a public authority that holds environmental information shall make it available on request.”

21. The Commissioner has sought to determine whether, on the balance of probabilities, the Council holds the information sought by the complainant. He makes this determination by applying the civil test of the balance of probabilities which is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.
22. The Commissioner has investigated this complaint by asking the Council a number of questions about the searches it has made to locate the information sought by the complainant and questions about its possible deletion/destruction.

Background information

23. The Mersey Gateway Crossings Board Ltd (the Board) is a special purpose vehicle established by Halton Borough Council with the delegated authority to deliver the Mersey Gateway Bridge project and to administer and oversee the construction and maintenance of the new tolled crossings, including the tolling of the existing Silver Jubilee Bridge.
24. The Board's term of reference and delegated authority are expressed in a Governance Agreement with the Council which is set to last for sixty years. The Board will deliver the project on behalf of the Council and will operate as a commercial not-for-profit organisation on an arm's length basis.
25. The Board works with the Merseylink consortium on a day-to-day basis to ensure that all aspects of the contract are adhered to, ranging from

Public Relations and Communications, environment, traffic management, to employment and skills.

26. The Mersey Gateway Executive Board ("MGEB") has delegated authority from the Council to make decisions relating to the Mersey Gateway Project without the need for approval by the full Council. Access to information was offered to those councillors who did not attend the MGEB and provided if they requested it.

The Commissioner's investigation

27. The Commissioner asked the Council about the information it holds which is relevant to the complainant's request. The Council responded to this question by listing and describing the documents it holds which it considers are relevant to the complainant's requests. The list and descriptions are contained in appendix 1 of this notice.
28. The information which the Council holds is both summative and formative in nature. The majority of the summative information has been provided to the complainant. However, the formative information has not been provided because it would require specialist software and training to be able to analyse it.
29. At the time the complainant made his request the Council held information in a document management system known as Business Collaborator ("BC"). This is a repository for electronic documents which has been used by the Project Team since 2006. Documents held in the BC are recognised and accessible in file formats such as Microsoft Word, Excel, Powerpoint, Adobe PDF, etc. the BC does however contain files which are in formats only accessible to specialist software such as Autocad, GIS software, etc.
30. The BC allows users to search for information in PDF documents or folders using key words or phrases. Such searches only work if the document recognises text ("OCR"). The information can be viewed on screen or downloaded to a laptop. The BC is password protected and has a high level of encryption so as to restrict access to users who do not have sufficient access rights.
31. From April 2014 the Mersey Gateway Crossings Board has used the Council's SharePoint site to store information relevant to the Mersey crossings. Information from the BC was either transferred to SharePoint or stored in an external hard drive. This meant that searches of the BC could no longer be made, although the information it held was accessible up to April 2015. This means that the searches necessary to find information relevant to the complainant's requests had already taken place.

32. As part of the procurement process for the Project over 5000 documents were indexed, categorised and issued to each bidder on an external hard drive – the Project Dataroom. Copies of this information have been retained and the index of this it was used to search for any documents which are relevant to the complainant's request. This
33. The Traffic Model was shared with bidders as part of the Dataroom. This information is accessible via specialist software as it consists of highway, public transport and a demand model. These have been developed in SATURN, PT TRIPS and DIADEM respectively.
34. Information relevant to the complainant's requests is also held on the laptop computers of individuals within the Board's team and on the Councils intranet. Generally the information is available to the public, or it is contained in 'private' report packs which have restricted access.
35. All of the locations described above were searched for information relevant to the complainant's request; although the Council points out that it does not possess the specialist software required to interrogate the traffic model files. The Council's archives and stored information comprises of 2 terabytes of information.

The complainant's first request

36. The Council accepts that it holds the baseline information which is used to interrogate different scenarios within the model. However it asserts that the Council does not hold the information which the complainant has specifically requested. The Council's position is that the only information it holds, without incurring further costs, is that which is contained within the numerous reports on this subject.
37. In order to answer the complainant's first request, the Council would have to re-run the model to reflect a different set of scenarios and variables. The company who undertook this work previously has confirmed to the Council that no further testing of the percentage split took place as part of the later traffic modelling work and that the base year model – 2006, was unchanged. Therefore the splits would be the same as those reported at the Public Inquiry in 2009.

The complainant's second request

38. The Council assures the Commissioner that neither it nor the Board hold specific documentation which identifies when all Halton Borough Councillors were notified of the 58,892 figure. The Council simply state that the information did not need to be presented to or agreed by the Full Council.

39. At the time it received the complainant's request, the Council did not have access to the Project Director's laptop as it had been removed by ICT services so that its information could be transferred to an external hard drive. Normally the information – presentations, would be available through other sources, including the laptops of other Board staff. This information would unlikely have been uploaded to the BC, SharePoint or the Project Dataroom. Nevertheless all were searched by the Council.
40. The Committee Services department within the Council was contacted to see if it had a copy of this information. The department confirmed that it did not.
41. Once the Project Director's computer was returned it was searched and no information relevant to the second request could be found. A slide from a presentation was found and this does indicate a drop in revenue and traffic figures, but only in relation to Average Annual Daily Traffic (AADT) figures and not the figures referred to by the complainant.
42. In relation to the request for a report which indicates a drop in figures from 74,000 to 59,000, the Council has again confirmed that it holds a report where these figures are summarised and that this report has been provided to the complainant. The origin of these figures was included in the information presented to the Public Inquiry and the Project's outline Business case was based on technical guidance from the Department of Transport ("DfT"). The original figures were developed before the global economic crisis and the DfT issued revised technical guidance to ensure that the project was still considered as being value for money in view of the more pessimistic and up-to-date economic outlook.
43. The Council has advised the Commissioner that information relevant to both of the complainant's requests is likely to be contained in the various reports relating to the Project rather than be subsumed within emails of individual officers. The Council believes its officers are best placed to understand and locate archived and current information which is relevant to the two requests.
44. Additionally, the Council and Board have spent a significant amount of money in ensuring that the documents which are relevant to this project are as accessible as possible. It points out that the Project Dataroom contains over 5000 files and that these are comprehensively indexed and categorised. This is also the case in respect of the BC. Between the Dataroom and the BC there are over ten years' worth of comprehensive documentation relating to the project. In the Council's opinion, it would be unlikely that information relating to the complainant's requests would be held anywhere else, as these form the main repositories for the entire project.

45. When the Council searched for information provided to individual councillors regarding the reduction in traffic figures, the Council searched its minutes for a six month period during which the Board would have likely approved the Final Business Case. These searches used a variety of appropriate search terms.
46. The Council has informed the Commissioner that all of the information relevant to the complainant's requests is still likely to be held. It assures the Commissioner that no information has purposefully been destroyed and that the information is subject to the Council's Records Retention Policy, although there are no statutory requirements for this information to be retained.

The Commissioner's decision

47. The Commissioner has fully considered the representations made by the Council and by the complainant.
48. The Commissioner is satisfied, on the balance of probabilities, that the Council holds information which is relevant to the complainant's first request. He accepts that the Council does not hold information which exactly matches the terms of the complainant's request. However he considers that the Council holds formative information from which the information requested by the complainant can be extracted or interpolated.
49. The Commissioner finds it necessary to reject some of the points made by the Council in respect of the information it holds, and which is relevant to the first request: He must point out that the EIR is both person and purpose blind.
50. Where a public authority holds environmental information it is obliged to make that information available to the public proactively or on request.
51. In this case, the Council holds formative information which may yield the statistics which the complainant seeks. In the Commissioner's opinion the Council should make the formative information available to the complainant or it should consider whether it can rely on one or more of the exceptions of the EIR to withhold it.
52. In this case, the Council has made the assumption that the complainant would not have access to appropriate software, nor would he have the ability to perform the necessary analysis required to satisfy his own information needs. The Commissioner considers that the Council is not entitled to make these assumptions.

53. Therefore, in respect of the complainant's first request the Commissioner finds that the Council has breached Regulation 5(1) of the EIR.
54. In consequence of this breach, the Commissioner requires the Council to disclose the information it holds, relevant to this request, or it should inform the complainant in writing of its reasons for withholding it.
55. In respect of the complainant's second request, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold the information which the Council seeks, other than the formative information referred used in the traffic model. He is therefore satisfied that the Council has complied with Regulation 5(1) of the EIR.

Right of appeal

56. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

57. 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.
58. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Appendix 1:

Information held by the Council which is relevant to the complainant's requests

Local Model Validation report – This describes the development and validation of the highway model used in the appraisal of the proposed Mersey Gateway development. It is available to the public and was submitted to the Public Inquiry held in 2009.

Email chain – containing information which confirms that the base year model was unchanged in terms of origin/destination of traffic and confirmation that that certain of the information sought by the complainant is not held but could be acquired through further work. This email chain is relevant to the complainant's first request.

Presentation to Halton Borough Council councillors – slides used in a presentation to councillors in November 2013. The slides do not show the latest Average Annual Weekday Traffic figures ("AAWT"). They show the Average Annual Daily Traffic figures ("AADT") which indicate a reduction in traffic since the Public Inquiry of 2009. This is relevant to the complainant's second request.

Expert evidence given at the Public Inquiry concerning traffic forecasts and their modelling – this is information which is publicly available.

Appendices to the expert evidence given at the Public Inquiry - this is information which is publicly available.

Summary of the expert evidence given at the Public Inquiry - this is information which is publicly available and it is relevant to both of the complainant's requests.

Mersey Gateway Highway Model: Traffic Forecasting Report – this report describes the forecasts produced for the Mersey Gateway scheme. It sets out the assumptions on which the forecasts are based. This document is available to the public and was submitted to the Public Inquiry.

Halton Borough Council Unitary Development Plan – This document mentions the source figures for origin/ destination traffic split which is relevant to the complainant's first request.

Mersey Gateway Value for Money Report – this contains value for money assessments/traffic modelling which was undertaken after the Public Inquiry of 2009. It deals with the reduction in traffic due to updated technical guidance and change in the scope of the project. A redacted copy of this document has been provided to the complainant. The

redacted information are of a commercial nature, reflecting the costs submitted from the successful bidder. The Council did not disclose the redacted information on the grounds that it would prejudice the third party's commercial interests.

Traffic forecasting – a summary report for the project's Environmental Statement. The model and the process for producing the traffic forecasts are summarised in the Summary Forecasting Report. The Report is relevant to both of the complainant's requests and it is information which is available to the public.

Base and Forecast model files listing – This lists the various traffic model files which were submitted to bidders as part of the dataroom during the procurement process. This information has not been disclosed to the complainant.

South Liverpool Roadside Interview data ("RSI data") – The raw data which was input into the model and validated. This is information which was not disclosed to the complainant.

MGEGB Report Pack – A restricted content report submitted to the Mersey Gateway Board on 7 November 2013. The report relates to the approval of the Final Business Case.

Mersey Gateway Economic Appraisal Report – This was submitted to the Public Inquiry in 2009. It provides background information of how the traffic model and forecasts interact with the economic appraisal.

Mersey Gateway Local Resident Discount Scheme Calculations – now known as the Local User Discount Scheme, illustrates calculations indicating that 44.8% of all class 2 traffic is eligible for the discounts scheme. This document was withheld from disclosure in reliance on section 43 of the FOIA on the grounds that the report contains information relating to confidential revenue forecasts.