

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

**Decision notice**

**Date:** 6 May 2017

**Public Authority:** London Borough of Westminster  
**Address:** Westminster City Hall  
64 Victoria Street  
London  
SW1E 6QP

**Decision (including any steps ordered)**

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1. The complainant has requested the council to disclose its entire investigation file into the ceiling collapse at the Apollo Theatre, London on 19 December 2013. The council refused to disclose this information citing regulations 12(4)(e), 12(5)(d) and 12(5)(f) of the EIR. During the Commissioner's investigation, the council also claimed a late reliance on regulations 12(5)(b) and 12(5)(e) of the EIR.
2. The Commissioner first considered the application of regulation 12(5)(b) of the EIR and she has decided that this exception has been applied appropriately to all the withheld information. She therefore does not need to consider any other exceptions cited or require any further action to be taken by the council.
3. It was however noted that the council failed to carry out an internal review within 40 working days of receipt. The Commissioner has therefore recorded a breach of regulation 11 of the EIR in this case.

## Request and response

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4. On 14 June 2016, the complainant wrote to the council and requested information in the following terms:

“I note that your department carried out a detailed year-long investigation [into the partial ceiling collapse at the Apollo Theatre, London on 19 December 2013]. We require your files, as an interested party, in order to carry out our investigations”.
5. The complainant chased a response on 21 and 29 June 2016.
6. The council responded on 30 June 2016. It refused to disclose the requested information citing regulation 12(4)(e) of the EIR.
7. The complainant requested an internal review on 21 July 2016. The complainant also made a new request for further information relating to the same incident.
8. The council carried out an internal review and notified the complainant of its findings on 21 November 2016. It upheld its previous application of regulation 12(4)(e) of the EIR but also advised the complainant that it wished to rely on regulations 12(5)(d) and 12(5)(f) as well.

## Scope of the case

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9. The complainant contacted the Commissioner initially on 16 November 2016 to complain about the way their request for information had been handled. Specifically, at this time, the complainant had not received the outcome of their internal review, as requested on 21 July 2016. Before the Commissioner had the opportunity to take any action, the council issued its internal review response four days later on 21 November 2016. The complainant remained dissatisfied and asked the Commissioner to consider the exceptions applied by the council to the requested information.
10. During the Commissioner's investigation the council confirmed that it also wished to rely on regulations 12(5)(b) and 12(5)(e) of the EIR. The Commissioner is satisfied that she is permitted to allow the late claim of additional exceptions if indeed these are made during the course of her investigation.

## Background

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11. On 19 December 2013 the auditorium ceiling of the Apollo Theatre collapsed during a live evening performance, injuring 88 people. On 20 December 2013 the investigation into the incident was formally handed over to the council's Environmental Health, Health and Safety Team by the Metropolitan Police.
12. The council explained that the investigation was fairly widespread involving a number of different stakeholders; the London Ambulance Service, The Really Useful Theatre Group, the National Theatre, 15 members of the audience who were injured on the night in question and 7 members of cast. The investigating officers also visited the site, spoke extensively to inspectors who had previously inspected the ceiling and held discussions with the Nimax Holding Ltd's (Nimax Holdings Ltd being the owner of the theatre) management team and staff. This was in addition to commissioning their own independent reports by a historic plaster specialist and a firm of structural engineers.
13. The council confirmed that the initial aim of the investigation was twofold:
  - 1) To make the theatre safe and secure its structural integrity; and
  - 2) to enable the theatre to reopen once the structural repairs had been undertaken.
14. The investigation focused on the inspection, maintenance and repair of the suspended ceiling from 2005 to 19 December 2013; the date of the incident. This period coincides with the transfer of ownership of the theatre to Nimax Holdings Ltd. The council confirmed that the investigation generated information that was both historical and factual for the purposes of establishing how and why the ceiling collapsed. Officers undertook interviews, requested information, commissioned surveys and generally sought to co-operate with other relevant stakeholders within both the West End theatres and the Health and Safety industry. To that end another related purpose was to identify how the industry as a whole could raise standards based on new guidelines developed as a result of the investigation.
15. The council advised that the investigation is now closed and all subsequent actions/recommendations arising from it have been duly published. At the end of the investigation the council published redacted versions of the reports online and these can be accessed via the following link:

<http://www.abtt.org.uk/westminster-city-council-publish-information-following-the-ceiling-collapse-at-the-apollo-theatre-on-19-december-2013/>

## Reasons for decision

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16. The Commissioner has considered the application of regulation 12(5)(b) of the EIR in the first instance. She will only go on to consider the application of other exceptions cited if it is found that regulation 12(5)(b) of the EIR does not apply to some or all the requested information.

### Regulation 12(5)(b)

17. Regulation 12(5)(b) of the EIR states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.
18. This exception is also subject to the public interest. So in addition to demonstrating that the exception is engaged the public authority must also consider the public interest arguments for and against disclosure and demonstrate that, in this case, the public interest rests in maintaining this exception.
19. The Commissioner's guidance on this exception explains how this exception encompasses any adverse effect on the course of justice and is not limited to information only subject to legal professional privilege. As such the Commissioner accepts that 'an inquiry of a criminal or disciplinary nature' is likely to include information about investigations into potential breaches of legislation, for example planning law, environmental law or health and safety legislation.
20. The Commissioner's guidance can be accessed via the following link:  
[https://ico.org.uk/media/for-organisations/documents/1625/course\\_of\\_justice\\_and\\_inquiries\\_exception\\_eir\\_guidance.pdf](https://ico.org.uk/media/for-organisations/documents/1625/course_of_justice_and_inquiries_exception_eir_guidance.pdf)
21. In the decision of *Archer v Information Commissioner and Salisbury District Council* (EA/2006/0037) the Information Tribunal highlighted the requirement needed for this exception to be engaged. It has explained that there must be an "adverse" effect resulting from disclosure of the information as indicated by the wording of the exception. In accordance with the Tribunal decision of *Hogan and Oxford City Council v*

*Information Commissioner (EA/2005/0026 and EA/2005/030), the interpretation of the word "would" is "more probable than not".*

Is the exception engaged?

22. The council explained that the withheld information is a file it holds relating to an investigation it undertook in relation to the ceiling collapse at the Apollo Theatre in December 2013. It explained that the matter was passed to it from the Metropolitan Police to allow it to investigate and decide whether there had been any breach of the Health and Safety at Work Act 1974. The investigation took a year to complete and its investigation file (the withheld information in this case) is therefore extensive. It confirmed that the role of the council was not to find fault but to identify the root cause of the incident and consider whether there was a breach of legislation. If a breach is found in such cases there are various sanctions available to the council including verbal or written warnings, improvement notices, prohibition notices if indeed this is required and prosecution.
23. The council confirmed that it was therefore satisfied that the requested information falls within the definition of this exception, as it relates to an enquiry undertaken by the council in accordance with relevant health and safety legislation.
24. In terms of the adverse effect that disclosure would cause, the council accepted that the investigation had concluded by the time of the request and so could not be argued to be a 'live' and ongoing enquiry. However, it felt that disclosure would still adversely affect its ability to conduct other enquiries of a similar nature and would damage public confidence in such enquiries being undertaken appropriately and with due regard to the rights and expectations of involved parties.
25. In particular, the council argued that disclosure would reveal to the world at large investigative techniques which would enable any person to take measures to limit the extent of their participation in any investigation ongoing by skewing the nature of their responses. It explained that this would have a detrimental impact on the ability of the council to obtain full and frank responses, thereby undermining its ability to provide an accurate determination of the events. Disclosure would adversely affect the integrity of the process and the ability of the council to carry out future investigations effectively and comprehensively.
26. The council confirmed that the investigation process relies on the full co-operation of all parties involved. If the inner workings of the council and the finer details of an investigation were routinely released into the public domain this would result in a loss of trust between confider and

confidante and in the willingness of parties to co-operate honestly, free and frankly in the future. This would in turn adversely affect the ability of the council to carry out future enquiries of this nature, investigate fully and comprehensively and act on any breaches of legislation that are identified.

27. The council also commented that the wording of the request itself highlights that there could be further proceedings in relation to this event which could then result in its investigation file being required as evidence during such proceedings.
28. It explained that although its investigation had concluded and no further action was going to be taken by the council at the time of the request, there was still the possibility that a civil recovery claim could be brought against involved parties. It was possible that the requested information may be drawn into such proceedings and indeed the council as a second/joint defendant or just compelled to assist the court as an independent party.
29. The Commissioner has reviewed the requested information and she is satisfied that regulation 12(5)(b) of the EIR is engaged in this case. She will now explain why.
30. As the council confirmed, the requested information is a year- long investigation into the events that took place at the Apollo Theatre in December 2013. An investigation was undertaken to determine the cause of the event, whether there had been any breach of health and safety legislation and, if so, what action should be taken. The requested information therefore falls within the definition of this exception as it is an enquiry of a criminal nature.
31. The council has also explained that there is still the possibility of a civil recovery claim being brought against a particular party/ies and the withheld information and, the council itself, could be drawn into such proceedings. The Commissioner is therefore satisfied that the requested information also falls within the definition of the general course of justice element of this exception.
32. In terms of adverse effect, the Commissioner accepts that disclosure would reveal investigative techniques the council uses to investigate such matters which could then be used by those being investigated for a potential breach of law to the detriment of the council. It would affect the co-operation of parties involved and enable them to skew how they respond and the information shared to their own benefit. This would in turn damage the integrity of the investigation process and the ability of the council to investigate and take action where necessary of any breaches of legislation.

33. Similarly, the council has explained that parties co-operate fully and frankly in such investigations with the understanding that the information will remain confidential and will not be disclosed to the world at large. If the investigation file itself was disclosed under the EIR, this would damage the trust and co-operation of connected parties on which the process and the ability of the council to exercise its powers heavily relies.
34. There is also still the possibility that this information could be drawn into further proceedings. There is still the possibility that civil recovery claim action could be taken. The Commissioner considers disclosure of this information at a time when this is still possible (and indeed likely considering the wording of the request itself) would adversely affect the course of justice and the ability of effected parties to receive a fair trial.
35. The Commissioner now needs to go on to consider the public interest test.

#### Public interest test

36. The council stated that it accepted that there is a public interest in the outcome of such investigations and in the transparency of the process. However, the council is of the view that disclosure of information, relating to the investigation process itself, would not further the general understanding of these aspects.
37. It stated that it has already published redacted reports detailing the outcome of their enquiries into this incident and it considers these reports meet the public interest in disclosure. Disclosure of how the council undertook the investigation would reveal investigative techniques to the world at large which would enable any person or party subject to such investigations to take measures to limit the extent of their participation by skewing the nature of their responses. This would have a detrimental impact on the ability of the council to obtain full and frank responses thereby undermining its ability to provide an accurate determination of the events. The council stated that such consequences would not be in the interests of the wider public. Rather it is in the public interest to maintain the integrity of the current investigative process to enable the council to fully investigate events of this nature and any potential breaches of legislation.
38. The Commissioner has considered the arguments for and against disclosure. She understands that there is a public interest in openness and transparency and in providing information to the public which enables them to understand more clearly how such matters are investigated and why a particular outcome has been reached. In this particular case, it is noted that people were injured and the event led to



concerns over health and safety. The Commissioner accepts that there will be a public interest in knowing how this matter was dealt with, why the council reached the decision that no breach of law had occurred in this case and why no enforcement action was deemed necessary.

39. However, the Commissioner notes the council published redacted versions of its final reports on the closure of its investigation to enable the public to understand more clearly what had been decided in this particular case. She considers this goes a fair way to meeting the public interest in disclosure.
40. The Commissioner accepts that disclosure of the entire investigation file would reveal investigative techniques to the world at large and damage the integrity of the current process and the willingness of parties involved in a case like this to co-operate fully. It is not in the wider interests of the public for this to happen. The council relies on the co-operation of parties involved to investigate fairly and comprehensively potential breaches of the law. If the council's ability to investigate such matters was damaged it would hinder its ability to investigate future cases and take appropriate enforcement action where necessary.
41. It is also noticed that there is still the possibility of further proceedings in relation to this event. The council has said that the requested information may be drawn into such proceedings if a court so requires. The Commissioner considers there is a stronger public interest in ensuring that each and every party has access to a fair trial. She considers it would be more appropriate in these circumstances to allow the court process to run its usual course.
42. Although there are public interest arguments in favour of disclosure in this case, the Commissioner has concluded that these are outweighed by the weightier arguments in favour of maintaining this exception. As a result she requires no further action to be taken.

### **Procedural issues**

43. As the council failed to carry out the complainant's internal review within 40 working days of receipt, the Commissioner has found the council in breach of regulation 11 of the EIR in this case.



## Right of appeal

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44. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

45. 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.
46. 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 .....**

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**