

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

**Decision notice**

**Date:** 3 September 2020

**Public Authority:** Manchester City Council  
**Address:** PO Box 532  
Town Hall  
Manchester  
M60 2LA

**Decision (including any steps ordered)**

---

1. The complainant requested from Manchester City Council ("the Council") information relating to the Great Ancoats Street upgrade work. The Council provided the complainant with what it stated was all the information it held within the scope of the request. However, the complainant was not satisfied with the amount of the information received.
2. The Commissioner's decision is that, on the balance of probabilities, the Council is correct when it says that it holds no further information within the scope of the request.
3. The Commissioner requires no steps to be taken as a result of this decision.

## Request and response

---

4. On 21 February 2020, the complainant wrote to the Council and requested information in the following terms:

*"I am requesting, under the FoI Act, all correspondence, rationale, and information used in the decision to produce the plan without cycle lanes for the Great Ancoats Street upgrade work."*

5. The Council responded on 20 March 2020, providing the complainant with an explanation on the decision making process and disclosing a number documents that the Council had identified as the information it held within the scope of the request.

6. Remaining dissatisfied with the response received, the complainant requested an internal review on 20 March 2020. He stated:

*"The information provided doesn't show the rationale behind removing the cycle lanes from the plans, it merely shows the plans with and without cycle lanes, and the modelling for each. There is no evidence of any meeting or discussion that outlines why the decision was taken to remove the cycle lanes entirely. As such, I feel the FOI request has not been handled sufficiently."*

7. Following an internal review the Council wrote to the complainant on 23 April 2020, maintaining its original position.

## Scope of the case

---

8. The complainant contacted the Commissioner on 23 April 2020 to complain about the way his request for information had been handled. He stated that he disagreed with the Council's response because he believed that the Council was in possession of more information within the scope of his request than it had disclosed.
9. During the course of the Commissioner's investigation, she asked the Council to reconsider whether it had applied the correct access regime when it responded to the complainant's request. The Council agreed that the correct access regime for the request was the EIR as opposed to the FOIA.
10. The following analysis will determine whether the Council complied with regulation 5(1) of the EIR, when it stated that it held no further information within the scope of the request beyond what was already disclosed.

## Reasons for decision

---

### Is the requested information environmental?

11. 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);*

12. The Commissioner considers that any information within the scope of the request that the Council held would be information relating to roadworks. She believes that this would be information about "measures" affecting the elements of the environment, and therefore would be environmental information under regulation 2(1)(c).

13. In view of this, the Commissioner has concluded that the Council wrongly (initially) handled the request under the FOIA and breached regulation 5(1) of the EIR. As the Council subsequently corrected this

during the Commissioner's investigation the Commissioner does not require the Council to take any steps in this regard.

**Regulation 5(1) – Duty to make environmental information available on request**

14. Regulation 5(1) of the EIR states that *"a public authority that holds environmental information shall make it available on request."* This is subject to any exceptions that may apply.
15. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. She will also consider the actions taken by the authority to establish what information within the scope of the request it held, and any other reasons offered by the public authority to explain why further information is not held. She will also consider any reason why it is inherently likely or unlikely that further information is not held.
16. The Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency* (EA/2006/0072) in which it was stated that *"there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records"*. It clarified that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. This is therefore the test that the Commissioner has applied in this case.
17. In discussing the application of the balance of probabilities test, the Tribunal stated that, *"We think that its application requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed."* The Commissioner has therefore taken the above factors into account in determining whether or not further information is held, on the balance of probabilities.
18. As part of her investigation, the Commissioner wrote to the Council requesting submissions in respect of a number of questions relating to the concerns raised by the complainant. The Commissioner's questions

were focused on the Council's endeavours in providing the requested information to the complainant, its searches conducted in relation to the complainant's request, and whether any of the information falling within the scope of the requests was deleted or destroyed.

19. The Council stated that following the Commissioner's investigation letter, it carried out further searches and it confirmed that there is no additional information held which includes reference to cycling provision on Great Ancoats Street, beyond what was already provided to the complainant.
20. The Council told the Commissioner that on receipt of the complainant's request, the relevant officers on the project board and project team were all contacted in order to identify the information held within the scope of the request. It stated that *"this led to the identification of the modelling data, emails and other information previously supplied to [the complainant]."*
21. The Council stated that the relevant officers were asked to conduct searches of their email accounts and project files on the Council's network for recorded information held on the decision not to include cycle lanes in the redevelopment. The Council stated that *"these searches returned the emails between the Council and Transport for Greater Manchester (TFGM) staff as well as board minutes referencing the word 'cycle' and modelling data."* The Council confirmed that all the identified information was disclosed to the complainant.
22. In addition, the Council explained that a project board was established for the implementation of this specific project. Following the complainant's initial request, *"enquiries were made of members of the Board who conducted relevant searches and reviewed recorded information to identify any information falling within the scope of the request. Unfortunately, beyond the information which has already been disclosed to [the complainant], this exercise did not return any additional information falling within the scope of the request."*
23. The Council confirmed that searches were undertaken by project officers and included information held locally, networked resources and in email accounts. The officers were also asked to review paper records to identify Great Ancoats Street project information including references to cycling, cycle lanes, options, modelling, designs and decisions.
24. The Council stated that if there were any further information held, it would be stored within project documentation held electronically on the Council's network. The Council confirmed that these resources had been checked on three occasions and no further information was identified, beyond what was already disclosed.

25. When asked whether any recorded information was ever held relevant to the scope of the complainant's request but had been deleted or destroyed, the Council stated that to its knowledge no such information has been deleted or destroyed.
26. The Council was also asked about its records management policy in relation to information of this nature. It stated that *"the Great Ancoats Street project is currently onsite and therefore live. Project information is retained in line with the Council's Corporate Retention Schedule. For information relating to highways works which is retained for 15 years after scheme completion."*
27. The Council was also asked whether there is any business purpose or statutory requirements to retain the information requested by the complainant, more specifically *"evidence of any meeting or discussion that outlines why the decision was taken to remove the cycle lanes entirely."*
28. The Council stated that *"not all decisions falling within the scope of highways projects are recorded and there is no requirement to do so."* It added that as far as the Council was aware, there was no statutory requirement to record or retain any additional information within the scope of the complainant's request.

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

29. The Commissioner has carefully examined the submissions of both parties. She has considered the searches performed by the Council, the information it disclosed, the Council's explanations as to why there is no further information held and the complainant's concerns.
30. Having considered the scope of the request, the Commissioner is satisfied that the Council carried out appropriate searches to identify all relevant information that was held at the time of the request.
31. The Commissioner appreciates the complainant's concerns, however, in the absence of evidence to the contrary, the Commissioner is satisfied that the Council has provided the complainant with all of the relevant information which it held, falling within the scope of the request.
32. Consequently, the Commissioner is of the view that, on the balance of probabilities, the Council did not hold further information within the scope of the request. Therefore, she does not require the Council to take any steps as result of this decision notice.

## Right of appeal

---

33. 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@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)

34. 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.
35. 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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**