

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

Date: 28 March 2025

Public Authority: Wirral Metropolitan Borough Council
Address: Wallasey Town Hall
Brighton Street
Wallasey
Wirral
CH44 8ED

Decision (including any steps ordered)

1. The complainant has requested a study of local housing need projections. The above public authority ("the public authority") relied on regulation 12(4)(d) of the EIR (material in the course of completion) to withhold the information.
2. The Commissioner's decision is that regulation 12(4)(d) of the EIR is engaged, but that the public interest favours disclosure.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose a copy of the requested report.
4. The public authority must take these steps within 30 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

5. On a date prior to 6 September 2024 the complainant requested information of the following description:

“I wish to know if the council holds a copy of the report ‘Review of Representations to Wirral Metropolitan Borough Council’s Local Plan 2021-2037’ either in draft or finalised form and if such report/reports exist I request a copy/copies of same.”
6. On 6 September 2024, the public authority responded. It refused to provide the requested information and cited regulation 12(4)(d) of the EIR as its basis for doing so. It upheld this stance following an internal review.

Scope of the case

7. The Commissioner notes that, although the public authority’s submissions were provided to him in a timely manner, he had to serve an information notice to acquire a copy of the withheld information.

Reasons for decision

8. The withheld information in this case is a report, compiled by academics at the University of Liverpool, reviewing representations made about the public authority’s local plan. That local plan sets out the strategic priorities for the public authority in terms of identifying land for residential or commercial development.
9. In the Commissioner’s view this is information on a measure (the local plan) likely to affect the elements of the environment – particularly, soil, landscape and water. It is therefore environmental information.

Regulation 12(4)(d) – material in the course of completion

10. Regulation 12(4)(d) of the EIR allows a public authority to withhold information that relates to incomplete data, unfinished documents or material in the course of completion. These are distinct categories, but they are not mutually exclusive.
11. The Commissioner asked the public to identify which of the categories above the information fell into and why.

12. Separately, he asked the public authority to set out when the document or material was likely to be finished or completed and what steps were required before completion.

13. The public authority conflated both questions and explained to the Commissioner that:

"After speaking with the relevant Council department, they have confirmed that the withheld information was part of a report that was never finalised, so remains incomplete.

"It was not used in the Council's case at the Local Plan examination, as the Government made changes. Advice taken at the time led in a different direction once the examination had begun."

The Commissioner's view

14. In the Commissioner's view, the public authority has not demonstrated that the information relates to material in the course of completion.

15. The Commissioner considers that the withheld information is, in itself, complete. It was written by academics and represents the outcome of their studies. There is no evidence suggesting that it is likely to be rewritten or amended in future.

16. However, just because a document is complete in its own terms, doesn't mean that it does not relate to other material that is still in the course of completion. For example, a local authority might commission an ecological study to form part of a wider business case for a regeneration project. That study may be complete in its own terms, but whilst the business case was being completed, the study could still relate to material (the business case) "in the course of completion".

17. The Commissioner is aware that there is, or soon will be, a public inquiry into the public authority's local plan. The public authority has confirmed that the withheld information does not form part of its case at that inquiry. Therefore, even if the public authority were still preparing its case for that inquiry (which could also be material in the course of completion), the withheld information does not relate to that case and therefore does not relate to any material in the course of completion.

18. The public authority has also indicated that the withheld information was intended to form part of a larger report that was never finalised. In theory, that larger report could also have been material in the course of completion.

19. However, the response to the Commissioner's question indicates that, whilst that larger report was never finalised, the public authority also no longer intends to finalise it.
20. In the Commissioner's view, for material to be "in the course of" completion, there must still be some intent to carry out further work. If a piece of work has begun, but been abandoned and there is no prospect of it being returned to, that piece work of work is "complete" in the sense that the public authority has no intention of adding to it.
21. The public authority cannot therefore argue that its larger report is material in the course of completion. The larger report is complete because the public authority does not intend to carry out further work on it.
22. However, whilst a particular document may no longer be in the course of completion, it may still be an "unfinished" document. A draft document is inherently unfinished and will remain so regardless of whether a final version is produced.
23. Although the withheld information is labelled "draft", labels are not determinative and the public authority has provided no evidence to suggest that the withheld information itself was likely to be redrafted. The Commissioner therefore does not consider the withheld information itself to be an unfinished document.
24. However, to engage the exception, the public authority only has to demonstrate that the withheld information relates to an unfinished document – the information doesn't have to be unfinished itself.
25. The public authority has stated that the withheld information was part of a larger report that was never finalised. It has given few details about this larger report or how the withheld information relates to it.
26. The Commissioner is sceptical that the exception applies. However, given the conclusions he has reached on the balance of the public interest, he has proceeded on the basis that regulation 12(4)(d) is engaged because the withheld information relates to an unfinished document.

Public interest test

27. Information that relates to unfinished documents must still be disclosed unless the balance of the public interest favours maintaining the exception.
28. In the Commissioner's view, the balance of the public interest falls firmly in favour of disclosure.

29. Housing policy is a matter of national significance. Deciding how many of what sort of houses should be built where is a debate that is being had at both the national, regional and local levels.
30. Local plans are intended to get communities to take ownership of their area, ensuring that the right number of houses are built and in the right places. It is easier for local planning authorities to refuse development applications that don't conform to the local plan. Equally, it is easier for developers to develop sites prioritised by the local plan.
31. It is evident to the Commissioner that the public authority's local plan has been contentious (as local plans often are). In particular there has been much debate over how the area's future housing need should be estimated. Private developers have argued for a much higher projected housing need, residents groups have argued for a lower projection.
32. Determining housing need is a key part of any local plan. The greater the area's housing need, the more sites it will need to identify for development and the less likely it is that brownfield sites will be sufficient to meet that need.
33. The thrust of the withheld information has been to analyse the various challenges and methodologies put forward for assessing future need and to critique each one.
34. The public authority has argued that the public interest should favour maintaining the exception because the withheld information did not form part of its case for the local plan. Recent developments in government planning policy have, it argues, meant the report has been "superseded".
35. The public authority argued that releasing this information into the public domain would:

"be confusing for members of the public who may believe that the report is of relevance to the ongoing examination process when it is not."
36. The Commissioner recognises that there may have been developments in planning policy since the withheld information was created. Clearly these would not be reflected in the document.
37. However, having considered the document at length, the Commissioner is equally unpersuaded that it is obsolete.
38. There is a standard method for predicting housing need, but local authorities are permitted to deviate from this method where there are exceptional circumstances that would suggest that using the standard

method would lead to a considerable over- or under-estimation. As referred to above, the withheld information considers the advantages and disadvantages of various methods of predicting future housing need. It also gives consideration to whether any of the alternative methods provides evidence of exceptional circumstances in the local area.

39. In the Commissioner's view any methodology is likely to be contentious – albeit that some may prove more reliable than others. The withheld information makes an important contribution to that debate. Even if some national policies have since changed, the evaluation of competing methods is something that will continue to be debated.
40. In the Commissioner's view, the withheld information would make a valuable contribution to helping those living, visiting or working on the Wirral to understand the competing priorities the public authority is faced with when determining development applications.
41. Whilst its contribution may be limited due to more recent changes at national level, the Commissioner does still consider that the withheld information would help people living in the local area to participate in the development and implementation of their local plan.
42. Whilst the focus of the report and the data is on the Wirral, the Commissioner also recognises that many of the methodologies and arguments used or proposed are ones that apply (or could apply) in many other parts of the country as well. He is therefore of the view that the report would make a contribution (albeit a limited one) to the national debate about housing policy.
43. The Commissioner therefore considers that the balance of the public interest should favour disclosure.

Right of appeal

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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