

Environmental Information Regulations 2004

Decision Notice

Date 29th November 2006

Public Authority: Transport for London

Address: Windsor House
42-50 Victoria Street
London
SW1H 0TL

Summary

The applicant submitted a request to the public authority on 3 April 2005 for copies of the questionnaires it had received as part of the Thames Gateway Bridge public consultation. The public authority dealt with the request under the Freedom of Information Act 2000 and responded that it would be unable to supply all the information requested as to do so would exceed the 'appropriate limit' specified in section 12 of the Freedom of Information Act 2000. Having investigated this case the Commissioner is of the view that the requested questionnaires in fact contain 'environmental information'. Accordingly, the Commissioner is of the view that the public authority should reconsider the request under the Environmental Information Regulations 2004 and ensure that any charge imposed for the provision of the information is both legitimately chargeable under the Regulations and is 'reasonable'.

The Commissioner's Role

1. The Environmental Information Regulations 2004 ('the EIR') were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner ('the Commissioner'). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 ('the Act') are imported into the EIR.

The Request

2. On 25 April 2005 the applicant requested the following information from the public authority in accordance with section 1 of the Act:

"The Thames Gateway Bridge public consultation questionnaire responses".

3. The public authority initially explained that the information would be withheld under section 40 of the Act. This decision was overturned after an internal review and, on 23 August 2005, the public authority informed the applicant that it had decided the responses to the consultation questionnaires should be made available “for those respondents who have not indicated on the questionnaire that they wish their response to remain private with any personal information redacted”.
4. The applicant was advised, however, that it was unlikely that all the responses would be provided since the estimated cost of complying with the request (including deleting any personal data) would exceed the appropriate limit of £450 specified in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”)
5. Although the cost of compliance would exceed the appropriate limit the public authority advised the applicant that it was willing to supply copies of those questionnaires that could be located and retrieved up to the appropriate limit or, alternatively, the applicant could fund any additional cost over the appropriate limit and receive copies of all the questionnaires.
6. At this stage, Friends of the Earth advised the public authority that it would be acting on the applicant’s behalf with regard to this complaint. For convenience only, the body of this Decision Notice refers to Friends of the Earth as “the complainant”.
7. The complainant maintained that the request should have been deal with under the EIR rather than the Act. The complainant also argued that the consultation questionnaires did not contain personal data and therefore the public authority’s assessment of the time involved in processing the request was excessive and unrealistic.

The Investigation

Scope of the case

8. On 13 June 2005 the complainant contacted the Commissioner to complain about the way the request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - i. The public authority’s decision to deal with the request under the Act rather than the EIR;
 - ii. The public authority’s decision to withhold some of the questionnaires under section 40 of the Act;
 - iii. The public authority’s estimation of the time it would take to comply with the request.

Chronology

9. On 1 November 2005 the Commissioner wrote to the public authority to request the following information: the reasons for dealing with the request under the Act rather than the Regulations; the justification for claiming that the questionnaires contained personal data; details of how the public authority calculated that compliance with the request would exceed the appropriate limit.
10. The public authority responded to the Commissioner in a letter dated 26 November 2005.
11. The public authority advised that it had considered the issue of which legislation was applicable on a number of occasions. After due consideration the public authority concluded that, although it accepted that the proposed Thames Gateway Bridge would have an impact on the environment, the views and/or comments of individuals about the proposed development did not satisfy any criteria included in regulation 2(a) to (f) of the Regulations and the information recorded in the questionnaires was not therefore 'environmental information'.
12. On the issue of personal data, the public authority advised the Commissioner that the questionnaire asked individuals for a postcode as part of their response. This was to allow the public authority to check they were reaching as much of the local area as possible. Whilst the public authority acknowledged that the provision of a postcode does not itself constitute personal data, in a number of cases respondents had supplied their full name and address.
13. With regard to the time it would take to comply with the request, the public authority estimated that it would take 24 hours to locate the information and then separate out manually those questionnaires where the 'keep it private' box had been ticked (730 of the 5290 questionnaires). The public authority estimated that it would take a further 7.5 hours to edit and prepare each of the 730 'keep it private questionnaires' and 2.5 hours to retrieve the questionnaires from archives.

Analysis

Procedural matters

The Act or the EIR

14. The Commissioner considered whether the questionnaires requested by the complainant contain environmental information and should therefore have been dealt with under the EIR rather than the Act.
15. The Thames Gateway Bridge 'Consultation Response Analysis Report - November 2003' (available from www.tfl.gov.uk) explains that the distribution of the questionnaire was central to the consultation process. The outcome of the consultation should have an important bearing on whether the project goes ahead. If the proposal is successful, the building of the Thames Gateway Bridge

would have a significant effect on the state of the elements of the environment referred to in regulation 2(1)(a) of the EIR.

16. For this reason the Commissioner believes that the questionnaire constitutes a 'measure' affecting or likely to affect the elements of the environment and therefore falls within the wording of regulation 2(1)(c) of the EIR, which states that environmental information means any information on –

“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”.

17. This view is supported by findings of the Thames Gateway Bridge 'Consultation Report - November 2003' (available from www.tfl.gov.uk). This report found that the comments provided by respondents to the questionnaire on the issue of their support for the bridge fell into four categories: Access/Links/Travel/Crossing; Pollution/Environment; Regeneration/Other; Traffic/Congestion/Roads. These categories are, in the main, environmental in nature.

Personal data

18. The Commissioner considered the public authority's claim that some of the questionnaires contained personal information.
19. The Commissioner is of the view that an individual's name and address constitutes personal data. Consequently, disclosure of a questionnaire where a respondent provided their name and address **and** ticked the 'keep it private' box would breach of the first Data Protection Principle. The information requested therefore "includes personal data" exempted from disclosure by virtue of Regulation 13 of the EIR. Accordingly, the Commissioner believes that the 730 relevant requested questionnaires should be disclosed after redaction of any personal data.

Estimated time to comply with the request

20. The Commissioner considered the public authority's estimation of the time it would take to comply with the request.
21. The public authority allowed 2.5 hours to retrieve the questionnaires from an archive location. The Commissioner is satisfied that this estimate appears reasonable.
22. The public authority explained that 730 of the 5290 questionnaires had the 'keep it private' box ticked. The public authority estimated that it would take 24 hours to locate the requested information and then separate out manually those questionnaires where the 'keep it private' box had been ticked.
23. The Commissioner is of the view that the time taken to separate the questionnaires cannot be included as part of the process of "making the

information available.” The sorting of the questionnaires is an additional measure being undertaken by the Council to ensure compliance with the Data Protection Act 1998. Regulation 8 of the EIR does not contemplate a charge for such activity. In any event, the Commissioner is very sceptical that a simple separation of the questionnaires into two categories would take as long as 24 hours. The Commissioner considers that – even if the activity is legitimately chargeable – it is unlikely that any charge reflecting such a length of time would be reasonable.

24. The public authority also estimated that it would take 7.5 hours to redact any personal information from those questionnaires where the “keep it private” box had been ticked. Again, and in the same reasoning, the Commissioner does not accept that editing and redaction of a document can be taken into account when calculating the costs a public authority reasonably incurs in “making the information available”.
25. For the reasons outlined above the Commissioner does not consider that the public authority’s estimates of the time involved in dealing with this request can justify non-disclosure. Some of the proposed charges are not recoverable under Regulation 8 of the EIR at all. To the extent that charges may be recoverable, they are likely to have been below the appropriate limit had this case fallen within the scope of the Act, although their reasonableness is a matter on which the public authority needs to be satisfied.

The Decision

26. The Commissioner has concluded that the information recorded in the questionnaires is environmental information within the meaning of the EIR. The Commissioner is therefore of the view that the request should have been dealt with under the EIR rather than the Act.
27. The Commissioner’s decision is that the public authority did not deal with the request for information in accordance with the EIR.

Steps Required

28. The Commissioner requires the public authority to take the following steps to ensure compliance with the EIR:
 - i. Reconsider the applicant’s request under the EIR to ensure that any charge imposed for the provision of the information is ‘reasonable’ within the meaning of Regulation 8(3), which states –

“A charge under paragraph (1) shall not exceed an amount which the public authority is satisfied is a reasonable amount”, and
 - ii. Provide the applicant with an appropriate response under the EIR.

29. The public authority should take into account the following when dealing with this request under the EIR:
- i. The Commissioner is of the view that disclosure of a questionnaire where the respondent had provided their name and address **and** ticked the 'keep it private' box would breach the first Data Protection Principle;
 - ii. The Commissioner is of the view that the public authority's estimates of the time involved in making the requested information available (a) include activities for which charges cannot be recovered under the EIR and (b) to the extent that they do include recoverable charges, those indicated appear to exceed what would be reasonable; and
 - iii. More specifically, the Commissioner considers that it would be reasonable for a charge to cover the 2.5 hours involved in the retrieval of questionnaires from archives.
30. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

31. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

32. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 29th day of November 2006

Signed

**Richard Thomas
Information Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**