

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

**Decision notice**

**Date:** 12 May 2023

**Public Authority:** Transport for London  
**Address:** 5 Endeavour Square  
London  
E20 1JN

**Decision (including any steps ordered)**

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1. The complainant has requested unredacted copies of two traffic management orders. The above public authority ("the public authority") provided copies of the orders with the signatures redacted. It relied on section 40(2) of FOIA to withhold the signatures.
2. The Commissioner's decision is that the public authority should have dealt with the request under the EIR. However, having done so, it would have been entitled to rely on Regulation 13 of the EIR to withhold the information. The public authority breached regulation 14 of the EIR as it failed to deal with the request under the EIR.
3. The Commissioner does not require further steps to be taken.

**Request and response**

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4. On 12 February 2023, the complainant wrote to the public authority and requested information in the following terms:  
  
"I would like to request a copy of the traffic management order for the no right turn prohibition from Queen's Road into Asylum Road, SE15. Please could this be provided in PDF format, with searchable / selectable text, and inclusive of all schedules."
5. On 10 March 2023, the complainant submitted a further request in the following terms:

"The GLA Side Roads (London Borough of Hackney) Designation Order 2000 does not designate Woodberry Grove (off the A503 / Seven Sisters Road) as a GLA side road. It therefore seems plausible that TFL and the Mayor of London must have made a further designation order to designate Woodberry Grove as a GLA side road, because the first 48 yards or so of Woodberry Grove are a red route. Under the Environmental Information Regulations 2004, I hereby request any and all records that document that Woodberry Grove is designated as a GLA side road, including (but not limited to) any designations orders made which alter The GLA Side Roads (London Borough of Hackney) Designation Order 2000."

6. The public authority responded to the first request on 2 March 2023 and the second on 21 March 2023. It provided copies of both sets documents, but with some information redacted. It relied on section 40(2) of FOIA to withhold the information.
7. Following an internal review the public authority wrote to the complainant on 18 April 2023. It removed some of the redactions but continued to withhold the signatures on the documents.

### **Scope of the case**

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8. The complainant contends that the information is environmental but that, either way, the public authority is not entitled to withhold any of it.
9. As the public authority's position was explained clearly in its responses, the Commissioner has not sought further submissions. The complainant provided a submission when making his complaint that the Commissioner has taken into account.

### **Reasons for decision**

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#### **Is the requested information environmental?**

10. 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;
11. One of the traffic management orders in question prohibits vehicles from making a right turn on a particular street, the other designates a particular street as being a Greater London Authority side road for the purposes of the Road Traffic Regulation Act 1984. Designating a particular road as a side road means that the highway authority for that road is the particular London Borough in which the road is situated, rather than the public authority.
  12. The Commissioner considers that traffic management orders are a measure affecting the elements of the environment.
  13. That is not to say that every traffic management order is made for the predominant purpose of affecting the elements of the environment. Depending on the precise terms of an order, the environmental impact may be large or small. However, taken as a whole, traffic management orders are issued for the purpose of improving the management of traffic (bearing in mind that this could be vehicular, pedestrian or cycle traffic) allowing it to flow more smoothly, more safely, or both.
  14. Good management of traffic should reduce emissions – either because vehicles spend more time moving or because it promotes the use of less-polluting forms of transport. Therefore measures to improve the management of traffic are likely to have an environmental impact – even if this was not the purpose (or, at least, not the predominant purpose) of the measures.
  15. Whilst the environmental impact of a single “no right turn” order may be hard to quantify, the Commissioner considers that, as it forms part of broader measures to improve traffic flow, it remains environmental information.
  16. However, for reasons that will be explained below, whether the specific orders are or are not environmental information is irrelevant in this case.

### **Regulation 13 – third party personal data**

17. Regulation 13 of the EIR allows a public authority to withhold any information, which is the personal data of a person other than the requester, where disclosure to the world at large would violate any of the data protection principles.
18. There is no material difference between the application of regulation 13 of the EIR and section 40(2) of FOIA. Therefore, even if the Commissioner were to consider the matter under FOIA, the test to be applied would be identical.
19. The withheld information comprises of signatures on the various documents.
20. The public authority noted that, in one instance, it had been unable to identify the person from the signature. The complainant argued that this meant such information was not personal data.
21. The Commissioner disagrees. The mere fact that the public authority was unable to locate a current employee able to identify the individual in question does not mean that the individual is not identifiable to anyone. For example, the individual's signature may have been known to their contemporary colleagues who have since retired or left the public authority. The fact that FOIA requires disclosure to the world at large increases the chance that the information could come into the hands of someone able to identify the individual in question.
22. The Commissioner also notes that the individual in question (and indeed any of the signatories) would be identifiable to a motivated intruder with access to public records and able to cross-reference job titles. The chance of identification is even higher if those records can be combined with "local knowledge" of the parts of the public authority that were likely to have been involved in such decision-making when it occurred.
23. The public authority has argued that disclosure in these circumstances would breach the first data protection principle – which requires personal data to be processed lawfully, fairly and transparently.
24. The complainant advanced a number of arguments as to why the information should be disclosed. Firstly, he argued that the first data protection principle did not apply in the circumstances. Secondly, he argued that, even if the principle did apply, the public authority was required by law to disclose the information anyway. Finally, he argued that there was a legitimate interest in disclosure which should outweigh the rights of the data subjects.
25. The Commissioner is not persuaded by any of these arguments.

26. The complainant argued that schedule 2<sup>1</sup> of the Data Protection Act 2018 requires the first data protection principle to be disregarded where the personal data in question was information the public authority was required by law to publish. Section 5(1) of schedule 2 states that:

“The listed GDPR provisions do not apply to personal data consisting of information that the controller is obliged by an enactment to make available to the public, to the extent that the application of those provisions would prevent the controller from complying with that obligation.”

27. For reasons that will be explained below, the Commissioner does not consider that complying with the first data protection principle in this case would prevent the public authority from complying with any legal obligation. However, even if he were so persuaded, this part of the law is irrelevant in this case as Section 1 of the same schedule defines the “listed GDPR provisions” as being:

“Article 5(1)(a) (lawful, fair and transparent processing), **other than** the lawfulness requirements set out in Article 6;” [emphasis added]

28. Therefore, even if withholding the information would prevent the public authority from complying with its legal obligations, the Data Protection Act 2018 still requires the public authority to have satisfied one of the six conditions for the lawful processing of personal data set out in article 6 of UK GDPR before the information could be disclosed.

29. Next the complainant argued that the documents in question were “public documents” in that they were documents that the public authority was required by law to make public. The Commissioner has taken this line of argument to mean that the complainant considers that article 6(1)(c) of the UK GDPR would provide a lawful basis for disclosure.

30. Article 6(1)(c) states that:

“processing is necessary for compliance with a legal obligation to which the controller is subject”

31. The complainant drew the Commissioner’s attention to the two pieces of legislation which he said governed the respective traffic management orders. Section 1 of schedule 1 of the Local Authorities’ Traffic Orders (Procedure) (England and Wales) Regulations 1996 (which the

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<sup>1</sup> The complainant erroneously referred to schedule 1 of the Act.

complainant said governed the "no right turn" order) states that a copy of any order made under the regulations and its associated documents:

"shall, so far as they are relevant, be made available for inspection at the principal offices of the authority during normal office hours and at such other places (if any) within its area as it may think fit during such hours as it may determine for each such place."

32. Section 124C(6)<sup>2</sup> of the Road Traffic Regulation Act 1984 states that:

"Transport for London, and the Greater London Authority, each of the London borough councils and the Common Council of the City of London, shall make the record, or (as the case may be) the copies of the record deposited with them, available for inspection by the public at all reasonable hours."

33. Section 124C only refers to the requirement on the public authority to maintain a record (which it defines as being a list and/or map) of the roads it has defined as GLA side roads, rather than the order itself. The Commissioner does not consider that this makes a material difference to his considerations as he does not consider that either piece of legislation provides a lawful basis for disclosure of the information.

34. Firstly, the Commissioner notes that both pieces of legislation referred to only require the relevant documents to be "available for inspection." Whilst this does suggest that Parliament intended the public to have access to such documents, it does not suggest that the intention was that the level of access was the unrestricted disclosure to the world at large required by FOIA. Neither legislation requires the public authority to provide copies of the documents to anyone who asks for them.

35. Whilst the public authority must make the documents available for inspection at reasonable hours, the legislation does not prevent the public authority from (for example) prohibiting the photographing or the making of copies of the documents. The public authority is not required to lend its copy of the information to anyone who asks for it: it is entitled to retain a single copy in its possession that cannot be replicated. That is not equivalent to unrestricted disclosure.

36. In addition, this lawful basis requires that the disclosure must be "necessary" for compliance – it is not sufficient for disclosure to be vaguely connected to compliance or to achieve a similar outcome.

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<sup>2</sup> The complainant erroneously referred to section 126C – which does not exist

37. In *Kol v Information Commissioner* [2022] UKUT 74 (AAC), the Upper Tribunal applied the decision of the UK Supreme Court in *South Lanarkshire Council v Scottish Information Commissioner* [2013] 1 WLR 2421 (which related to the provisions of the 1998 Data Protection Act) to the interpretation of the UK GDPR. In particular, the Supreme Court's definition of necessity:

"necessity is well established in community law as part of the proportionality test...in ordinary language we would understand that a measure would not be necessary **if the legitimate aim could be achieved by something less.**" [emphasis added]

38. The two enactments the complainant has referenced require the public authority to make certain information available for inspection. Making information available for inspection is, as discussed above, "something less" than unrestricted disclosure to the world at large. The public authority presumably does make such information available for inspection (and the complainant has not argued that it does not) so disclosure is clearly not necessary for the public authority to meet its legal obligations. It follows that article 6(1)(c) of the UK GDPR does not provide a lawful basis for disclosure of this personal data.
39. As the individuals involved have not given consent for their personal data to be disclosed to the world at large, the only remaining lawful basis on which the information could be disclosed would be if it were necessary to achieve a legitimate interest.
40. The complainant argued that the individuals involved were (at least at the time) senior individuals within the public authority – and this is borne out by the titles they held. As such (and particularly given that they knew – or should have known – that the documents they were signing were public documents), those individuals would have no reasonable expectation that the information would be disclosed.
41. The complainant argued that there was a legitimate interest in disclosure because the authenticity of an order could be a key factor in determining whether a traffic contravention had occurred. He noted that a tribunal would not accept a redacted version of such an order.
42. The Commissioner accepts that there is a legitimate interest in understanding whether such orders have been legitimately made and that would include seeing the signatures on the document.
43. However, the Commissioner does not accept that disclosure to the world at large is necessary to meet this legitimate interest. If a person wishes to dispute that an order, which they are alleged to have contravened, is valid they have, as previously discussed, the right to inspect a copy of



that order. If, having inspected the order, they have valid grounds for disputing the authenticity of that order, they can then appeal to the tribunal and apply, via the tribunal, for a complete, unredacted copy over which the tribunal can adjudicate. The complainant has already accepted that such information will be available via the tribunal process.

44. As the legitimate aim can clearly be achieved by "something less" it follows that disclosure is not a proportionate means of achieving the legitimate aim. Disclosure is therefore not necessary

45. The complainant has argued that the original signatories have no reasonable expectation that their signatures would be withheld. That may or may not be true – but it is also irrelevant here. As the Upper Tribunal in the Kol case said:

"The starting point for data protection law is this: a person's data is protected from disclosure except in accordance with the legislation. There is no precondition that it is protected if, and only if, disclosure would have some particular effect on the data subject...To reduce it to its simplest: personal data is protected just because it is personal data. That is what the first preamble to GDPR says. Just to be clear, I am not saying that the effect of disclosure on the data subject is irrelevant. It is relevant, but only if it is necessary to resolve a conflict between the interests of the person who requested the information and the person to whom it relates."

46. As disclosure is not necessary, there is no lawful basis on which the personal data could be disclosed and disclosure would be unlawful. Unlawful processing of personal data violates the first data protection principle and, as such, the public authority was entitled to rely on regulation 13 of the EIR to withhold it.

47. For the avoidance of doubt, the Commissioner would have accepted that section 40(2) of FOIA applied to this information, for the exact same reasons, had the information not been environmental.

## **Procedural matters**

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48. The public authority breached regulation 14 of the EIR as it failed to deal with this request under the EIR within 20 working days.



## Right of appeal

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49. 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](mailto:grc@justice.gov.uk)

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

50. 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.
51. 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**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**