

**FREEDOM OF INFORMATION ACT 2000 (SECTION 50)  
ENVIRONMENTAL INFORMATION REGULATIONS 2004**

**DECISION NOTICE**

**Dated 2<sup>nd</sup> March 2006**

**Name of Public Authority:** City of Plymouth Council  
**Address of Public Authority:** Civic Centre  
Plymouth  
PL1 2EW

**Nature of Complaint**

The Information Commissioner (the "Commissioner") has received a complaint which states that on 23<sup>rd</sup> January 2005 the following information was requested from City of Plymouth Council;

"copies of the stage 2 safety audit reports relating to the works completed last year at Derry's Cross and St. Andrew's Cross roundabouts as part of the reduction of the highway capacity of Royal Parade and the introduction of the surface level pedestrian crossing"

It is alleged that:

The City of Plymouth Council failed to communicate the information requested in breach of regulation 5(1) of the Environmental Information Regulations 2004.

**The Commissioner's Decision**

The Council planned to introduce new pedestrian crossing facilities and the complainant requested a report on the safety of these proposals. The implementation of the scheme would change the state of the land and the report itself is information about how human health and safety would be affected by those changes to the state of land. The Commissioner therefore has taken the view that the report is environmental information as defined in regulation 2(1) of the Environmental Information Regulations 2004 ("the Regulations").

Under section 50(1) of the Freedom of Information Act, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Commissioner is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part 2 and 3 of the Regulations and to issue a Decision Notice to both the complainant and the public authority.

The complainant made his request on the 23<sup>rd</sup> January 2005. The Council originally dealt with the request under the Freedom of Information Act 2000

(the Act) and refused the request on the 17<sup>th</sup> February 2005, relying on the exemption relating to information intended for future publication, provided by section 22 of the Act, to withhold the information.

The Council's local complaints procedure was concluded on the 18<sup>th</sup> March 2005 and upheld the decision to rely on section 22. This internal review also considered whether the subject of the request was environmental information. Although it is not clear whether the Council was completely satisfied that it was environmental information, the review found that if it was, it could be withheld under regulation 12(4)(d). Regulation 12(4)(d) provides that a public authority may refuse a request to the extent that –

“it relates to material which is still in the course of completion, to unfinished documents or to incomplete data.”

The stage 2 safety audit report was produced in May 2004 and is one in a series of three safety audits that are conducted during the implementation of highway scheme of this nature. The Council viewed these three stages as a continuous process and was not prepared disclose the stage 2 safety audit report until the stage 3 safety audit had been completed. However once the stage 3 audit had been completed it was happy to release all three safety audit reports.

In considering the public interest in maintaining either the exemption under the Act or, the exception under the Regulations, the Council explained that to release the stage 2 audit before the stage 3 audit had been completed, could compromise the final safety audit and, during the course of the investigation, went on to explain that ultimately this could prejudice pedestrian safety.

Once the stage 3 safety audit was completed the complainant was provided with copies of all three safety audits on the 10<sup>th</sup> June 2005.

The Commissioner's decision, which is explained more fully in the attached Statement of Reasons, is that the exception provided by regulation 12(4)(d) did not apply. Therefore the City of Plymouth Council should have provided the complainant with the information he had requested within 20 working days of the receipt of his request in accordance with regulation 5(2). Since the Council did not release the information until the 10<sup>th</sup> June 2005 the Commissioner's decision is that it has failed to comply with regulation 5(2) and therefore has not dealt with the complainant's request in accordance with Part 2 of the Regulations.

### **Action Required**

In view of the matters referred to above the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he does not require any remedial steps to be taken by City of Plymouth Council since the information has already been provided to the complainant.

Reference: FER0069925

## Right of appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: <a href="mailto:informationtribunal@dca.gsi.gov.uk">informationtribunal@dca.gsi.gov.uk</a>
Leicester	
LE1 6ZX	

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

Dated the 2<sup>nd</sup> day of March 2006

Signed: .....

Graham Smith  
Deputy Information Commissioner

Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

## Statement of Reasons

### **Freedom of Information Act 2000, section 22 Information intended for future publication.**

Since the subject of the request is environmental information it should have been dealt with in accordance with the provisions of the Environmental Information Regulations 2004. Therefore the exemptions available under the Freedom of Information Act are not applicable.

### **Material still in the course of completion, unfinished documents or incomplete data.**

Although each safety audit is only one in a series of such audits carried out during the implementation of the highway scheme, each one is conducted at a particular stage of the implementation process. Each report considers the safety issues apparent at that particular stage of the scheme's implementation and makes recommendations regarding any modifications that are required. The result of each safety audit is considered and acted upon in order for the highway scheme to progress to the next stage. In light of this the Commissioner's decision is that each report constitutes a separate document which is distinct from others in the series. It follows that when the stage 2 safety audit report was produced in May 2004 it was a finished and completed document.

In light of this the Commissioner is not satisfied that the exception provided by 12(4)(d) is engaged. It is not therefore necessary to consider the public interest in maintaining the exception.

### **Pedestrian safety**

The Council originally dealt with the request under the Act and relied on the exemption provided by section 22, relating to information intended for future publication, to refuse the request. When reviewing this decision under its local complaints procedure, the council considered the public interest in maintaining that exemption. In doing so the Council argued that releasing the stage 2 safety audit would prejudice the independent assessment of the later stage 3 safety audit. During the course of the investigation it went on to explain that, ultimately, this could compromise pedestrian safety. Since the council raised concerns about public safety, the Commissioner decided it was appropriate to consider whether the information could be withheld under the exception provided by regulation 12(5)(a). 12(5)(a) provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely –

“affect international relations, defence, national security or public safety.”

The Council has argued that if the stage 2 safety audit was placed in the public domain before the completion of the stage 3 safety audit, the public debate that may be generated could influence the outcome of the stage 3

**Reference:** FER0069925

safety audit. In this particular case it is not clear how the pressure of public debate could sway the professional objectivity of the officers carrying out the later safety audit. Indeed it is conceivable that increased awareness of issues around the highway scheme may lead to useful ideas or opinions being contributed by the public and promote the safety objectives of the scheme.

In light of this the Commissioner decided that the exception provided by regulation 12(5)(a) does not apply and therefore there is no requirement to consider the public interest in maintaining the exception.

Since the information cannot be withheld under either of the exceptions considered, the Commissioner's decision is that the Council should have released the information requested as soon as possible and no later than 20 working days after the date of receipt of the request.