

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 3 July 2017

Public Authority: Highways England
Address: Bridge House,
1 Walnut Tree Close,
Guildford GU1 4LZ

Decision (including any steps ordered)

1. The complainant has requested information relating to a proposed route of the Oxford to Cambridge Expressway.
2. The Commissioner's decision is that Highways England (HE) has correctly applied regulation 12(4)(d) (material in the course of completion) of the EIR to the withheld information.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 3 December 2016, the complainant wrote to HE and requested information in the following terms:

"I wondered whether you have developed more detail on the proposed Southern Route (Option A) and the Oxford Sub-Option 54, both shown on Page 39 of your report.

It would be really interesting to see more detailed proposed route maps if they exist, particularly as they relate to the areas around Wheatley and Thame".

5. HE responded on 16 December 2016 and refused to provide the requested information citing regulation 12(4)(d) of the EIR (material in the course of completion) as its basis for doing so.
6. Following an internal review HE wrote to the complainant on 20 December 2016. It maintained its original position.

Scope of the case

7. The complainant contacted the Commissioner on 3 January 2017 to complain about the way his request for information had been handled.
8. The complainant explained that the map in question was produced for the purposes of the Oxford to Cambridge Expressway Strategic Study Stage 3 Report which was published in December and is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/571353/oxford-to-cambridge-expressway-strategic-study-stage-3-report.pdf
9. This specific request relates to disclosure of one of the route maps that HE has confirmed it has produced for the purposes of the Study, and of which an overview appears on page 39 of the published Study.
10. The complainant is interested in seeing the map of the proposed Southern Route (Option A) and the Oxford Sub-Option 54, both of which are shown in outline on page 39. Alternatively, the complainant indicated to HE that he would be satisfied to receive a subset of these, limited to the areas between the villages of Thame and Wheatley, both in Oxfordshire.
11. The Commissioner considers the scope of this case to be to determine if HE has correctly applied regulation 12(4)(d) to the withheld information.

Reasons for decision

12. **Regulation 12(4)(d) - Material still in the course of completion**
13. Regulation 12(4)(d) states that a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.
14. The exception sets out three distinct categories and the information must fall within one of these for the exception to be engaged. The first category is that the information relates to material which is in the course of completion. The 'material' in question may be a final policy document that is to be produced later. Therefore although the requested information may be contained in a document which is itself complete, if that document is intended to inform a policy process that is still ongoing, the information may attract the exception.
15. The interpretation of 'unfinished documents' is more straightforward. A document will be unfinished if the public authority is still working on it at the time the request is received. Furthermore, a draft version of a

document will remain an unfinished document even once a final, finished version of the document has been produced.

16. Incomplete data is data that a public authority is still collecting at the time of the request.
17. The complainant has argued that the now completed Study Stage 3 Report makes it very clear that it will be followed by further reports. He considered that it would be rather unlikely therefore that anyone reading Study Stage 3 Report could be confused into believing that there will be no further reports that could introduce variations.
18. HE explained to the Commissioner that at the start of any major road scheme, it carries out a study to consider if there is a case for change, the potential viability of potential proposals and calculate the initial value for money of these by conducting an initial appraisal of what a scheme could look like. It is currently at this stage.
19. HE has been asked to carry out the Oxford to Cambridge Expressway Strategic Study on behalf of the Department for Transport. The requirement for this study was set out in the first Road Investment Strategy (RIS), published in December 2014, which announced a programme of new strategic studies which explore options to address some of the large and complex challenges facing the strategic road network. The results of these high-level studies will inform the development of the next RIS, which will commence in April 2020.
20. The aim of the study is to consider whether there is a case for improving east-west connectivity between Oxford, Milton Keynes and Cambridge and to then consider the options for improving the road network which can support growth. For the better options, this will include the preparation of strategic outline business cases which can be considered in developing future Road Investment Strategies.
21. The work reported in the stage 3 report published on 28 November, <https://www.gov.uk/government/publications/oxford-to-cambridge-expressway-strategic-study-stage-3-report> outlines the high level case for a strategic link and will inform further work to develop options for intervention.
22. Based on work so far, HE has identified three options with various sub-options for further development. These options are still at a very early stage of development and further work will be required to determine the best route possible in terms of wider economic benefits to the surrounding area.
23. HE further explained that if Government consider there may be merit in further analysis, it carries out work to investigate and assess route options. It then carries out public consultation, including information

events in the local areas affected and produce a consultation document that is sent to interested organisations and people living near, or on, any of the options included in the consultation.

24. At that stage, HE still cannot say with any accuracy which property might be required. Following the consultation, if it decides to go ahead with a particular option, HE will announce a preferred route for the roads and reasons for the choice. It will then protect the route from conflicting development by registering it with the local planning authority. This provides clarity over which properties will be affected and triggers the statutory blight regime under the Town and Country Planning Act 1990.
25. Given the above explanation the Commissioner is satisfied that the information requested is material still in the course of completion. The policy processes to which the information relates were still ongoing, and therefore it related to material still in the course of completion. Although the requested information may be contained in a document which is itself complete, if that document is intended to inform a policy process that is still ongoing, the information may attract the exception.

Public interest test

26. However regulation 12(4)(d) is subject to the public interest test as set out in regulation 12(1)(b). This means that even though the exception is engaged, the information can only be withheld if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure. In simple terms this involves considering whether disclosing the information would be harmful in some way and, if so, balancing that harm against the value to the public in making the information available.

HE's arguments in favour of maintaining the exception

- HE should be afforded the safe space to conclude their work to determine which routed option(s) will be taken forward to public consultation.
- Release of the information now could mislead the public into believing their land or property will be adversely affected causing unwarranted alarm, requiring disproportionate effort to correct that view.
- HE will take route option proposals to public consultation where detailed plans of those routes will be available.
- At that time, it will be clearer what property and land is likely to be affected and HE will take steps to properly inform land and property owners.

- The route options have been generated solely to produce an indication of likely estimated costs, benefits and environmental effects of an alignment between the A34 and the M1, the output of which will be used to determine whether there is a case to further investigate improved east-west connectivity. They have no other status.

Arguments in favour of disclosing the withheld information

- There is an important public interest in the work of HE being transparent and open to scrutiny to increase diligence and to protect the public purse.
- There is a strong public interest in releasing information which shows the criteria used when assessing options to illustrate that the processes used were fair and appropriate.
- There is an interest by the public in knowing how their property and land may be affected by future proposals.

Conclusion

27. The Commissioner has considered the arguments presented and is satisfied that the public interest lies with maintaining the exception. This is because:
- the information was being used to inform HE on what options were viable, which will in turn inform the options presented for consultation, and was to establish some broad principles on different aspects of the options in order to guide future stages of the project's development;
 - it is important that HE has the ability to objectively and robustly assess options and formulate strategy away from public scrutiny at what was an early and formative stage;
 - release of the information could mislead the public into believing land or property will be adversely affected;
 - this could result in a disproportionate volume of enquiries to HE requiring a response and would lead to the diversion of resources that will, in all probability, impact the delivery of the project
 - HE will take route option proposals to public consultation.
28. HE are entitled to rely on regulation 12(4)(d) to refuse the request. The Commissioner does not require HE to take any further action.

Right of appeal

29. 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@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.

31. 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

**Pamela Clements
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