

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

**Date:** 1 December 2022

**Public Authority:** London Borough of Haringey  
**Address:** 7<sup>th</sup> Floor, River Park House  
225 High Road  
Wood Green  
London  
N22 8HQ

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to a planning application. The London Borough of Haringey (the Council) disclosed some information in the form of email exchanges, however stated that further information was not held. The Council also withheld some of the requested information under section 22 of FOIA. On internal review, the Council amended their position and withheld the remaining information under regulation 12(4)(d) of the EIR.
2. The Commissioner's decision is that the Council has correctly applied regulation 12(4)(d) to the remaining information however the public interest in maintaining the exception does not outweigh the public interest in disclosure. The Commissioner also finds that the Council has breached regulation 5(2) by failing to produce a document identified as missing from the original disclosure.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
  - Disclose the information withheld on the basis of regulation 12(4)(d) to the complainant.

- Provide the missing document<sup>1</sup>, or issue a fresh refusal to the complainant in respect of the document that is compliant with the EIR.
4. The public authority must take these steps within 35 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 FOIA and may be dealt with as a contempt of court.

## **Request and response**

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5. On 10 August 2021, the complainant wrote to the Council and requested information in the following terms:

"Copies of all information and records held in relation to planning application HGY/2021/0814 including without limitation all internal and external correspondence and records whatsoever."

6. The Council responded on 8 September 2021. It provided some information within scope of the request in the form of a pdf document of email correspondence relating to the planning application. The Council stated that it held copies of draft planning reports, however it considered them exempt under section 22 of FOIA.

7. On the same day the complainant contacted the Council to request an internal review in the following terms:

"Your response does not for instance include [redacted] correspondence with Metropolis / City of London Corporation nor does it include the record of [redacted] sign off/ minutes of meeting of 27 July nor does it include emails sent by residents which did not appear on the Council website. Please provide all of the missing information to me by return / it should already all have been included in this response."

8. The complainant disputed the Council's application of section 22 to withhold the draft planning reports.
9. The complainant also sent a further email to the Council requesting the job titles of specific members of staff and their respective dates in post.

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<sup>1</sup> This is the delegation request document titled 'Del Authority [address redacted]'

10. Following an internal review the Council wrote to the complainant on 6 October 2022. It stated that it was amending its position and withholding the draft planning reports under regulation 12(4)(d) of the EIR. The Council confirmed that no other correspondence was held further than that which had been provided in the original disclosure. The Council provided the complainant with the names and dates in post of specific Council staff members.
11. On 25 November 2021 the complainant contacted the Council to query the absence of a delegation request document titled 'Del Authority [address redacted]' that appears to have been attached to an email provided by the Council in their initial disclosure.
12. The Council responded on 3 December 2021 to advise the complainant to submit a new request for the information.

### **Scope of the case**

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13. The complainant contacted the Commissioner 24 November 2021 to complain about the way their request for information had been handled.
14. The Commissioner contacted the complainant to establish their grounds of complaint as follows:
  1. The complainant does not believe the Council are entitled to rely on regulation 12(4)(d) to withhold the draft planning reports.
  2. That the information disclosed in the initial response provided by the Council is incomplete as it does not include the delegation request form attached to [redacted] email to [redacted] dated 30 April 2021. In their email to [redacted] dated 4 November 2021, which has been provided in support of their complaint, the complainant has stated this form was "essential as part of Council process". The complainant maintains that the Council are obligated to provide the record of delegation in accordance with point 7.02 of Part Three, Section E of Haringey Council's Scheme of Delegation.
15. The complainant confirmed this as correct.
16. The complainant also raised matters relating to tree preservation orders (TPOs) that, since work on the development began, they believe have been amended. The Commissioner has not taken this element of the complaint forward as part of his investigation as he does not consider this to fall within the scope of the original request.

17. The Commissioner therefore considers the scope of the investigation to be whether the Council has correctly applied regulation 12(4)(d) to withhold the draft planning reports, and to ascertain the Council's reasoning behind refusing to provide the delegation request form.

## **Reasons for decision**

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### **The Council's position**

18. The Commissioner wrote to the Council to establish its position in respect of its application of regulation 12(4)(d) and to request that the Council either provide the complainant with the missing information identified at paragraph 14(2), or provide an explanation for why it was withheld that is compliant with the EIR. The Council acknowledged the Commissioner's investigation on 21 October 2022.
19. Despite writing to the Council a further three times the Council failed to provide a response. Therefore, due to the Council's lack of engagement, the Commissioner has decided to reach a decision based on the available information before him as submitted by the complainant.
20. In its internal review the Council stated that it considered regulation 12(4)(d) to apply at 'the request is for a draft report and a draft of a document is by its nature an unfinished form of that document.'
21. The Council offered the following public interest arguments in favour of disclosing the draft reports:

"There is always a general public interest in disclosing environment information, derived from the purpose of the EIR.

To encourage transparency in the Council's decision making processes

To allow transparency of decisions on how public funds are spent

To inform public debate on the particular environmental issue that the information relates do.

To show how a public authority has met its obligations under other environmental legislation"

22. The Council offered the following public interest arguments against disclosing the draft reports:

"The draft reports are prepared by a Junior Planning Officers [sic] and presented to a Delegated Officer to check that all relevant information

has been considered and all the planning considerations have been address [sic] as laid down by our policies. After corrections the final report is approved & signed by the Head of Service.

We consider that releasing incomplete or unfinished material into the public domain could distract public debate away from the substantive issues that the information relates to.

We consider that in this case it would be difficult for this unfinished information to be placed into a context that would allow us to counteract any confusion.

Instead the debate could focus on secondary issues such as the differences between a draft and a final version etc. creating more enquiries and distracting Council officers from their normal duties as they would be required to provide responses to such enquiries.

It is therefore considered that the public interest in withholding the information outweighs the public interest in disclosing it."

### **The Commissioner's position**

23. Despite not receiving any submissions from the Council indicating which limb of the regulation the Council is relying on, the Commissioner's position is that regulation 12(4)(d) is engaged because the drafts are unfinished documents. The Commissioner's published guidance<sup>2</sup> on regulation 12(4)(d) details his view regarding unfinished documents:

"Furthermore, draft documents will engage the exception because a draft of a document is by its nature an unfinished form of that document. Furthermore, the Information Tribunal has found, in the Eddington case below that a draft version of a document is still an unfinished document, even if the final version of the document has been published."

24. Paragraph 82 of Secretary of State for Transport v the Information Commissioner (2009)<sup>3</sup> states

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<sup>2</sup> [https://ico.org.uk/media/for-organisations/documents/1637/eir\\_material\\_in\\_the\\_course\\_of\\_completion.pdf](https://ico.org.uk/media/for-organisations/documents/1637/eir_material_in_the_course_of_completion.pdf)

<sup>3</sup>

[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i307/Sec%20of%20State%20for%20Transport%20v%20IC%20\(EA-2008-0052\)%20-%20Decision%2005-05-09.pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i307/Sec%20of%20State%20for%20Transport%20v%20IC%20(EA-2008-0052)%20-%20Decision%2005-05-09.pdf)

"However, the opinion of the majority and, ultimately our unanimous conclusion, is that the Draft Report is, by its very name and giving the words their logical meaning, an unfinished document."

25. In this instance, as the complainant is requesting draft versions of a report which has been finalised and published, the Commissioner considers regulation 12(4)(d) to apply.
26. In reaching his decision the Commissioner has considered the balance of the public interest in favour of and against disclosing the information.
27. The Commissioner is aware that the development subject to planning application has been controversial, as per information available on the Council's planning portal. The Commissioner is also aware that the application had been approved and final report produced shortly before the complainant made their request for information, and that 15 months has elapsed since. The Commissioner understands that the development has already commenced works.
28. Having taken the Council's public interest arguments as set out at internal review into account, the Commissioner considers that the arguments against disclosure do not sufficiently outweigh the arguments in favour.
29. The Commissioner has not received any detailed submissions from the Council to explain why it would be difficult to place the draft reports into context in order to minimise confusion. The Commissioner considers that the Council should be able to provide an explanation for differences between the drafts and final report.
30. The Commissioner has not received any detailed submissions from the Council to indicate that the development is currently subject to public debate, and that disclosure may pose a risk in terms of diverting attention towards secondary issues such as differences between versions of the reports. Therefore the Commissioner cannot conclude that disclosure would present a significant impact on public authority resources in terms of increasing the number of queries received about information contained within the draft reports. The Commissioner is aware that the development had received objections and that it is possible that disclosure may result in some further contact from concerned parties, however the Commissioner has not seen any quantifiable evidence from the Council to suggest that this would present an unreasonable burden on its resources.
31. The Commissioner acknowledges the possibility that staff involved in producing the draft and final reports may no longer work at the Council,

which could hinder the Council's ability to provide explanations for any differences between the drafts and final versions. However, the Commissioner has not received any submissions from the Council to indicate that this is the case.

32. The Commissioner is mindful that under regulation 12(2) requests for information handled under the EIR carry a presumption in favour of disclosure, and is not satisfied that the arguments for withholding the information presented by the Council override this presumption. The Commissioner also considers it important that the public is allowed insight into local authority decision making processes. The Commissioner therefore requires the Council to disclose the withheld information to the complainant.
33. With regards to the documents that the complainant identified as missing from the original disclosure, the Commissioner has not seen any evidence to support withholding this information. The Commissioner considers this document to be within scope of the original request as 'all information and records held' in relation to the planning application; the complainant should not have to make a second request for information as per the Council's instruction. The Commissioner therefore considers the Council to be in breach of regulation 5(2) of the EIR, as it has failed to provide the document within the statutory timeframe of 20 working days. The Commissioner requires the Council to either provide the complainant with this information, or issue a refusal notice withholding the information that is compliant with the EIR.

## Right of appeal

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34. 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)

35. 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.
36. 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 .....**

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**