

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: **21 November 2024**

Public Authority: **Wiltshire Council**
Address: **County Hall**
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Decision (including any steps ordered)

1. The complainant has requested specific data relating to the 2023–2024 Bradford on Avon Traffic Study. Wiltshire Council (“the Council”) stated that the information was held but already publicly available for the purposes of regulation 6(1)(b) (Information already publicly available) of the EIR, on the basis that it could be provided for a charge. During the course of the Commissioner’s investigation the Council stated that it was now relying on regulation 12(4)(b) (manifestly unreasonable requests) of the EIR on the grounds that to comply with the request would incur an unreasonable burden on its resources.
2. The Commissioner’s decision is that the Council is entitled to rely on regulation 12(4)(b) of the EIR to refuse to comply with the request. However, the Council has not complied with its duty under regulation 9(1) of the EIR to provide advice and assistance to the complainant.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with advice and assistance to help them to submit a request that does not create an unreasonable burden.

4. The Council must take these steps within 30 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 2 April 2024, the complainant wrote to the Council and requested information in the following terms:

"Can you please provide access to all the inputs, settings, outputs, and other data used for or associated with the 2023-2024 Bradford on Avon Traffic Study carried out by AtkinsRéalis for Wiltshire Council and Bradford on Avon Town Council?

Can this please include but not be limited to the following? The references are to the sections and page numbers of the Study.

VISSIM Microsimulation traffic model (s1.1, p2)

Source data for the town bridge carrying 2,500 – 4,000 pedestrian trips per day (s1.2, p2-3)

Source data for town bridge cyclist trips

Data recorded from automatic traffic sensors (s1.2, footnote 1, p3)

Accurate locations of July 2023 traffic survey counts (s2.1, p12)

Results of classified junction turning counts (s2.1, p12)

Results of automatic traffic counts (s2.1, p12)

Pedestrian count data for the Frome Road signalised pedestrian crossing (s2.1, p12)

Frequency the signalised crossing is called as represented in the traffic model (s2.1, p12)

Permanent automatic traffic counts (Vivacity data) from at least the same time period (s2.1, p12)

Data analysis from which the peak hours were found (s2.1, p13)

Accurate start/endpoints of journey time study routes (s2.2, p13)

TomTom Sat-Nav journey time data (s2.2, p13), and please state whether these journeys started or finished in the peak hours or both, and whether the results in Tables 5.5 and 5.6 (s5.2.3.2, pp44-45) are for the routes in Figure 2.2 (s2.2, p13) or the routes in Figures 5.16 and 5.17 (s5.2.3.2, pp43-44)

Bus service information including town bus services, school bus routes and timetable information (s2.3, p14)

Video surveys taken at 10 key junctions in the town (s2.3, p14)

Observations from the video surveys (s2.3, p14)

Accurate extent of the microsimulation base model network shown in Figure 3.1 (s3.1, p15)

Locations, shapes, dimensions etc. of the roads, links, junctions, roundabouts, crossings etc. and traffic speed settings in the base

- model network (s3.1, p15) before and after refinement (s3.2, p16)
 - Observations from video surveys used to refine the model (s3.2, p16)
 - Validation and calibration inputs, settings, outputs and results including turning movements for the base model (s3.2, pp15-16)
 - Origin-destination matrices used in the 2023 base model (s3.3, p16) and 2041 models
 - Model run inputs including random seeds (s3.3, p16)
 - Results of the 20 iterations and the average result (s3.3, p16)
 - Speed data averaged for the base model in operation (s3.3 and Figures 3.2. and 3.3, pp 16-18)
 - Records of site visits (s4.1, p19)
 - Analysis of the Future of Transport Consultation responses (s4.1, p19)
 - High-level assessment of the longlisted options against the study aims (s4.1, p19)
 - Records of discussions with the project team (s4.1, p19)
 - analysis of the model results for Options A and B (s4.1, p19)
 - Locations, shapes, dimensions etc. of the roads, links, junctions, roundabouts, crossings etc. and traffic speed settings in the Option A, B networks and the Option C networks before and after optimisation (s4.1, p19)
 - Full details of the summarised footway widening opportunities (s5.1.1, pp23-24)
 - Full details of the modelled bus gate (ss4.1, 5.1 and 5.2, pp20-45)
 - Full details of the bus journey time results of the different modelled scenarios (s5.2.3.3, p45)
 - Traffic model outputs from VISSIM used in the emission modelling (s5.3, p46)
 - Vehicle type emission parameters used in the emission modelling (s5.3, p46)
 - Congestion patterns used for estimating location-specific air quality impacts (s5.3, p46)
 - DEFRA guideline vehicle fleet composition change forecast data (s5.3, p46)
 - Model output data for the Do Nothing and Options on slow but steady traffic and congestion including stop-start congestion (s6.2, pp48-49)."
6. The Council responded on 30 April 2024. It stated that the requested information was already publicly available and easily accessible to the complainant under the terms of regulation 6(1)(b), on the basis that it could be provided for a charge.
 7. Following an internal review the Council wrote to the complainant on 4 June 2024. It maintained the application of regulation 6(1)(b).

Scope of the case

8. The complainant contacted the Commissioner on 6 June 2024 to complain about the way their request for information had been handled, and specifically that the Council had failed to comply with regulation 6(1)(b) of the EIR.
9. During the course of the investigation, the Council revised its position. It informed the Commissioner that it considered compliance with the request would be manifestly unreasonable on the grounds of cost under regulation 12(4)(b) of the EIR.
10. The scope of this case and of the following analysis is whether the Council is entitled to rely upon regulation 12(4)(b) of the EIR, and has complied with the requirement to provide advice and assistance under regulation 9 of the EIR.

Reasons for decision

The requested information

11. The requested information comprises data that was used to inform the 2023–2024 Bradford on Avon Traffic Study.

Regulation 12(4)(b) – Manifestly unreasonable requests

12. Regulation 12(4)(b) states that:

“For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that— (b) the request for information is manifestly unreasonable;”

13. The Commissioner has issued public guidance¹ on the application of regulation 12(4)(b). This guidance contains the Commissioner’s definition of the regulation, which is taken to apply in circumstances where either the request is 1) vexatious, or 2) where the cost of compliance with the request would be too great. If engaged, the exception is subject to a public interest test.

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-12-4-b-environmental-information-regulations-manifestly-unreasonable-requests/>

14. In this case, the Council considers that circumstance 2) is applicable.
15. The EIR do not provide a definition of what is manifestly unreasonable in terms of cost. This is in contrast to section 12 of the Freedom of Information Act 2000 ("FOIA"), under which a public authority can refuse to comply with a request if it estimates that the cost of compliance would exceed the "appropriate limit".
16. However, the FOIA "appropriate limit" can be a useful starting point in considering whether a request for environmental information can be refused as being manifestly unreasonable.
17. The FOIA appropriate limit is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations"). These define the appropriate limit in terms of the amount of time which staff would be expected to take in complying with a request.
18. The Fees Regulations state that the relevant activities, set out below, may be calculated/charged for at a flat rate of £25 per hour of staff time. For the Council, the appropriate limit under the Fees Regulations would be £450; that is, 18 hours of staff time.
19. Under FOIA, a public authority is only allowed to include the cost of certain activities in its estimate: determining whether the information is held; locating the information or a document which may contain the information; retrieving the information or a document which may contain the information; and extracting the information.
20. However, since the Fees Regulations do not apply to the EIR, a public authority may take into account other activities and wider considerations in terms of what may render a request for environmental information "manifestly unreasonable". It is also the case, however, that a public authority is expected to accept a greater burden when considering requests for environmental information.
21. Whether considering a costs estimate under either FOIA or the EIR, the Commissioner expects any estimate to be realistic, sensible and supported by cogent evidence. He also expects that, where possible, a sampling exercise will have been carried out.

The Council's position

22. The Council has explained to the Commissioner that it considers that regulation 12(4)(b) applies to the request on the grounds of cost.

23. This is because the request seeks specialised data (specifically "32 specific data points") that is held by AtkinsRéalis on behalf of the Council. The Council has explained that:

"The Bradford on Avon traffic study was conducted by AtkinsRéalis on behalf of the council under a contract. Under the contract the council provided a briefing to AtkinsRéalis in order for them to determine what data to collect to create the required outputs identified in the briefing.

AtkinsRéalis have informed the council that most of the information caught by the request is embedded within the 'model file' which can be viewed by AtkinsRéalis using the modelling software they hold a license for. The only way to present the information in a readable format is in a summarised technical report.

AtkinsRéalis estimate that the technical report would take between 1 and 2 weeks to create and this work would cost approximately £3,200.

The Council does not have a license to access the 'model file' through the software application, nor the ability to create a summarised technical report."

24. The Council has provided the Commissioner with a copy of its correspondence with AtkinsRéalis, in which the cost of creating the report is stated.

The Commissioner's findings

25. The Commissioner has considered the Council's submissions and understands that the request seeks specific data that is held by AtkinsRéalis on behalf of the Council. However, to generate the data sought by the request, in a readable format that can be provided under the EIR, a technical report would need to be created. The Council is not able to request this action be done under its current contract with AtkinsRéalis. Whilst AtkinsRéalis can provide the information to the Council, it would be at a cost of £3200.
26. As explained in the Commissioner's guidance, public authorities may include costs other than staff time when calculating the cost of compliance². This includes circumstances such as where retrieval of the

² <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-12-requests-where-the-cost-of-compliance-exceeds-the-appropriate-limit/#Costs>

information can only be done through the purchase of specialist software.

27. In the circumstances of this case, the Commissioner is satisfied that the Council does not have access to the information under its current contract and would need to pay for a technical report to be created by AtkinsRéalis.
28. The Commissioner recognises that compliance with the request would incur significant cost, far in excess of the appropriate limit set for FOIA. The Commissioner is therefore satisfied that compliance with the request would be manifestly unreasonable, and that the Council is entitled to rely upon regulation 12(4)(b) to refuse it.
29. When considering whether the public interest favours maintaining the exception or actioning the request, the Commissioner has taken into account that there is an inherent public interest in openness and transparency by the Council, particularly in regards the basis on which it may make decisions about traffic management.
30. However, the Commissioner recognises that the purpose of the exception is to protect finite public resources from being unnecessarily consumed. In the circumstances of this case, compliance with the request in full would consume significant public resources. The Council has explained to the Commissioner that the summary report of the data, and the key findings of the traffic study has already been published. The Commissioner considers that the public interest in openness and transparency has been met by these steps.
31. Having considered the public interest arguments, the Commissioner finds the public interest in protecting public resources to be the stronger argument.
32. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions. As stated in the Upper Tribunal decision *Vesco v Information Commissioner* (SGIA/44/2019): "If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure..." and "the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations" (paragraph 19).
33. As covered above, in this case the Commissioner's view is that the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation

12(2), is that the exception provided by regulation 12(4)(b) was applied correctly.

Procedural matters

34. Regulation 9(1) requires a public authority to consider what advice and assistance it can reasonably provide to an applicant in cases where it relies on regulation 12(4)(b) of the EIR on the basis of cost. Even if this is simply to confirm to the complainant in a given case that no reasonable or practicable advice and assistance can be provided.
35. As stated in this notice, the Council did not apply regulation 12(4)(b) to the request until after the Commissioner commenced his investigation. As such, to date, the Council has not provided any advice or assistance to the complainant on whether it would be possible to refine or narrow the request in order to reduce the burden. For example, it may be possible to reduce the burden by providing only specific data, or other related information held by the Council. If it is not possible to refine the request in any meaningful way, the Council should explain why this is the case to the complainant.

Right of appeal

36. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

37. 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.
38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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