

Freedom of Information Act 2000 (FOIA)

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 2 December 2022

Public Authority: Transport for Greater Manchester
Address: 2 Piccadilly Place
Manchester
M1 3BG

Decision (including any steps ordered)

1. The complainant requested copies of proposal documents and correspondence relating to a proposed Active Neighbourhood Scheme. Transport for Greater Manchester (TfGM) disclosed reports and correspondence with redactions for personal data under regulation 13(1) and withheld draft plans, including drawings and maps under regulation 12(4)(d) of the EIR.
2. The Commissioner's decision is that TfGM has correctly applied the regulation 13 exception to withhold the personal data from the information disclosed. TfGM has also correctly engaged regulation 12(4)(d) to the draft plans and the balance of the public interest favours maintaining the exception.
3. The Commissioner does not require further steps

Request and response

4. On 24 August 2021 the complainant made a request to TfGM in the following terms:

"In recent weeks Manchester City Council have been in dialogue and discussion with Transport for Greater Manchester over the scope and details of a permanent Active Neighbourhood scheme, covering Levenshulme and the northern area of Burnage.

Please furnish me with copies of proposals for a permanent scheme sent by Manchester City Council to Transport for Greater Manchester, including drawings, maps, or text descriptions of proposals, and any replies or comments on such proposals in reply.

I would also be grateful for minutes of any meetings or correspondence between Manchester City Council officers and Transport for Greater Manchester representatives in the past eight weeks regarding the Levenshulme and Burange [sic] Active Neighbourhood project."

5. TfGM stated draft plans were being withheld under regulation 12(4)(d). With regard to minutes of meetings TfGM stated no minutes were recorded and the Reports had been provided in response to an earlier request (FOI 2021/0119). TfGM also redacted the names of council employees and Councillors from correspondence it provided.
6. Following an internal review TfGM acknowledged that names of Councillors should not have been redacted from the correspondence it provided and disclosed this. In terms of the draft plans; TfGM explained these had since been finalised as part of the public consultation and had been made available as part of the [consultation process](#).

Reasons for decision

Regulation 12(4)(d) – material in the course of completion

7. Regulation 12(4)(d) of the EIR provides 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.
8. TfGM explained the scheme in question was presented to TfGM's Design Review Panel for a pre-consultation review on 20 October 2021. The information being withheld was being prepared as part of a consultation to be launched by Manchester City Council, a consultation that has since been launched.
9. TfGM stated that the consultation needed to take place in a neutral environment without prejudice by prior release of materials, enabling a fair and proper analysis of public opinion. TfGM stated the scheme information available to TfGM is draft in nature and being developed to

enable public consultation on a proposed scheme. It argued the information was draft in nature as it was unlikely to be same as or consistent with the information eventually published.

10. The Commissioner is satisfied the information is incomplete data and relates to material in the course of completion. He accepts that at the time of the request, the information in question constituted an unfinished document, and this status remains until the publication of a final version of the document. The Commissioner finds the exception is engaged and TfGM was entitled to rely on regulation 12(4)(d) of the EIR. He has therefore gone on to consider the public interest test.
11. In considering the public interest in this case, the Commissioner is mindful that regulation 12(2) of the EIR instructs a public authority to apply a presumption in favour of disclosure.
12. TfGM recognised the public interest in disclosing information where it would promote accountability and transparency in relation to how it operates. It also recognised disclosure would promote openness and honesty.
13. Balanced against this TfGM argued that the information was scheduled to be published as part of the consultation process in line with its established procedures and disclosure at the time of the request would have resulted in unfairness, for example by providing information to an individual in advance of wider public dissemination. TfGM also argued disclosure would inhibit the effective delivery of services and would undermine TfGM's ability to fulfil its role. In addition TfGM considered disclosure of the information would harm the effectiveness and neutrality of the consultation.
14. The Commissioner is aware that there is always a general public interest in disclosing environmental information, derived from the purpose of the EIR. He recognises that, as the public interest can cover a wide range of values and principles relating to what is the public good, or what is in the best interests of society, there are always arguments to be made on both sides
15. The Commissioner accepts that having the requested information in the public domain at the time would have provided some insight into TfGM's plans ahead of the formal consultation.
16. Whilst the Commissioner recognises this argument, he considers that there are strong public interest arguments in favour of non-disclosure of the information requested. There is a strong argument for considering that disclosure at the stage TfGM was at when the request was made would have had an impact on TfGM's ability to continue to prepare

materials for the public consultation as there would be additional scrutiny and diversion of staff resources to answer queries. There is a need to preserve the safe space needed to finalise documents and prepare information for public consultation to allow of a fair and proper analysis of public opinion.

17. The Commissioner also notes that projects such as this which concerns the development of a permanent Active Neighbourhood scheme, covering Levenshulme and the northern area of Burnage, would generate a reasonable amount of information which is made publicly available. He understands that it would create confusion if TfGM disclosed draft documents at each stage of the project.
18. The Commissioner is also mindful that there is an inbuilt public interest in enabling public participation in decision-making in environmental matters. However, public interest considerations should always be relevant to the exception being relied upon, to the specific nature of withheld information and to the context at the time of the request. In this instance, the Commissioner considers TfGM has demonstrated that the information relates to and informs a decision-making process which is incomplete and its disclosure would impede the decision-making process that it supports.
19. The Commissioner's view is the balance of the public interests favours the maintenance of the exception. 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)(d) of the EIR was applied correctly.

Regulation 13 – personal data

20. Regulation 13(1) provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.
21. In this case the relevant condition is contained in regulation 13(2A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
22. The information in this case is the names of junior employees and third-party employees (ie Council employees), including signatures, contact details and job titles. This information was redacted from the correspondence disclosed to the complainant between Manchester City Council officers and TfGM representatives regarding the project.

23. The Commissioner is satisfied that the information relates to various data subjects' names, contact details, and signatures which are personal data.
24. Disclosure under either FOIA or the EIR is effectively an unlimited disclosure to the world at large, without conditions.
25. The Commissioner acknowledges that the complainant considers that they have a legitimate interest in disclosure of the withheld personal information.
26. However, the Commissioner must balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms.
27. The Commissioner considers disclosing the names and information of the more senior people involved in the correspondence ie Councillors was necessary for the legitimate interest of the complainant. A fact recognised by TfGM at internal review when this information was disclosed. This allowed the public to see the senior people involved in discussions in a professional capacity.
28. The Commissioner does not consider that it is necessary to disclose the names, job roles, contact details and signatures of junior employees, either at TfGM or externally and agrees that they would have no reasonable expectation that this information would be disclosed. Nor has he seen any evidence of any wider public interest in disclosure of the withheld information.
29. As the Commissioner has decided in respect of junior employees that disclosure is not necessary to meet the legitimate interest in disclosure, he has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a).
30. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subject's fundamental rights and freedoms. The Commissioner therefore considers that disclosing the information in question would contravene a data protection principle as it would not be lawful. Therefore, he has decided that the data is exempt under regulation 13(1) by virtue of 13(2A)(a).
31. It follows that the TfGM is entitled to withhold this information

Right of appeal

32. 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

33. 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.
34. 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

Jill Hulley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF