

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 8 November 2022

Public Authority: London Borough of Wandsworth

Address: The Town Hall
Wandsworth High Street
London
SW18 2PU

Decision (including any steps ordered)

1. The complainant submitted an information request to the London Borough of Wandsworth ("the Council") relating to environmental data generated by the Safety Shield Eco Census System.
2. The Commissioner's decision is that the Council was entitled to withhold the requested information under regulation 12(4)(d) of the EIR and that, on the balance of probabilities, the Council does not hold the full information as requested by the complainant therefore regulation 12(4)(a) also applies.
3. The Commissioner does not require the Council to take any further steps.

Request and response

4. On 29 March 2022, the complainant wrote to the Council and requested information in the following terms:

“I attach a formal request, under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, for the publication, promptly and in full, of the environmental data generated by the Safety Shield Eco Census Systems which the Council installed on and around Putney High Street last autumn”.
5. On 21 April 2022, the Council responded to the request. It refused to provide the information and relied on regulation 12(4)(d)(material in the course of completion).
6. The complainant requested an internal review on 22 April 2022. On 10 June 2022 the Council maintained its original response and applied regulation 12(4)(a)(information not held) to some of the requested information.

Scope of the case

7. The complainant contacted the Commissioner on 16 June 2022 to complain about the way their request for information has been handled.
8. In the complainant’s internal review and in correspondence to the Commissioner, they state that their request has not been interpreted correctly, for the request specified that they were seeking data as “originally received” from the Safety Shield Eco Census Systems up to the date of their request.
9. In light of the above, the scope of the Commissioner’s investigation is to determine whether the Council interpreted the complainant’s request correctly and whether both regulations 12(4)(d) and 12(4)(a) have been correctly applied to the request.

Reasons for decision

10. The following analysis sets out why the Commissioner has concluded that the Council was entitled to rely on regulation 12(4)(d) and 12(4)(a) of the EIR.

Regulation 12(4)(d)-information in the course of completion

11. Regulation 12(4)(d) of the EIR allows a public authority to withhold information which is in the course of completion, unfinished documents, or incomplete data.
12. The Commissioner is satisfied that the withheld information can be categorised as incomplete data for the business partner, that holds the data on behalf of the Council, informed the Council that there had been technical issues leading to an "intermittent collection of data" and that the Council was yet to receive a complete set of data from the supplier.
13. The Commissioner's guidance on regulation 12(4)(d)¹ examines the concept of incomplete data in paragraphs 11 and 12.
14. The Commissioner notes the complainant's comments that the exception does not apply to their data request as they understood their request to be for data "as originally received" from the Safety Shield Eco Census Systems, up to the date of their request. However, the Commissioner, like the Council, has interpreted the request to be for the full data generated by the Safety Shield Eco Census Systems.
15. As such, the Commissioner has decided the Council was entitled to apply regulation 12(4)(d) of the EIR to the request, as the data, at the time of the request, was incomplete.
16. When considering whether the public interest test favours maintaining the exception or disclosing the withheld information, the Commissioner is mindful that regulation 12(2) of the EIR instructs authorities to apply a presumption in favour of disclosure.
17. The Council has acknowledged that there is a strong public interest in the data being published as it is emissions data, however it also acknowledges that there is a considerable public interest in the data having undergone a robust quality check, before being published on a rolling basis, to ensure public confidence in the data's reliability and integrity by being complete.

¹ https://ico.org.uk/media/for-organisations/documents/1637/eir_material_in_the_course_of_completion.pdf

18. The Commissioner considers the public interest in the Council being open and transparent would be served if the information was to be disclosed however he finds the public interest in the data being complete and reliable, so as not to undermine the public confidence in it, to be the stronger argument. As such, the Commissioner is satisfied that, in this case, the public interest test favours maintaining the exemption.

Regulation 12(4)(a)-information not held

19. Regulation 12(4)(a) of the EIR says that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
20. In their request, the complainant asks for " the publication, promptly and in full, of the environmental data...". For the reasons stated above, the Council did not hold the full set of data, at the time of the request. As such the Commissioner is satisfied that that regulation of 12(4)(a) of the EIR is engaged.
21. When considering whether the public interest test the Commissioner can only find that the public interest in maintaining the exception at 12(4)(a) of the EIR outweighs any public interest in disclosure, simply because, at the time of the request, there was not the full information to disclose.

Right of appeal

22. 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

23. 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.
24. 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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF