

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 10 March 2023

Public Authority: London Borough of Tower Hamlets
Address: Town Hall
Mulberry Place
5 Clove Crescent
London
E14 2BG

Decision (including any steps ordered)

1. The complainant requested information about the liveable streets programme. London Borough of Tower Hamlets (the Council) provided some information and stated other information was exempt under regulation 12(4)(e) (internal communications) of the EIR. The Commissioner's decision is that the Council has correctly applied regulation 12(4)(e) to the remaining withheld information. The Commissioner does not require the Council to take any steps.

Request and response

2. On 10 October 2022, the complainant wrote to the Council and requested information in the following terms:

"I would like to see any report that was prepared for the mayor by officers of the council that gave advice on the implementation of the manifesto pledge to remove liveable streets scheme.

Specifically I am looking to see reports and other advice that was prepared after the election in May and prior to the mayors decision to consult on the complete reopening of roads that was announced in July. This would include reports that presented options to the mayor about ways that the Liveable Streets schemes could be amended/alterd as

well as any reports that gave specific advice for ways that the manifesto pledge could be implemented.

I am interested in seeing both draft and/or final advice that was prepared.

I am making this application under the EIR”.

3. The Council responded on 18 November 2022 and provided some information and stated that the remaining information held was exempt under regulation 12(4)(e) of the EIR. The Council upheld this position in its internal review response dated 19 December 2022.

Reasons for decision

4. The following analysis sets out why the Commissioner has concluded that the Council was entitled to rely on regulation 12(4)(e) of the EIR in this particular case.
5. Regulation 12(4)(e) provides an exception for information which constitutes an 'internal communication'. In order for the exception to be engaged it needs to be shown that the information in question constitutes a communication within one public authority, specifically, the authority to which the request is made.
6. Regulation 12(4)(e) is a class-based exception. There is no need to consider the sensitivity of the information to engage the exception. However, the exception is subject to the public interest test.
7. The withheld information in this case comprises a report which was prepared for the Mayor regarding the future of the liveable streets programme and whether any changes are required to the schemes. The Commissioner is satisfied that all of the withheld information falls within the definition of internal communications, therefore the exception is engaged. The Commissioner has gone on to consider the public interest test.
8. With regards to the public interest test, the Council acknowledges that disclosure would provide individuals with a better understanding of decisions around the liveable streets schemes, and in some cases assist individuals who wish to challenge those decisions.
9. The Council outlined its representations in favour of maintaining the exception at regulation 12(4)(e). The Council argues that disclosure would inhibit the free and frank provision of advice and exchange of views for the purpose of deliberation. The Council also maintains that it

needs a safe and private thinking space in order to conduct its affairs effectively.

10. The Council explained to the Commissioner that the subject matter associated with the request is live in that the withheld information was in circulation at the time of the request. Internal departments were reviewing and commenting on the report prior to it being presented to the Mayor. The Council pointed out that the report also contains information obtained from its legal team, where departments have sought legal advice.
11. The complainant disputes that discussions about the subject matter are ongoing. They pointed out that they requested a report prepared in May/June 2022 in the lead up to a consultation exercise which has now been carried out. The complainant argues that their request is not relevant to any ongoing decisions about the scheme, but rather the design and implementation of a public consultation exercise which has already taken place. As such they do not consider the matter to be live at the time of their request.
12. The Commissioner acknowledges the complainant's assertion that consultation had taken place prior to the request being submitted. However, he accepts that the subject matter was still live at the time of the request and no decisions had been made on the future of the schemes. In addition, the report is not limited to the design and implementation of any public consultation exercise, as suggested by the complainant. The Commissioner also understands that, at the time of this notice, the Council is undertaking further consultation on a number of the schemes in question¹ which supports the Council's assertion that the matter is still live.
13. The Commissioner acknowledges the public interest in transparency regarding decision making around the liveable streets programme. He understands that the schemes have been the subject of significant local interest, both in favour of and against the schemes. However, as the withheld information relates to a live matter the Commissioner accepts that the Council needs to maintain a safe space to freely and frankly discuss any changes or abandonment of the schemes without external interference.

¹ <https://talk.towerhamlets.gov.uk/liveablestreets>

14. The Commissioner is satisfied that disclosure would be likely to have an adverse effect on officers corresponding internally with frankness and candour. This could damage the quality of advice and may lead to poorer decision-making with regard to the liveable streets schemes under consideration. This would not be in the public interest.
15. The Commissioner's conclusion is, therefore, that the public interest in the maintenance of the exception outweighs the public interest in favour of disclosure of the requested information.
16. 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)
17. As covered above, the Commissioner has concluded that the public interest in maintaining the exception at regulation 12(4)(e) outweighs the public interest in disclosure of the information. 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)(e) was applied correctly.

Right of appeal

18. 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

19. 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.
20. 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

Joanne Edwards
Senior Case Officer
Information Commissioner's Office
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