

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 6 July 2023

**Public Authority:** West of England Combined Authority  
**Address:** 3 Rivergate  
Bristol  
BS1 6ER

#### **Decision (including any steps ordered)**

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1. The complainant has requested a copy of an underground/mass transit report. West of England Combined Authority (WECA) refused to disclose the requested information, citing regulation 12(4)(d) (material still in the course of completion) of the EIR.
2. The Commissioner's decision is that WECA was entitled to rely on regulation 12(4)(d) of the EIR to refuse to disclose the withheld information.
3. The Commissioner does not require WECA to take any further steps.

#### **Request and response**

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4. On 24 February 2023, the complainant wrote to WECA and requested information in the following terms:  

"I wish to see a full copy of the Bristol underground/mass transit report prepared by WSP (WSP Global Inc)."
5. WECA responded on 29 March 2023. It stated that the information was exempt from disclosure as it relates to material that is still being completed, unfinished documents or incomplete data, and therefore it cited regulation 12(4)(d) of the EIR.

6. Following an internal review WECA wrote to the complainant on 5 May 2023. It maintained its reliance on regulation 12(4)(d) of the EIR to refuse to comply with the request. It also explained that the WSP report is the Strategic Outline Case, and it will form just one element of any future discussions for the region. It expanded on this in its submissions to the Commissioner, explaining that the Strategic Outline Case will be one part of a report which will pull together all options and elements for the future of mass transit to be considered and discussed together. The Commissioner is therefore satisfied that the Strategic Outline Case is the information in scope of the request.

## **Reasons for decision**

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### **Is the requested information environmental?**

7. Regulation 2(1) of the EIR defines environmental information as being information on:
  - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
  - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
  - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
  - (d) reports on the implementation of environmental legislation;
  - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
  - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred

to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

8. WECA explained that the requested information falls under the measures described at regulation 2(1)(c) which, specifically in this case, will affect or be likely to affect the state of the elements of the environment as described at regulation 2(1)(a). Having had sight of the withheld information, the Commissioner agrees with WECA's assertion, and therefore finds that it was correct to handle this request in accordance with the EIR.

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

9. 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.
10. Regulation 12(4)(d) is a class-based exception, which means that if the information falls within its scope then the exception is engaged. It is not necessary to demonstrate that disclosure would have any particular adverse effect in order to engage the exception. However, regulation 12(4)(d) is subject to the public interest test.
11. The Commissioner's published guidance on regulation 12(4)(d)<sup>1</sup> explains that the exception can be split into three possible limbs –  

“Information which is, or which relates to:

  - material which is still in the course of completion;
  - unfinished documents; or
  - incomplete data.”
12. If the requested information falls within any of these limbs the exception will be engaged, and there can be overlap between limbs.
13. The Commissioner's guidance also explains that regulation 12(4)(d) goes beyond applying to requests for information that itself is in the course of completion, an unfinished document or incomplete data. The exception may also be engaged if the requested information relates to other material which is still in the course of course of completion.

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/regulation-124d-eir/>

14. WECA clarified that the requested information itself is an unfinished document, as well as relating to material which is still in the course of completion.
15. Firstly, in considering the limb of the exception which covers unfinished documents, WECA explained that the Mass Transit Strategic Outline Case, prepared by WSP on behalf of WECA, is still in unfinished draft form and is in the process of being finalised, taking into account comments received through the Combined Authority's Grant Assurance process and independent technical assurance work.
16. Secondly, in considering the limb of the exception which covers information relating to material which is still in the course of completion, WECA explained that the Strategic Outline Case being prepared by WSP forms just one element of future discussions for mass transit in the region. WECA therefore considers it to be reasonable to withhold the requested information until a full report can be put to the Committee outlining all elements in order that all information can be considered together and no incomplete or misleading impression is given. WECA stated that it intends to put the completed report to the Committee in autumn 2023.
17. Having viewed the withheld information, the Commissioner is satisfied that the requested information is both an unfinished document, and information which relates to material in the course of completion, with that material being the final report to be put before the Committee containing all elements for discussion relating to mass transit in the region. The Commissioner therefore finds that regulation 12(4)(d) of the EIR is engaged. He has gone on to consider the public interest test.

### **Public interest test**

18. WECA considers that the issue of mass transit is certainly of interest to the wider public and therefore it understands the need to be open, transparent and accountable, particularly in relation to any environmental impacts the final proposals and decisions may have.
19. However, as the document would form just one element of any future discussions, WECA considers that disclosing the Strategic Outline Case in its current incomplete draft form would provide a misleading picture to the public as to the possible future for mass transit in the region.
20. WECA further explained that if the draft document was disclosed it could blight properties which may in fact not be affected by the finalised proposals, subsequently resulting in unnecessary harm to some residents, as well as causing blight claims against the local authority.

21. WECA concluded that, as the requested information is likely to be placed into the public domain by autumn 2023, it is reasonable to withhold the information until such a time when the full report setting out the options for the future of mass transit can be put before the Committee. It is WECA's opinion that the harm which may be caused by premature disclosure outweighs the benefits of disclosure of the unfinished draft document.

### **The Commissioner's conclusion**

22. 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. Whilst the Commissioner has taken into account the requirements of Regulation 12(2), he considers that the public interest that lies in favour of maintaining the exception clearly outweighs that in the information being disclosed in this instance.
23. The Commissioner has considered all arguments put forward to him. On the evidence presented to him in this case, and whilst informed by the presumption provided for in regulation 12(2), he is not persuaded that the public interest arguments in favour of disclosure are sufficiently compelling so as to outweigh those in favour of maintaining the exception. Whilst the issue of future plans for mass transit in the region is clearly of public interest, the Commissioner is satisfied that disclosure of an unfinished draft document which may be subject to change before completion, and which will eventually be one part of a wider comprehensive report covering all elements for consideration, is not in the public interest.
24. The Commissioner has concluded that the balance of the public interest in this case favours maintaining the exception. Therefore, the Commissioner's decision is that WECA was entitled to rely on regulation 12(4)(d) of the EIR to refuse to disclose the requested information.

## Right of appeal

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25. 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)

26. 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.
27. 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 .....**

**Laura Tomkinson**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**