

**Freedom of Information Act 2000 (FOIA)**  
**Environmental Information Regulations 2004 (EIR)**  
**Decision notice**

**Date:** 22 March 2021

**Public Authority:** London Borough of Hammersmith and Fulham  
**Address:** King Street  
Hammersmith  
London W6 9JU

**Decision (including any steps ordered)**

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1. The complainant has requested copies of engineering reports related to Hammersmith Bridge from the London Borough of Hammersmith and Fulham (the "Council"). The Council initially handled the request under FOIA and refused to provide the information under FOIA sections 24 and 38 (national security and health and safety respectively). At internal review, it revised its position and cited the equivalent EIR exception for national security (regulation 12(5)(a)) but also inferred that it could refuse the request under regulation 12(4)(b) – manifestly unreasonable, on the grounds of cost. It later confirmed its reliance on regulation 12(4)(b) in correspondence with the Commissioner.
2. The Commissioner's decision is that the Council can rely on regulation 12(4)(b) as its basis for refusing to provide the requested information. It breached the requirements of regulation 11 by failing to conduct an internal review within 40 working days.
3. No steps are required.

**Request and response**

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4. On 7 June 2019 the complainant requested information of the following description:

"I am writing to you under the Freedom of Information Act 2000 to request the following information from the London Borough of Hammersmith and Fulham:

What engineering reports have there been relating to Hammersmith Bridge sent to/from the Council since May 2014? I would like to see copies of all the reports.

Please provide the information in paper or electronic copies. If it is not possible to provide the information requested due to the information exceeding the cost of compliance limits identified in Section 12, please provide advice and assistance, under the Section 16 obligations of the Act, as to how I can refine my request."

5. On 2 July 2019, the Council responded. It refused to provide the requested information. It cited the following FOIA exemptions as its basis for doing so:
- section 24 (national security); and
  - section 38 (health and safety).
6. The complainant requested an internal review on 2 August 2019 but did not receive a reply until 6 April 2020. This is considerably outside the timeframe expected by the Commissioner under FOIA and also outside the statutory timeframe of 40 days set out in the EIR. The Council acknowledged this and apologised to the complainant.
7. It also acknowledged to the complainant that it should have dealt with the request under EIR. It said that it was relying on the equivalent exception in EIR, namely regulation 12(5)(a) (international relations, defence, national security or public safety). However, it also seemed to suggest that regulation 12(4)(b) (manifestly unreasonable on the grounds of cost) may apply. It said:
- "In addition despite not having the full details of how much it will cost H&F to release the engineering reports on the closure of Hammersmith Bridge, it will not come as a surprise if the cost exception is engaged i.e. regulation 12(4)(b) because of the staggering number of reports we hold on this matter".
8. It did not acknowledge that if regulation 12(4)(b) applies then the applicability or otherwise of regulation 12(5)(a) falls away. That said, regulation 12(4)(b) is subject to a public interest test.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 27 August 2020 to complain about the way his request for information had been handled.
10. The Commissioner notes that if regulation 12(4)(b) applies, then regulation 12(5)(a) does not fall to be considered. If the Commissioner concludes that regulation 12(4)(b) does not apply, that is, if the request is not manifestly unreasonable on the grounds of cost, the Commissioner will consider whether the Council can rely on regulation 12(5)(a) as its basis for refusing to provide the requested information. She has therefore considered the application of regulation 12(4)(b) first. Where she concludes that the Council cannot rely on it, she will consider the application of regulation 12(5)(a).

## **Reasons for decision**

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### **Background**

11. At the time of the request, Hammersmith Bridge was already closed to motor vehicles (it was closed for this purpose on 10 April 2019). After the request was made, Hammersmith Bridge was closed in August 2020 to all traffic on safety grounds due to microfractures identified in its structure.<sup>1</sup>

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

12. Information is "environmental information" and must be considered for disclosure under the terms of the EIR rather than the FOIA if it meets the definition set out in regulations 2(1)(a) to 2(1)(f) of the EIR.
13. The Commissioner considers that the information in this case can be classed as environmental information, as defined in regulation 2(1)(c) of the EIR. This regulation provides that any information on measures such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements or factors of the environment listed in regulation 2(1)(a) and 2(1)(b) will be environmental information. The elements listed under 2(1)(a) include land and water. Furthermore, regulation 2(1)(f) refers to "built structures inasmuch as they are or may be affected by the state of the elements of the environment...". The Commissioner is satisfied that the information described in the request is environmental information –

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<sup>1</sup> <https://www.lbhf.gov.uk/articles/news/2020/08/133-year-old-hammersmith-bridge-closed-due-urgent-safety-concerns>

reports on a river crossing - and that the EIR applies to the complainant's request. In particular, the Council is examining whether/to what extent the elements of the environment, namely land and water, are affecting the structure, namely the bridge.

**Regulation 12(4)(b) – request is manifestly unreasonable**

14. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable. A request can be refused as manifestly unreasonable if an unreasonable burden would be incurred by the public authority when providing a response.. In this case, the Council is citing regulation 12(4)(b) on the grounds that to comply with it would impose a significant and disproportionate burden on the Council's resources, in terms of officer time and cost.
15. Regulation 12(4)(b) of the EIR is designed to protect public authorities from exposure to a disproportionate burden in terms of the amount of time and resources that a public authority has to expend in responding to a request. In effect, it is similar to section 12 of FOIA, where the cost of complying with a request exceeds the appropriate limit.
16. Under FOIA, the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations") specify the appropriate limit for the amount of work required (£600 for central government departments, £450 for all other public authorities) beyond which a public authority is not obliged to comply with a request.
17. However, the EIR differ from FOIA in that under the EIR there is no specific cost limit set for the amount of work required by a public authority to respond to a request.
18. While the Fees Regulations relate specifically to FOIA, the Commissioner considers that they nevertheless provide a useful point of reference where the reason for citing regulation 12(4)(b) of the EIR is the time and costs that would be incurred in dealing with a request. However, the Fees Regulations are not the determining factor in assessing whether the exception applies. Furthermore, this EIR provision is subject to a balance of public interest test.
19. The Fees Regulations provide that the costs associated with the activities involved in dealing with a request (determining whether the requested information is held; finding the information, or records containing the information; retrieving the information or records; and extracting the requested information from records) should be worked out at a standard rate of £25 per hour per person. For local authorities, the appropriate limit is set at £450, which is the equivalent of 18 hours work.

20. Regulation 12(4)(b) sets a robust test for an authority to pass before it is no longer under a duty to respond. The test set by the EIR is that the request is “manifestly” unreasonable, rather than simply being “unreasonable” per se. The Commissioner considers that the term “manifestly” means that there must be an obvious or clear quality to the identified unreasonableness.
21. The Commissioner’s guidance on regulation 12(4)(b) states that public authorities may be required to accept a greater burden in providing environmental information than other information.<sup>2</sup>
22. Therefore, in assessing whether the cost or burden of dealing with a request is clearly or obviously unreasonable, the Commissioner will consider the following factors:
  - the proportionality of the burden on the public authority’s workload, taking into consideration the size of the public authority and the resources available to it, including the extent to which the public authority would be distracted from delivering other services;
  - the nature of the request and any wider value in the requested information being made publicly available;
  - the importance of any underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue;
  - the context in which the request is made, which may include the burden of responding to other requests on the same subject from the same requester;
  - the presumption in favour of disclosure under regulation 12(2) of the EIR; and
  - the requirement to interpret the exception restrictively.
23. The Council’s arguments around regulation 12(4)(b) were second in its submissions to the Commissioner. Its primary argument was focussed on reliance on regulation 12(5)(a). The Commissioner had explained to the Council in a letter of 21 October 2020 that she must first consider the application of regulation 12(4)(b).
24. The Council provided the Commissioner with a table explaining that it would take 72 hours to complete the four activities described in paragraph 19 above.

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

25. It said: "There are approximately 45 engineering reports with approximately 2000 appendixes/pages. The decision to close the bridge was based on the information generated over a period of 17 months (December 2017 to April 2019). Arguably, in isolation, the cost associated with determining and locating the information is not unreasonable. However, given the number of reports and related appendixes/pages, [the Council] must also consider the other two weightier activities (explained below) when considering the 'reasonableness' of this request." It explained that retrieving the information and extracting that which has been requested would take a considerable amount of further time (24 hours and 52 hours respectively). It said that, using the figure of £25/hour set out in the Fees Regulations, responding to the request would cost £1,925.

26. The Commissioner went back to the Council and asked it to explain more about what it meant when it said it would need to review the information in order to retrieve engineering reports. It explained:

"We have over 40+ documents on Hammersmith Bridge they are so large that we can't share them except for a link - that was how information was shared with the Department for Transport. To provide the document we would need to check what we need to redact and this can only be done by an engineer.

The feasibility study ... for the Bridge is 4,000 pages and [a specific identified report] is 285 pages.

For us to release these document[s] each would have to be reviewed to take all the sensitive information out. Please note these are two documents out of the extensive collection of reports and analysis of the bridge. The other documents will be of similar sizes, the engineers currently working on the bridge will be pulled off the current work to undertake this review."

### **The Commissioner's position**

27. In considering the application of regulation 12(4)(b), the Commissioner has had regard for her own guidance.<sup>3</sup>

28. Although the Council's initial explanation to the Commissioner was unclear, she is satisfied with the Council's further explanation that going through the information in order to respond to this EIR request would

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

impose an unreasonable burden upon it. The information itself is voluminous and the Commissioner accepts the Council's assertion that it includes specialist detail. She also accepts that it would require the involvement of an engineering specialist to consider what information was and was not suitable for redaction. Under EIR, unlike under FOIA, public authorities are entitled to include the time taken to consider the application of exceptions when calculating the cost of compliance with an EIR request. That said, where consideration of FOIA exemptions can be shown to take an significantly burdensome amount of time, this may be a factor which can support reliance on FOIA section 14 – vexatious request.

29. However, the regulation 12(4)(b) is still subject to a balance of public interest test. This means that even if it would be manifestly unreasonable to respond to the request, a public authority can only rely on this exception if the public interest in doing so outweighs the public interest in providing a response.

### **Public interest test**

30. The Council identified the following points in favour of providing a full response:

- “[T]ransparency and openness [on the Council’s part] in relation to the structure and safety of a public and much used key part of the London transport infrastructure and a major local historic landmark.
- Members of the public and those using Hammersmith Bridge and the surrounding areas, such as the River Thames, have a right to more information on the decision to close this historic bridge”.

31. It set out the following points in favour of reliance on regulation 12(4)(b):

- “Releasing this information will lead to a disproportionate burden on the services involved and an unjustified level of disruption in handling other information requests
- Dealing with this request will place a strain on available resources and get in the way of delivering mainstream services and answering other requests
- [The Council] proactively makes information about the Hammersmith Bridge closure, including a summary of the reasons for the closure and details of the planned repair works, available on the council’s website. Therefore, whilst disclosure of this information would contribute to the public’s understanding, this is not the only information that is available to them about this matter:

<https://www.lbhf.gov.uk/transport-and-roads/hammersmith-bridge-all-you-need-know-and-latest-updates>

- [The Council] will continue to publish information about the closure and the planned works to repair the Hammersmith Bridge on our website. Providing information via this method is a more efficient use of limited council resources than reviewing all the materials produced in relation to Hammersmith Bridge in response to a specific request”.
32. The Commissioner recognises that there is an explicit presumption in favour of disclosure in the EIR and that information should be disclosed unless there is a legitimate basis for not doing so.
  33. The Commissioner also recognises that there is a considerable public interest in understanding work undertaken on Hammersmith Bridge: an important crossing point on the River Thames in London. The Commissioner notes that the Council publishes information regularly on its website about the closure including detailed FAQs (Frequently Asked Questions). However, she recognises that the cost of providing a response in this case would be extremely expensive and time consuming. Had the Council been providing much more limited information about the closure to the public, the Commissioner accepts that there would be a more compelling public interest in providing information to the complainant despite the cost to the public purse that would inevitably arise.
  34. The Commissioner is therefore satisfied that the Council is entitled to rely on regulation 12(4)(b) as its basis for not responding to the request.
  35. Given her conclusion with regard to regulation 12(4)(b), the Commissioner has not gone on to consider whether the Council can also rely on regulation 12(5)(a).

### **Regulation 11 – Internal review**

36. Under the requirements of regulation 11, a public authority is obliged to respond for a request for internal review within 40 working days.<sup>4</sup>
37. In failing to carry out an internal review within 40 working days the Council has also breached Regulation 11 of the EIR. The Commissioner notes that the Council apologised for this.

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<sup>4</sup> <https://www.legislation.gov.uk/uksi/2004/3391/regulation/11>



## Other Matters

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38. Regulation 9 of the EIR requires a public authority to provide advice and assistance to requesters. There is a similar requirement under section 16 of the FOIA for requests made under that legislation. The Commissioner has published guidance on the provision of advice and assistance.<sup>5</sup>
39. When questioned about what advice and assistance it had provided to the complainant, the Council said:
40. "We did not suggest to the applicant to review their request given the nature of the information contained in the reports.
41. We made it clear to the applicant that, it is evident that it would not make any difference if the request were to be revised because of the sensitive nature of the information in the report. Hammersmith Bridge is a Grade II listed bridge that was opened in 1827. As published on the H&F website, in 2015, the council began the first series of thorough reviews in the bridge's recent history. The scope was to check all aspects of the bridge's structure. These new, weekly safety checks included using new sensor technology to assess if the stresses being imposed on the bridge were causing structural damage. The safety checks revealed that over decades the bridge's bearings had seized up due to corrosion. This has caused the bridge's natural and necessary flexibility to become compromised. The bridge was closed to motor vehicles in April 2019 after our engineers discovered hairline micro-fractures had started to appear in the iron castings around the pedestals of the bridge.
42. In May 2019, we published information on its refurbishment on our website and we continue to update our website as new information becomes available: -
43. • Update on Hammersmith Bridge I LBHF - 30 October 2020"
44. Although the Commissioner considers the Council to have sufficiently met its obligations under regulation 9, there may have been merit in the Council nevertheless continuing its dialogue with the complainant about what it could provide above and beyond what it is already providing. The Commissioner recognises, though, that it may consider that this would

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<sup>5</sup> <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf> (see paragraph 27 onwards)

not be productive because of the voluminous nature of the information which includes sensitive information.

45. However, the complainant is clearly willing to have that dialogue and, given the significant impact of the closure on local residents and those who would normally use the crossing, the Council should keep under regular review the amount of information it is providing to the public. In the circumstances of this case, the Commissioner considers that dialogue with the complainant is likely to assist in this.

## Right of appeal

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46. 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: 0300 123 4504

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)

47. 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.
48. 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 .....**

**Alexander Ganotis**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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