

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

Decision notice

Date: 15 February 2019

Public Authority: Transport for London
Address: 55 Broadway
London
SW1H 0BD

Complainant: William Cooke
Address: wcooke1@sky.com

Decision (including any steps ordered)

1. The complainant has requested information associated with the Crossrail 2 project: a list of residential property in the 2015 Safeguarding zone and a Safeguarding map. Transport for London (TfL) has released the list of properties, directed the complainant to where particular maps are published and released the part of the Safeguarding map that includes the complainant's property. TfL has withheld the full Safeguarding map (that is, the unconfirmed proposed revisions to the 2015 Safeguarding Directions for the entire length of the Crossrail 2 route) under regulation 12(5)(e) of the EIR (commercial or industrial information).
2. The Commissioner's decision is as follows:
 - TfL is entitled to withhold the specific information the complainant has requested – the full Safeguarding map– under regulation 12(5)(e) of the EIR, and the public interest favours maintaining this exception.
3. The Commissioner does not require TfL to take any remedial steps.

Request and response

4. On 3 April 2018 the complainant wrote to TfL and requested information in the following terms:

"I would like a list of all residential property included in the 2015 safeguarding zone.

Your [Name Redacted], a Crossrail 2 safeguarding manager, gave evidence at a planning hearing regarding [Address Redacted], on the 20th February 2018, whereby he stated that the property was included in an as yet unpublished future safeguarding map. I would like a list of all residential property included in that map and a copy of said map.

This information is not being requested to further any commercial purpose."

5. TfL responded on 26 April 2018 – its reference FOI-0031-1819. It released some relevant information - a list of properties within the Areas of Surface Interest identified in the 2015 Crossrail 2 Safeguarding Direction - and directed the complainant to where a map associated with the Direction is published. With regard to an unpublished future Safeguarding zone map, TfL refused to disclose this information under regulation 12(4)(d) as it said this was material still in the course of completion. TfL said the public interest favoured finalising this information before it was released.
6. The complainant requested an internal review on 27 April 2018. He drew TfL's attention to a letter from a TfL Safeguarding Manager dated 10 March 2017, some of the content of which he said was based on the information that TfL was now withholding. TfL provided an internal review on 21 June 2018 – its reference IRV-011-1819. It addressed the complainant's point concerning the Safeguarding Manager's letter and maintained its position that the requested information is exempt from release under regulation 12(4)(d).
7. During the Commissioner's investigation, TfL reconsidered its position and released to the complainant a part of the future Safeguarding zone map that includes the complainant's property. TfL considered that this was the information the complainant had requested.
8. On 4 December 2018 the complainant advised TfL that he was dissatisfied with this response as his request was for the full revised Safeguarding route, not just the part of the map that includes his property.

9. After further correspondence with both parties, TfL confirmed to the Commissioner that it was prepared to consider the complainant's correspondence of 4 December 2018 as a clarification of his original request and not a new request.
10. On 21 December 2018 TfL provided a fresh response to the request. It withheld the full revised Safeguarding route under regulation 12(5)(e) of the EIR and confirmed that the public interest favoured maintaining this exception. TfL confirmed it was prepared to waive a further internal review and the matter was passed to the Commissioner.

Scope of the case

11. The complainant first contacted the Commissioner on 14 June 2018 as TfL had not provided him with an internal review at that point. Following provision of TfL's response of 21 December 2018, he is dissatisfied with TfL's reliance on regulation 12(5)(e) to withhold the specific information he has requested.
12. The Commissioner's investigation has focussed on TfL's application of regulation 12(5)(e) to the disputed information and the balance of the public interest.

Reasons for decision

Background

13. In its submission to the Commissioner of 11 February 2019 TfL has helpfully provided a background to the request, as follows. Crossrail 2 is a proposed new railway serving London and the wider South East. It would connect National Rail networks linking southwest and northeast London, as well as destinations across Surrey and Hertfordshire via new tunnels and stations between Wimbledon, Tottenham Hale and New Southgate.
14. London is a growing city. Not only is the population growing, but so is the number of journeys taken on London's public transport network. To enable Crossrail 2 to be built TfL would need to permanently acquire areas of land which sit along the route and that would be essential to its ability to deliver the scheme. As transport infrastructure takes a long time to plan, design and build TfL needs to ensure that the land required, both above and below ground, is protected. This is done through a process called Safeguarding.

15. Safeguarding is an early part of the planning process. It allows the Government to issue a Direction to local planning authorities asking that TfL is notified of any proposed development along the identified safeguarded route for Crossrail 2 that might impact upon the plans for the delivery of the project. This is a fundamental mechanism to protect the land needed for the project and is increasingly important in cities such as London, where there is significant development with bigger buildings and deeper foundations. Safeguarding does not necessarily prevent developments taking place; rather it ensures that plans can accommodate proposed infrastructure of strategic importance. This Direction is how TfL came to engage with the complainant in relation to a planning application he made to his local Borough Council.
16. Historically parts of the proposed Crossrail 2 route have been covered by Safeguarding Directions which were issued in 1991 for an earlier London railway scheme known as the Chelsea - Hackney Line. Following changes in forecasted travel demand, TfL carried out a number of planning and design studies, which demonstrated that the Chelsea - Hackney Line proposals combined with existing infrastructure needed revising to deliver the necessary congestion relief and connectivity that London now needs. This, and further work which was carried out over a number of years, has led to the current Crossrail 2 project proposals which are in process.
17. In 2014 the Department for Transport (DfT) undertook a consultation on a new Safeguarding Direction for the central tunnelled section for the Crossrail 2 proposals. This consultation ran from 20 November 2014 to 29 January 2015. In total, 4,038 responses to the Crossrail 2 Safeguarding consultation were received and a new Safeguarding Direction for Crossrail 2 was confirmed by the Secretary of State for Transport in March 2015.
18. In 2015 TfL carried out its most detailed public consultation on the project, which covered the full extent of the route. Details were provided to the public on proposed station entrances and exits for the tunnelled section, location of shafts, construction sites required to build and operate the tunnelled section of the scheme, and service patterns and changes to existing National Rail services. Over 21,000 responses were received, the highest response rate for any Transport for London project at the time. Since 2015 significant work has been undertaken on the project and in response to feedback received during the 2015 consultation, the design of the route and the land needed to deliver that route have changed and as a consequence would affect the complainant's property. These changes however, have yet to be confirmed by the Secretary of State and so at present are 'unconfirmed' proposals.

19. In the 2017 Autumn Budget the Chancellor announced that the DfT and TfL would commission an Independent Affordability Review (IAR) to examine ways of making the Crossrail 2 scheme more affordable. The review was aimed at ensuring the public would get an affordable scheme that is fair to the UK taxpayer. The IAR has reviewed the scheme, however the extent of the IAR's considerations and recommendations are not in the public domain. Their findings have been reported directly to the Secretary of State and the Mayor of London and the outcome of their review will be used to inform future recommendations on a proposed route for Crossrail 2 by the Government and the Mayor.
20. TfL says that the Crossrail 2 project team is currently working on a new Strategic Outline Business Case and preparing for the Secretary of State for Transport an update of the Safeguarding Directions. This is so that Crossrail 2 can consult with the public and advise affected landowners on the latest proposals. The route options for the railway, timelines for delivery and its funding and financing remain subject to ministerial approval. As these decisions have yet to be made, there have been limited public updates on the route since. The nature of the scheme or the extent of the land needed to deliver that route have not been made public as to do so at this crucial preliminary stage of the project would, according to TfL, have a detrimental impact on the delivery of the project going forward.
21. In addition to this background to the Crossrail 2 project, TfL has provided a background to its contact with the complainant. It says its Crossrail 2 team has been in regular direct engagement with the complainant for a considerable number of months, concerning a planning application he made to a local Borough Council. It has provided detailed advice and assistance to all of the complainant's enquiries regarding his property. TfL says that, to date, the focus for the complainant surrounds his insistence that it makes a commitment to compulsorily purchase his property should Crossrail 2 gain ministerial approval. TfL says it is not in a position to provide the complainant with the commitment he seeks and he has been advised of this on several occasions.
22. TfL has confirmed that it has released a copy of the Safeguarding map that shows proposed revisions to the directions that would result in the complainant's property being impacted. However, the complainant is now seeking the release of the proposed revisions across the entirety of the Crossrail 2 route; something that TfL says has yet to receive ministerial approval.

Regulation 12(5)(e) – commercial or industrial information

23. Regulation 12(5)(e) of the EIR says that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest. Regulation 12(5)(e) is subject to the public interest test.
24. The Commissioner considers that in order for this exception to be applicable, there are a number of conditions that need to be met. She has considered how each of the following conditions apply to the facts of this case:
- Is the information commercial or industrial in nature?
 - Is the information subject to confidentiality provided by law?
 - Is the confidentiality provided to protect a legitimate economic interest?
 - Would the confidentiality be adversely affected by disclosure?

Is the information commercial or industrial in nature?

25. The Commissioner's published guidance on section 12(5)(e) advises that for information to be commercial in nature, it will need to relate to a commercial activity; either of the public authority or a third party. The essence of commerce is trade and a commercial activity will generally involve the sale or purchase of goods or services, usually for profit. Not all financial information is necessarily commercial information.
26. In its submission TfL has confirmed that the request relates to the release of proposed revisions to the 2015 Safeguarding Directions. The proposed revisions, which it says are continually evolving until the Secretary of State for Transport gives full approval, would provide advance information directly affecting in excess of one thousand residential, commercial and community use properties. These properties will be the subject of future acquisitions, if the necessary powers are confirmed by the Government for the future delivery of Crossrail 2. As decisions as to how the project may be taken forward have yet to be confirmed, the document requested, and therefore the properties that may be directly affected, are still subject to change.
27. In the context of the project, once land has been safeguarded it becomes protected and no development should take place without Crossrail 2 being notified, to determine whether it would have an impact on the future ability to build or add to the future costs associated with operating the railway. All land and property has an existing use value

which is a figure for what it is worth in its current form. Anything that might change the status of that land and gives greater certainty about the future development prospects will inevitably add to the value to that land. This 'hope value' will increase as the likelihood of new alternative, more profitable, uses for that land become more certain.

28. According to TfL, there are a wide range of studies that have been undertaken in the UK and in other developed countries which have examined the underlying reasons for land value increases. The general consensus and considered view in the property industry is that releasing details of future infrastructure investment and the land required for future transport infrastructure will inevitably lead to an upward pressure and increase in land values.
29. TfL says that it has been widely reported that infrastructure projects can *'provide investors with the next best place to invest.'* It has provided the Commissioner with part of a report from real estate fund management company DTZ Investors which, it says, evidences this point. In the report DTZ Investors provide strategic advice to their clients on how to capitalise from transport infrastructure projects.
30. TfL has also referred to the UK Government, House of Commons, Housing, Communities and Local Government Committee Land Value Capture Tenth Report of Session 2017–19. This expresses the view that *"Land values increase for many reasons—not least from economic and demographic growth but some of the most significant increases arise from public policy decisions, in particular the granting of planning permission and the provision of new infrastructure."*
31. This report also goes on to say *"The present right of landowners to receive 'hope value'—a value reflective of speculative future planning permissions—serves to distort land prices, encourage land speculation, and reduce revenues for affordable housing, infrastructure and local services"* TfL argues that releasing information about unprotected land that might be needed to construct the railway, but does not have any statutory protection, would without doubt increase the cost of the land and in turn inflate the cost of the scheme, which would have to be borne by the taxpayer.
32. TfL has provided the Commissioner with example of 'hotspots' identified along the Crossrail 2 route in areas currently not safeguarded that could still be needed as part of its future proposals. These hotspots are sites where Crossrail 2 is aware that there is current development interest and there is the possibility that these identified sites will be brought forward for development by other parties. Using this data it is able to look at how the value of these sites would increase if they were developed. The values for the current status of the land are based on

current valuations and market information. Assuming that these development interests would be granted planning permission (which is based on information from discussions with the Local Planning Authorities about how they would be likely to favour the application assuming it were to come forward) this provides TfL with a 'hope value' uplift to the land.

33. These figures are then projected forward based on the market price of residential units in the area. The prices Crossrail 2 used were based on a two bedroom residential property within the area, and the information taken from reviewing property web sites (which is why the figures provided to the Commissioner vary). A two bed property was taken as a reasonable price indicator by Crossrail 2 as it assumes that there would be a range of one, two, three (and above) bed residential units developed on a site.
34. An additional 20% was then added to these figures to reflect the additional property costs associated with compensation payments and other costs associated with administering a future Compulsory Purchase for a site in the event that it was built.
35. TfL acknowledges this is not an exact science given market variability, but says it is still clear that releasing information regarding the possible future Safeguarding of land, without that land having the benefit of Statutory Safeguarding, could potentially end up costing the project more than £2bn in additional land values. This is particularly the case if this information means that the decision to develop land is progressed or accelerated ahead of a Government decision and land was required by the project to deliver Crossrail2.
36. TfL says that Crossrail 2 is a multi-billion pound strategic transport scheme of national significance. It argues that if it was to release its proposed revisions for the full route it would increase the cost of the scheme exponentially and severely diminish its ability to secure land at its current estimated value, potentially preventing it from securing best value for public funds. At worst it could ultimately affect its future ability to deliver Crossrail 2 altogether.
37. The Commissioner considers that TfL's arguments on this point are strong. She is satisfied that the requested information is commercial or industrial in nature and that the first condition above has therefore been met.

Is the information subject to confidentiality provided by law?

38. In her guidance the Commissioner advises that, in this context, this will include confidentiality imposed on any person by the common law of confidence, contractual obligation or statute.
39. TfL has confirmed that at present Crossrail 2 is awaiting a decision from Government as to how the project may be taken forward. TfL says it is therefore a working assumption that the necessary Crossrail 2 powers to take the project forward would be confirmed via a hybrid bill process similar to that already in place for the current Crossrail 1 project being delivered in London. Crossrail 2 is a key feature of the London Plan and the Mayor's Transport Strategy - documents that the Mayor is required to produce for the proper strategic planning for London's future.
40. The Commissioner has noted this point. In addition, in assessing whether the information has the necessary quality of confidence, the Commissioner has considered whether the information is more than trivial, whether or not it is in the public domain and whether it has been shared in circumstances creating an obligation of confidence. A useful test to consider with regard to the latter is to consider whether a reasonable person in the place of the recipient would have considered that the information had been provided to them in confidence.
41. The information is clearly more than trivial, associated as it is with a multi-billion pound national infrastructure project. The Commissioner understands that the specific information requested in this case is not currently in the public domain; hence the complainant's request for it. The Commissioner also considers that a reasonable person who was provided with the requested information would consider that the information had been provided to him or her in confidence. This is because it concerns land along the proposed Crossrail 2 route that TfL would need to acquire in order to deliver the project, with all the associated implications and sensitivities that TfL has discussed above. The Commissioner is therefore satisfied that the information in question is subject to confidentiality provided by law and the second condition has been met.

Is the confidentiality provided to protect a legitimate economic interest?

42. TfL's submission goes on to state that all land and property has an existing use value which is a figure for what it is worth in its current form. Anything that might change the status of that land and gives greater certainty about the future development prospects will add to the value to that land. The previously mentioned 'hope value' will inevitably increase as the likelihood of new alternative, more profitable, uses for that land become more and more certain. The general consensus and

considered view in the property industry is that releasing details of future infrastructure investment and land required for future transport infrastructure will unavoidably lead to an upward pressure and increased land values.

43. TfL maintains that releasing information about unprotected land that could be required in the course of delivering the project to construct the railway, but does not have any statutory protection, would increase the likely cost of the land and in turn rapidly inflate the cost of the scheme.
44. It confirms that the complainant is requesting the disclosure of the proposed draft revisions to the 2015 Safeguarding Directions for the entire length of the Crossrail 2 route. The current Safeguarding Directions only protect approximately 35% of the proposed scheme and as of yet none of a particular part of the route, which the Commissioner does not intend to detail in this notice. TfL argues that this presents a significant risk to the affordability and deliverability of the scheme. It says that if it was to release this information into the public domain at this crucial stage of the project it would be providing the property market with details of land that the project needs but does not currently have statutory protection to acquire. As it has evidenced above, the property market is always looking to capitalise on the impact of major infrastructure projects. TfL argues that releasing this information would be in essence providing a list of valuable land to developers providing them with a significant commercial advantage and would inflate the cost of the land, thereby putting the project as a whole in jeopardy.
45. TfL's position is that, given that Crossrail 2 has undergone a rigorous IAR at the behest of the Government to understand ways to get obtain value for the taxpayer when delivering the route, disclosing the requested information would effectively undermine all the work that has been done to date.
46. The Commissioner has considered TfL's arguments and she is satisfied the third of the conditions has been met. She considers that disclosing the requested information would have the effect that is identified in the exception; namely, disclosure would adversely affect TfL's legitimate commercial interests. The Crossrail 2 infrastructure project is still very much a live project. Releasing information on what land TfL may need to acquire along the entire length of the route, before that land has statutory protection, would, because of the potential value of such land to TfL, inflate the land's cost and jeopardise the Crossrail 2 project.

Would the confidentiality be adversely affected by disclosure?

47. As the Commissioner has concluded that disclosure would adversely affect TfL's legitimate economic interests, it follows that the

confidentiality designed to protect such harm would be adversely affected by disclosure.

48. Since the necessary four conditions at paragraph 24 have been met the Commissioner is satisfied that the information that TfL has withheld engages the exception under 12(5)(e) and she has gone on to consider the public interest arguments.

Public interest test

Public interest in releasing the information

49. In its submission, TfL has stated that it is fully aware of the importance of accountability and the strong argument it provides for the release of information that enables the public to satisfy themselves that best value is achieved through the expenditure of public funds. Following on from its lengthy public consultation in 2015, its strategic plan has always encompassed continuing to update the Safeguarding Directions and engaging with as many of the affected home and business owners as possible as part of its ongoing engagement process. Once the scheme has been given full ministerial approval, TfL says it will undertake another formal public consultation.
50. TfL says it is also its every intention to be transparent with the wider public in its continued development of the scheme. Once the project has received formal sign off from the Secretary of State the information that the complainant is seeking will be publicly available as part of its public consultation.
51. TfL says it appreciates that disclosing the information being requested would support fairness in its dealings with the public. As it has outlined above, it is in constant communication with the complainant regarding his property and any changes he wishes to make to it. TfL says it does not wish to prevent development of his property from proceeding and it has endeavoured to assist the complainant by providing him with the proposed revisions that affect his property. TfL has confirmed that this level of advice and assistance would extend to all members of the public and homeowners.
52. In his correspondence with the Commissioner, the complainant's concerns have centred on TfL's initial interpretation of his request, its final application of regulation 12(5)(e) and its application of regulation 12(4)(d) to particular information earlier in the investigation. It is clear that the complainant has a strong personal interest in the information, as evidenced by his ongoing correspondence with TfL regarding his justified concerns about the impact of Crossrail 2 on him and his property. The Commissioner has also noted the complainant's concern

about what he considers has been TfL's interference in a further five planning applications that he says are outside the 2015 Safeguarding zone.

53. With regard to TfL's previous reliance on regulation 12(4)(d), the complainant had suggested that TfL was running "an unofficial Safeguarding zone" and that the public interest therefore favoured disclosing particular information. By "unofficial Safeguarding zone" the Commissioner understands the complainant to have meant the proposed revisions to the 2015 Safeguarding Directions that are not currently published but which he has requested.

Public interest in maintaining the exception

54. TfL has argued that Crossrail 2 is a significant project for the people of London and surrounding areas. It would support the regeneration and development of up to 200,000 new homes across London and the South East as well as support 60,000 new jobs across the UK supply chain while under construction and 200,000 jobs across London and the South East once operational.
55. TfL says that the current housing shortage means that Londoners are facing far longer commutes and businesses are struggling to recruit and retain the people they need to grow and prosper. When new homes are built in the capital and surrounding areas to meet the demand of a world class city, good transport links are vital so people can get to work, healthcare, leisure opportunities and all that the city has to offer. Previous transport improvements have shown the potential benefits of investing in previously under-developed areas, with Crossrail 1 spurring major housebuilding in anticipation of the new railway.
56. To continue to create jobs and power the national economy, people need efficient transport links like Crossrail 2 to get them from their homes to work. TfL says the new railway would help the capital to continue attracting international investment and allow it to create new jobs. This would grow the national economy, benefiting the whole of the UK. Analysis suggests London could contribute £159bn a year to the UK economy by 2035, money which can be spent around the country.
57. Crossrail 2 would provide significant employment opportunities. Construction would support apprenticeships – increasing the long-term skills base to help both workers and businesses and helping to ensure that the opportunities for regeneration, house building and job creation made possible by the new railway can be developed to their full potential.

58. When considering disclosure TfL says it needed to take into consideration the national interest in maintaining the ability to deliver this project. It will have an inevitable positive economic impact by providing a much needed additional method of travel in the capital and surrounding areas as well as alleviating current high levels of congestion.
59. Disclosing the Crossrail 2 route map in its entirety at this stage would, according to TfL only serve to significantly increase the cost of the project and bring into question the viability of being able to deliver the project at all.
60. On balance TfL considers the act of publishing the Crossrail 2 Safeguarding route map would adversely affect its commercial and legitimate economic interest in a way that would lead to increased costs being passed on to the UK's taxpayers. Because of the potential cost to the public purse and the wider public interest in allowing it to be able to continue with the project at all, the public interest supports the application of the exception.

Balance of the public interest

61. The Commissioner has reviewed the complainant's correspondence. He may strongly disagree with the aspects of how TfL is delivering the Crossrail 2 project but he has not presented the Commissioner with evidence of any irregularity in how TfL is running the process that would suggest the wider public should be concerned.
62. TfL's arguments are strong and there is clearly a very strong public interest in the Crossrail 2 project being delivered, and delivered without the costs being inflated. The Commissioner notes that TfL has released part of the Safeguarding map relating to the complainant's property. Once the Crossrail 2 scheme has received ministerial approval TfL also intends to run a further public consultation and to engage with affected home and business owners. The consultation will include releasing the requested information. The Commissioner considers these activities have satisfied and will satisfy the public interest. She is satisfied that in this case there is a stronger public interest in TfL withholding the requested information. This is so that the Crossrail 2 project and its associated national benefits are not jeopardised, and so that TfL can secure the best value for tax payers.

Right of appeal

63. 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 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

64. 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.
65. 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

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