

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

### **Decision notice**

**Date:** 26 June 2013

**Public Authority:** City of Bradford Metropolitan District Council

**Address:** Britannia House  
Hall Ings  
Bradford  
BD1 1HX

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

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1. The complainant requested a copy of the draft Bradford Retail and Leisure Study. The City of Bradford Metropolitan District Council (the Council) refused to disclose this information, relying on the exception provided by regulation 12(4)(d) (unfinished documents) of the EIR.
2. The Commissioner's decision is that regulation 12(4)(d) has been applied correctly and so the Council was not required to disclose this information.

#### **Request and response**

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3. On 15 February 2013, the complainant wrote to the Council and requested the following information:  
  
*"...a copy of the draft Bradford Retail and Leisure Study 2012".*
4. A chain of emails followed with the response that most closely resembled a substantive response to the information request being provided on 1 March 2013. Although it was not set out clearly why this exemption was believed to be engaged and why the balance of the public interest favoured the maintenance of this exemption, reference was made to section 22 of the Freedom of Information Act (FOIA). It was evident that the position of the Council was that this information was intended for future publication and so was exempt under section 22 (information intended for future publication) of the FOIA.

5. The complainant responded on 1 March 2013 and requested an internal review. The complainant at this stage made the point that no adequate explanation for the citing of this exemption had been provided.
6. The Council responded on 4 March 2013 and stated that the refusal to disclose this information was upheld. Brief reasoning for the citing of section 22 of the FOIA was given at this stage.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 4 March 2013 to complain about the way his request for information had been handled. The complainant stated at this stage that he believed that he had been disadvantaged in preparing a case for a planning appeal hearing by the refusal to disclose the requested information.
8. Early in the investigation of this case the Commissioner identified that the requested information was very likely to be environmental and so the request should have been considered under the EIR. It was also clear from the responses the complainant received that the request had been poorly handled by the Council.
9. In order to remedy these issues at the earliest possible stage, the ICO recommended to the Council that it issue a fresh response to the information request under the EIR. The Council was advised that, if it maintained that the information in question would not be disclosed, it should clearly explain its reasons under the EIR to the complainant.
10. The Council subsequently responded to the complainant on 20 May 2013. It stated that the request had been considered under the EIR and that it maintained that the information should not be disclosed, with the exception provided by regulation 12(4)(d) (unfinished documents) of the EIR cited. The complainant subsequently confirmed that he wished the ICO to consider whether regulation 12(4)(d) had been cited correctly.
11. The analysis in this notice concerns the amended response from the Council, including an explanation as to why the information in question is considered to be environmental and whether regulation 12(4)(d) was cited correctly.

## Reasons for decision

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### Regulation 2

12. The first question for the Commissioner to address here is whether the information is environmental in accordance with the definition given in regulation 2(1). Environmental information is defined within regulation 2(1) of the EIR as follows:

*"any information in written, visual, aural, electronic or any other material form on –*

*(a) the state of the environment, such as air and atmosphere, water, soil, land and landscape and natural sites including wetlands...*

*(b) factors, such as substances, energy, noise, radiation or waste, emissions...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...and activities affecting or likely to affect the elements and factors referred to in (a) and (b)...".*

13. The view of the Commissioner is that this information is 'on' a plan that falls within the scope of regulation 2(1)(c). The Bradford Retail and Leisure Study is described on the website of the Council<sup>1</sup> in the following terms:

*"The aim of this study is to provide an up-to-date comprehensive picture of current and future capacity for retailing and leisure in Bradford Metropolitan District, which will be used to accurately determine planning applications and to inform the emerging Local Development Framework."*

14. The Commissioner believes that this description reflects that this study is information "on" a plan that is likely to affect several of the elements

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<sup>1</sup>

[http://www.bradford.gov.uk/bmdc/the\\_environment/planning\\_service/local\\_development\\_framework/evidence\\_base\\_retail\\_study](http://www.bradford.gov.uk/bmdc/the_environment/planning_service/local_development_framework/evidence_base_retail_study)

and factors referred to in regulations 2(1)(a) and (b), including land and landscape during any construction that occurs, and factors such as emissions and discharges both during construction and on an ongoing basis once the construction phase is complete.

15. The information in question is, therefore, environmental under regulation 2(1)(c) and it was correct to deal with the request under the EIR.

### **Regulation 12(4)(d)**

16. This regulation provides that materials that are, at the time of the request, in the course of completion, or are unfinished documents, or are incomplete, are exempt from disclosure. Consideration of this exception is a two-stage process; first, for the exception to be engaged the information must fall within the class described in regulation 12(4)(d). Secondly, this exception is qualified by the public interest. This means that the information must be disclosed if the public interest in the maintenance of this exception does not outweigh the public interest in disclosure.
17. Covering first whether the exception is engaged, the request is specifically for information in draft form. The ICO's published guidance on this exception<sup>2</sup> states that:  
  
*"...draft documents will engage the exception because a draft of a document is by its nature an unfinished form of that document."*
18. The view of the Commissioner is that the wording of the request makes it clear that the information falling within its scope would be unfinished documents. The exception provided by regulation 12(4)(d) is, therefore, engaged in relation to this information.
19. Turning to the balance of the public interest, regulation 12(2) is specific that a presumption in favour of disclosure of environmental information must be applied when the balance of the public interest is considered, along with any factors that favour disclosure of the specific content of the information in question. Weighed against this presumption are any

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[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Environmental\\_info\\_reg/Detailed\\_specialist\\_guides/eir\\_material\\_in\\_the\\_course\\_of\\_completion.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Detailed_specialist_guides/eir_material_in_the_course_of_completion.ashx)

factors that apply in favour of maintenance of the exception in relation to the information in question.

20. The key factor that the Commissioner has considered as part of the public interest test here is the timing of the request and how soon disclosure was to take place following that request. At the time of the request, the complainant was informed that the study was to be published in April 2013. Later, that publication date was postponed until 30 June 2013.
21. Whilst it is regrettable that the original timetable was not met, the Commissioner notes that disclosure is due on a specified date, approximately four months following the response to the request. Where this exception is cited in relation to a distant or ill-defined publication date, it is more likely that the public interest will favour disclosure. In this case the date of the future publication is both clearly defined and relatively soon after the date of the request.
22. The interest protected by this exception is that of ensuring that public authorities have a safe space in which to carry out the process of drafting documents, away from the possibility of disclosure which may be disruptive to that process. In this case the view of the Commissioner is that, at the time of the request, the public interest in preserving that safe space outweighed the public interest in disclosure, which was reduced in weight owing to the imminent completion and publication of the report.
23. The conclusion of the Commissioner is that the public interest in the maintenance of the exception provided by regulation 12(4)(d) outweighs the public interest in disclosure. The Council is not, therefore, required to disclose the report prior to its intended publication date.

## **Other matters**

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24. As referred to above, the handling of the complainant's request by the Council was poor, with responses not clearly setting out why the Council's position was that the information requested by the complainant could not be disclosed. This trend continued at the stage of the Council providing the response recommended by the Commissioner in which the complainant was advised that the information he had requested was believed to be environmental and so it was appropriate to consider his request under the EIR. No explanation was given to the complainant at that stage as to why the information he had requested was believed to be environmental, and no thorough explanation was given as to the scope of regulation 12(4)(d), or why it was believed to apply in this case.

25. The Council must ensure that the quality of its responses to information requests is improved. In response to each information request, it should set out clearly whether or not the information is held. Where it is relying on any provision of the FOIA or the EIR to withhold information, it should set out in detail why that provision is believed to be engaged and, where relevant, why the public interest is believed to favour the maintenance of the exemption or exception.
26. A record has been made of the issues that have arisen in this case. If future cases suggest that these issues are representative of systemic problems with the processes that the Council has in place to respond to information requests, these issues may be revisited.

## Right of appeal

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27. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

28. 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.
29. 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 .....**

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