

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 1 October 2013

Public Authority: South Gloucestershire Council
Address: The Council Offices
Castle Street
Thornbury
Bristol
BS35 1HF

Decision (including any steps ordered)

1. The complainant has requested correspondence on South Gloucestershire Council's (SGC) internal discussions about Filton Airfield. SGC identified a number of documents within the scope of the request and disclosed many of these. The remaining documents were withheld under regulation 12(4)(e) of the EIR.
2. The Commissioner's decision is that the internal communications exception is engaged and the public interest favours maintaining the exception.

Request and response

3. On 25 September 2012, the complainant wrote to South Gloucestershire Council (SGC) and requested information in the following terms:
"Please could you send to me, copies of all internal SGC correspondence (Emails, notes, minutes) concerning Filton Airfield (no restriction on subject matter) for the period of 14 April 2011 to 29 June 2011 inclusive."
4. SGC responded on 16 November 2012. It stated that it had treated the request as a request under the EIR and confirmed it did hold information

within the scope of the request. However SGC considered the internal communications requested to be exempt from disclosure on the basis of regulation 12(4)(e) – the internal communications exception. Having considered the public interest SGC made some information available to the complainant but maintained the remaining information should be withheld.

5. Following an internal review SGC wrote to the complainant on 5 December 2012. It stated that it considered the EIR to be the appropriate access regime to consider the request under. SGC upheld its use of the regulation 12(4)(e) exception and also addressed the list of documents the complainant considered were missing from the information already disclosed. Several of these documents were publicly available and the complainant was directed to them, the remaining documents were considered exempt under regulation 12(4)(e).

Scope of the case

6. The complainant contacted the Commissioner initially on 2 November 2012 and then later after the receipt of the internal review response on 2 January 2013 to complain about the way his request for information had been handled. The complainant was unhappy with the time taken for SGC to deal with his request and the decision to withhold the remaining information within the scope of the request.
7. Following correspondence with the Commissioner, SGC disclosed some of the previously withheld information to the complainant but continued to maintain a number of documents could not be disclosed on the basis of regulation 12(4)(e) and regulation 12(5)(b). As SGC only introduced the use of this exception at a late stage, the Commissioner required SGC to write to the complainant and make him aware of the use of this exception.
8. As a result the Commissioner considers the scope of his investigation to be to determine if SGC has correctly applied the cited exceptions to withhold the following information:
 - Filton Airfield capacity note dated 3 June 2011 (regulation 12(4)(e));
 - Internal emails of 10 and 13 June 2011 (regulation 12(4)(e));
 - Internal email of 20 May 2011 (regulation 12(4)(e) and 12(5)(b));
 - Internal emails of 19 and 20 April 2011 (regulation 12(4)(e) and 12(5)(b));

- Internal emails of 22 and 27 June 2011 (regulation 12(4)(e));
- Internal email of 23 May 2011 (regulation 12(4)(e));
- Internal email of 27 April 2011 (regulation 12(4)(e));
- Internal communications on the future of the Airfield for the Inspector (regulation 12(4)(e)); and
- Internal emails on Core Strategy document decisions (regulation 12(4)(e))

Background

9. The SGC Core Strategy is a document in SGC's Local Plan and includes policies and programmes for the general location of new development. Discussions on the future of Filton Airfield formed part of the Core Strategy. The Core Strategy was examined by an independent inspector between 19 June and 18 July 2012 and his preliminary findings submitted to the Council.

Reasons for decision

Regulation 12(4)(e) – internal communications

10. The Commissioner has first considered the application of regulation 12(4)(e) as SGC consider this to be engaged in relation to all of the remaining withheld information.
11. Regulation 12(4)(e) of the EIR states that a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications. The Commissioner has recently published guidance¹ on regulation 12(4)(e), which includes a description of the types of information that may be classified as 'internal communications.'

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http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Detailed_specialist_guides/eir_internal_communications.ashx

12. The first factor that must be considered is whether the information in question can reasonably be described as a 'communication'. In his guidance on the exception, the Commissioner acknowledges that the concept of a 'communication' is broad and will encompass any information someone intends to communicate to others, or places on file so that others may read it.
13. The withheld information in this case is, in the main part, internal emails regarding the future of Filton Airfield. The other document – the capacity note – was used to assist in discussions regarding the future of the Airfield and SGC's plans. The Commissioner is satisfied that these documents properly constitute 'communications' for the purpose of the exception. He has therefore next considered whether the withheld information constitutes 'internal' communications.
14. There is no definition of what is meant by 'internal' contained in the EIR. Consequently, in the absence of one, a judgment on what is an internal communication must be made by considering the relationship between a sender and recipient, the particular circumstances of the case and the nature of the information in question. Typically, however, communications sent between officials within a single organisation are the clearest example of records that will be covered by the exception. For this reason the Commissioner is satisfied that all of the remaining withheld information within the scope of the request would constitute 'internal' communications. In view of this he is satisfied that regulation 12(4)(e) is engaged. He has next gone on to consider the relevant public interest arguments.

Public interest arguments in favour of disclosing the requested information

15. SGC has not submitted any arguments in favour of disclosing the requested information and the complainant has also not submitted any arguments in favour of disclosure.
16. However, the Commissioner acknowledges the presumption in favour of disclosure inherent in regulation 12(2) of the EIR. He also accepts that this is an inherent public interest in the openness and transparency of public authorities and their decision making process.
17. There was local interest² in the future of Filton Airfield and groups set up to campaign for the future of the Airfield³. The Commissioner recognises

² <http://www.bbc.co.uk/news/uk-england-bristol-20729913>

³ <http://www.savefiltonairfield.org/>

that this indicates there was a public interest in the future of the Airfield and the decision-making process of SGC.

Public interest arguments in favour of maintaining the exception

18. SGC argues that the confidential internal communications should not be disclosed as the future of Filton Airfield was a controversial element of the Core Strategy Examination and at the time of the request the planning inspector had not reported on the inquiry beyond publishing his preliminary findings. SGC considers that, due to the nature of the discussions, it needed a safe space to be able to reach decisions and debate the issues arising from the planning inquiry, away from external influence and scrutiny. SGC has argued that disclosure of the remaining internal communications would impact on the candour and affect the quality of advice and decision making.

Balance of the public interest

19. The Commissioner recognises that, inherent in the exception provided by regulation 12(4)(e) is the argument that a public authority should be afforded private space for staff in which issues can be considered and debated, advice from colleagues be sought and freely given and ideas tested and explored to protect the integrity of the internal deliberation and decision making process. The Commissioner also recognises that public authorities often require a safe space in which to debate issues without the hindrance of external comment and to develop their policies or opinions free from outside interference. However the Commissioner has to consider the specific information in dispute in this case in order to determine whether this safe space is still relevant and important, taking into account the timing of the request and the content and context of the particular information in question.
20. The Commissioner considers that the need for a safe space will be strongest when an issue is still "live". Once a public authority has made a decision, a safe space for deliberation will no longer be required and the public interest is more likely to favour disclosure.
21. In this case, the Commissioner accepts that the remaining withheld information constitutes internal advice and deliberations on the future of Filton Airfield at a time when the issue was being considered by the planning inspector for the purposes of an inquiry. The Commissioner is satisfied that at the time of the request the issue was still on-going and no final decision had been made.
22. The Commissioner acknowledges that there is a general public interest in public authorities being as accountable and transparent as possible regarding their decision-making processes. He appreciates that the issue

of the future of Filton Airfield was complex and the subject of considerable local interest and controversy. The Commissioner therefore accepts there is significant public interest in the subject matter but considers this to have been met to some extent by the disclosure of much of the requested information in this case.

23. However, he also recognises the strong public interest in affording a public authority safe space in which to deliberate over important issues, options and risks and to make decisions accordingly. The Commissioner notes that at the time of the request the inspector's report had not been published and SGC had not adopted the Core Strategy so there was a strong argument for maintaining the exception and so as not to interrupt the process.
24. In reaching a decision on where the balance of the public interest lies in this case, the Commissioner has attached particular weight to the fact that no formal decision or adoption of the strategy had been made at the time of the request, the need to avoid any impact on the decision making process by premature disclosure of the requested information, the disclosure of much of the requested information already and in particular the fact that after publication of the planning inspectors report there was still an opportunity for further legal challenge.
25. For the reasons set out above the Commissioner considers that, in all the circumstances of the case, the public interest in maintaining the exception set out in regulation 12(4)(e) outweighs the public interest in disclosure.

Right of appeal

26. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

27. 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.
28. 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

Pamela Clements
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Wycliffe House
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SK9 5AF