

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 03 June 2014

Public Authority: Department for Communities and Local Government

Address: Eland House
Bressenden Place
London
SW1E 5DU

Decision (including any steps ordered)

1. The complainant has requested information relating to planning appeals. The Department for Communities and Local Government refused the request, citing the EIR exceptions for internal communications (regulation 12(4)(e)) and personal data (regulations 13(1) and 13(2)(i)).
2. The Commissioner's decision is that the Department for Communities and Local Government has correctly withheld the requested information under regulation 12(4)(e) of the EIR and that the public interest favours maintaining the exception.
3. The Commissioner does not require the public authority to take any steps.

Background

4. DCLG has explained that the request relates to two planning appeals which were submitted by the complainant. The Inspector identified in the request [name redacted] was initially appointed to determine the appeals. A hearing was held but this was adjourned. Also referred to in the request is [name redacted], a "middle manager" in the public authority's casework section who was responsible for the procedural elements of the planning appeals.
5. DCLG has stated that the request for information followed correspondence from the complainant which asked that the planning appeals be recovered for decision by the Secretary of State and also made an allegation of misconduct about [name redacted].
6. DCLG has provided the Commissioner with letters to the complainant (sent prior to the date of the request) which confirm that their allegations of misconduct were not upheld and explain that the appeals did not meet the criteria to be recovered.

Request and response

7. On 27 October 2013, the complainant requested information in the following terms:

(In relation to appeal references APP/U1340/A/13/2191057 & 2194970)

"All correspondence between [details redacted] and [details redacted]"
8. The request was submitted to The Planning Inspectorate, an executive agency of the Department for Communities and Local Government (DCLG). For the purposes of compliance with the EIR and this decision notice, DCLG is the relevant public authority.
9. DCLG responded on 15 November 2013 and confirmed that the information was being withheld under the exception for internal communications (regulation 12(4)(e) of the EIR).
10. Following an internal review the DCLG wrote to the complainant on 13 December 2013. The review upheld DCLG's original position and applied an additional exception to the withheld information (regulation 13 of the EIR).

Scope of the case

11. On 6 January 2014 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
12. The Commissioner confirmed with the complainant that his investigation would consider whether DCLG had correctly withheld the requested information under the exceptions cited.
13. During the course of the Commissioner's investigation DCLG reviewed its handling of the request. It identified some information which it considered could be the complainant's own personal data and disclosed this under the Data Protection Act 1998 (DPA).
14. The complainant stated that he was not satisfied with this disclosure and the Commissioner confirmed that he would consider whether the outstanding requested information had been correctly withheld. The complainant has also stated to the Commissioner that he was not requesting any personal data relating to himself and that he only sought discovery of the correspondence emails between [name redacted] and [name redacted]. The Commissioner has not, therefore, considered the DPA elements of this matter, as they relate to the complainant's own personal data.

Reasons for decision

Regulation 12(4)(e) – internal communications

15. Regulation 12(4)(e) of the EIR states:

"For the purposes of paragraph 1(a), a public authority may refuse to disclose information to the extent that..

(e) the request involves the disclosure of internal communications."
16. Regulation 12(4)(e) is a class based exception so it is not necessary to demonstrate prejudice or harm to any particular interest in order for its engagement.
17. DCLG has confirmed that the withheld information consists of emails sent within the department. The Commissioner has viewed the withheld information and it is as described by the DCLG. That is, it is communications between individuals within the DCLG and therefore they are clearly internal communications for the purposes of regulation 12(4)(e).

18. As he has concluded that the exception is engaged the Commissioner has gone on to consider the public interest arguments.

Public interest in disclosure

19. DCLG has noted that there is a public interest in transparency and that the requested information might provide background and further transparency in relation to the processing of an allegation, as well as the process of responding to that allegation.
20. In their request for internal review the complainant stated that that the public interest favoured disclosure because the information would assist them in preparing their case for recovery of both appeals by the Secretary of State and in order to prepare amended hearing statements.
21. More generally, the Commissioner notes that regulation 12(2) of the EIR instructs public authorities to apply a presumption in favour of disclosure when using exceptions.

Public interest in maintaining the exception

22. DCLG has argued that the planning appeals in question were still "live" at the time of the request. In relation to the public interest in transparency, DCLG has stated that, as regards the complainant's allegation of misconduct, this was addressed and refuted in its letters to the complainant, sent prior to the date of the request.
23. DCLG has also argued that there is a public interest in providing a safe space during the processing of planning appeals, allowing officials to conduct full and frank internal exchanges without fear that this information will be made public.
24. DCLG has stated that the planning process provides opportunities to all parties to make representations and consideration is given to procedural correspondence and complaints during any appeal process. DCLG has argued that the planning appeal process is a quasi-judicial process and procedural decisions made in respect of any appeal, as well as those made by the Inspector, can be subjected to legal challenge. In effect, DCLG argues that the principles of accountability and transparency are adequately served by the planning process.
25. DCLG considers that disclosure of internal communications, particularly those of the appointed decision maker, during the course of a planning appeal would complicate and hinder the process of determining the appeal. DCLG has stated that disclosing the information would be likely to prompt further correspondence from the complainant which would prolong the appeal process.

Balance of the public interest

26. In determining where the balance of the public interest lies, the Commissioner has factored in the EIR's general disposition towards disclosure. Whilst this provides a general weighting in favour of disclosure, he has considered whether there are any specific factors which apply in this case.
27. The Commissioner acknowledges that the complainant has a personal interest in accessing the information. He also notes that complainant has concerns that the Investigator handling his appeals might have committed misconduct. DCLG, however, has also provided evidence to the complainant that these concerns have been addressed.
28. In addition, the public interest in the context of the EIR refers to the broader public good and, in weighing the complainant's interests against those of the DCLG and its ability to undertake planning appeals on behalf of the wider public, the Commissioner does not consider that the interests of the complainant carry significant weight in this case.
29. Furthermore, the Commissioner notes that the planning appeal process provides mechanisms for such issues to be addressed and concerns about maladministration, similarly, can be progressed in other arenas than under the EIR. The Commissioner considers that DCLG's argument in favour of maintaining a safe space in which to consider issues relating to the appeals are particularly compelling as, at the time of the request, the issues were still live and undecided. The Commissioner accepts that there was a real risk that disclosure at this time would interfere with DCLG's ability to effectively conduct the appeal process.
30. Having considered the relevant facts the Commissioner has concluded that, in this case, the public interest favours maintaining the exception.
31. As the Commissioner has concluded that all the withheld information is excepted under regulation 12(4)(e) it is not necessary for him to consider DCLG's application of regulation 13(1) and regulation 13(2)(a)(i) to withhold some of the requested information.

Right of appeal

32. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF