

Environmental Information Regulations 2004 (EIR)

Decision Notice

Date: 29 September 2020

Public Authority: Department for Infrastructure
Address: Clarence Court
10-18 Adelaide Street
Belfast
BT2 8GB

Decision (including any steps ordered)

1. The complainant requested discretionary assessment criteria used by the Department for Infrastructure in respect of applications for Blue Badges. The Department refused the request in reliance on the exception at regulation 12(4)(e) of the EIR. The Commissioner's decision is that the exception is engaged and that the public interest in maintaining that exception outweighs the public interest in disclosure of the requested information. The Commissioner does not require any steps to be taken.

Request and response

2. The Blue Badge Scheme provides on-street parking concessions for people with severe mobility problems. The Scheme was established in the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978. It is administered by the Department and relevant information is publicly available on the NI Direct website.¹
3. On 11 July 2019 the complainant requested the following information from the Department:

I herein request a copy of the 'Assessment' criteria used by The Department for Infrastructure when determining applications for the Blue Badge which are 'Discretionary' in nature and do not fall within

¹ <https://www.nidirect.gov.uk/articles/blue-badge-eligibility-criteria>

'Automatic' entitlement, for example scoring 8 points or more for PIP mobility under 'Moving Around'.

4. The Department issued a refusal notice on 31 July 2019, citing the exception at regulation 12(4)(e) of the EIR.
5. The complainant requested an internal review on 20 August 2019. The Department provided him with the outcome of that review on 18 September 2019. The internal review upheld the refusal.

Scope of the case

6. The complainant contacted the Commissioner on 18 November 2019 to complain about the handling of his request. The complainant asked the Commissioner to make a decision as to whether or not the requested information ought to have been disclosed to him.

Reasons for decision

Access regime

7. The Commissioner understands that the Blue Badge Scheme allows people with severe mobility problems to park close to their destination. The Commissioner accepts that the operation of the Scheme is likely to affect the elements of the environment in terms of factors such as emissions and pollution emanating from vehicles used by badge holders. It will also affect the number journeys taken by car, and the number of parking bays required to be provided in public places.
8. In light of the above the Commissioner accepts that information relating to the Scheme is environmental information within the meaning of regulation 2(1)(c) of the EIR:

"measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors..."

Regulation 12(4)(e): internal communications

9. Regulation 12(4)(e) of the EIR provides an exception from disclosure to the extent that the requested information comprises internal communications. The exception is class-based, which means that it is engaged if the information in question falls within its scope. There is no requirement to consider prejudice or adverse effect at this stage.

10. The Commissioner has inspected the withheld information and is satisfied that it falls under the description of "internal communications". This is because it is an internal document providing guidance to assist officials assessing applications for Blue Badges. Accordingly the Commissioner is satisfied that the exception at regulation 12(4)(e) is engaged.
11. Regulation 12(1) of the EIR states that disclosure of environmental information may be refused if (a) an exception to disclosure applies and (b) if in all the circumstances of the case the public interest in maintaining the exception outweighs the public interest in disclosing the information.
12. Regulation 2(2) states that the public authority must apply a presumption in favour of disclosure when considering the public interest.

Public interest arguments in favour of disclosure

13. The Department acknowledged the general public interest in openness and transparency. The aim of the Scheme is to help people with severe mobility problems, and there is a public interest in ensuring that people are aware of the Scheme. Wide dissemination of the eligibility criteria would serve the public interest insofar as it might encourage eligible individuals to apply under the Scheme.
14. The Department also confirmed that it had taken account of the presumption in favour of disclosure set out at regulation 12(2) of the EIR.

Public interest arguments in favour of maintaining the exception

15. The Department set out that there was a strong public interest in protecting the integrity of the Scheme. It said it had a duty to ensure that Blue Badges were only granted to eligible individuals.
16. The Department was concerned that disclosure of the discretionary criteria would encourage fraudulent claims. It would inform fraudulent applicants of the Department's process and logic in decision making, and would assist them in tailoring information in order to help their claim.
17. The Department further argued that an increase in fraudulent applications would prejudice the Scheme itself, which would not be in the public interest. The Department did not provide specific evidence relating to Northern Ireland, but advised that in England in 2018-19 there had been over 1400 prosecutions for misuse of Blue Badges.

Balance of the public interest arguments

18. The Commissioner recognises that the Scheme is an important measure that supports people with mobility issues in their everyday lives. In order to ensure that people who qualify are able to apply, it is in the public interest to ensure that eligibility information is made publicly available.
19. The Commissioner considers that publishing the eligibility criteria on the NI Direct website is a positive step in meeting the public interest. She notes that written guidance is also available to help applicants understand the process and information required.
20. The Commissioner acknowledges the potential benefit of making more detailed information available, such as the discretionary criteria. It may encourage eligible individuals to apply, and may help people reach a better informed decision as to whether they may in fact be eligible. It would also allow greater transparency and would thus enhance the public's understanding as to how the Department operates the Scheme.
21. However the Commissioner is also persuaded that the discretionary element of the eligibility criteria does carry a significant risk of fraud. Publication of this information would make it easier for fraudulent applicants to provide information that would help their applications.
22. The Commissioner has taken account of the specific content of the withheld information. She cannot describe it in detail since to do so would defeat the purpose of applying an exception. However the Commissioner can say that the information provides guidance to assessors on the evidence that may be provided and how it should be considered.
23. It follows that it would be more difficult for assessors to distinguish between genuine and fraudulent applicants if everyone had access to all the criteria and the guidance as to how they could be met. If fraudulent applications were more likely to be successful the Scheme could be overwhelmed, thus defeating the purpose of providing support to people who genuinely need it.
24. Having considered all the circumstances of this case the Commissioner does not attach significant weight to the public interest in favour of disclosure, aside from that in transparency of the Scheme and how it works. The Commissioner is of the opinion that there is a more compelling public interest in protecting the Scheme's effective operation.

25. The Commissioner finds that the negative impacts of disclosure, ie the detrimental impact on the allocation of Blue Badges, are more significant than the public benefit in this case. Accordingly the Commissioner is satisfied that the public interest in maintaining the exception outweighs the public interest in disclosure of the withheld information.

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: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF