

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 9 December 2022

Public Authority: Manchester City Council
Address: Town Hall
Manchester
M60 2LA

Decision (including any steps ordered)

1. The complainant requested information from Manchester City Council ("the Council") relating to proposals for a permanent Active Neighbourhood Scheme covering Levenshulme and the northern area of Burnage. The Council disclosed some information within the scope of the request, however it withheld some information under regulation 12(4)(e) of the EIR, the internal communications exception. The Council also withheld some of this information under regulation 13 of the EIR, the personal data exception.
2. The Commissioner's decision is that the Council was entitled to rely on regulation 12(4)(e) of the EIR to withhold all of the withheld information. He has therefore not gone on to consider the Council's application of the personal data exception.
3. The Commissioner does not require the Council to take any steps.

Request and response

On 24 August 2021, the complainant wrote to the Council and requested information relating to proposals for a permanent Active Neighbourhood Scheme covering Levenshulme and the northern area of Burnage (numbers added for ease of reference):

- 1) "Please furnish me with copies of proposals for a permanent scheme sent by Manchester City Council to Transport for Greater Manchester, including drawings, maps, or text descriptions of proposals, and any replies or comments on such proposals in reply.
 - 2) I would also be grateful for minutes of any meetings or correspondence between councillors and Manchester City Council officers in the past eight weeks."
4. The Council disclosed some information within scope of the request. However, it withheld some information under regulation 12(4)(e) of the EIR, the internal communications exception. The Council also withheld some of this information under regulation 13 of the EIR, the personal data exception.

Reasons for decision

5. The following analysis sets out why the Commissioner has concluded that the Council was entitled to rely on regulation 12(4)(e) of the EIR in this particular case.
6. Regulation 12(4)(e) is a class-based exception. There is no need to consider the sensitivity of the information to engage the exception. However, the exception is subject to the public interest test.
7. The withheld information in this case comprises emails between council staff and councillors, largely between councillors and council officers from the Highways Service who oversee the Active Neighbourhood projects across the city, and attachments to these emails. The Commissioner is satisfied that all of the withheld information falls within the definition of internal communications, therefore the exception is engaged. The Commissioner has gone on to consider the public interest test.
8. The Council took the following factors in favour of disclosure in to account:

- “The general public interest in transparency and accountability in decision-making by the Council.
 - The general public interest to understand why a decision was made.
 - Further the understanding of and participation in the debate of current issues
 - The general public’s interest in how the Council’s Active Neighbourhood projects are developed.
 - The general public’s interest in how projects officers and Councillors correspond in such projects.”
9. The Council took the following factors in favour of maintaining the exception in to account:
- “The need for Council Officers from the Highways Service and Councillors to communicate amongst themselves in private, in particular:
 - The need to protect the Council’s internal deliberating and decision making, also known as the ‘safe space argument’. This ensures that officers have a safe space to discuss, review and comment on all proposals whilst undertaking their due diligence. The Council considers this argument to be applicable (even though the Burnage & Levenshulme project is now live) because there are a number of similar Active Neighbourhood projects currently under development across the City, involving the same Council officers and Councillors and concerning similar issues.
 - The disclosure of these communication will inhibit the free and frank discussions, known as the ‘chilling effect’. If the Council were to lose the ability to correspond internally with frankness and candour, this will inevitably damage the quality of advice and lead to poorer decision-making in all similar schemes. The Council considers this argument to be applicable (even though the Burnage & Levenshulme project is now live) because there are a number of similar Active Neighbourhood projects currently under development across the City, involving the same Council officers and Councillors and concerning similar issues.”
10. Taking the above factors into account, and having applied the presumption in favour of disclosure, the Council determined that the public interest favours maintaining the exception.

11. The Commissioner acknowledges the public interest in transparency regarding decision making about the Active Neighbourhood Scheme. However, his view is that the 'safe space' and 'chilling affect' arguments made by the Council are weighty factors in favour of maintaining the exception in this case due to the fact that similar Active Neighbourhood Projects are currently under development across the city. He is satisfied that disclosure would be likely to prevent councillors and council officers corresponding internally with frankness and candour, which could damage the quality of advice and may lead to poorer decision-making with regard to the Active Neighbourhood Projects which are still being developed. This would not be in the public interest.
12. Having reviewed the withheld information, the Commissioner's decision is that the public interest in maintaining the exception outweighs that in disclosure, therefore the Council was entitled to rely on regulation 12(4)(e) to withhold the withheld information.
13. As the Council was entitled to rely on regulation 12(4)(e) to withhold all of the withheld information, the Commissioner has not gone on to consider whether the Council has correctly applied the personal data exception to some of this information.

Right of appeal

14. 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

15. 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.
16. 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

Victoria James
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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