

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 27 October 2022

Public Authority: Northumberland County Council
Address: County Hall,
A197
Morpeth NE61 2EF

Decision (including any steps ordered)

1. The complainant requested information associated with a pre-planning application. Northumberland County Council (the "council") withheld the information under the exception for interests of the information provider – regulation 12(5)(f).
2. The Commissioner's decision is that the council has correctly relied on regulation 12(5)(f) to withhold the requested information.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 12 October 2021 the complainant wrote to Northumberland County Council (the "council") and requested the following information:

"In respect of the property [redacted]. All information relating to a pre-planning application that was made in respect of the development of the property and site. We wish to see:

- Copies of the Pre-Planning Application made by the applicant, • Any correspondence between the applicant and Northumberland County Council,
- Correspondence between the departments within the County Council, and
- The outcome and response to this application given by the County Council.

We are aware that pre-planning advice had been sought by the applicant because outline planning application [redacted] states that pre-planning advice was sought. We are also aware from the responses to [redacted] that are on the County Council Planning website, that the pre-planning application was circulated to some Consultees for comment."

5. The council's final position is that it is relying on the exception for interests of the information provider (regulation 12(5)(f)) to withhold the requested information.

Reasons for decision

Regulation 12(5)(f) – interests of the information provider

6. The following reasoning sets out why the Commissioner has concluded that the council was entitled to rely on the exception in regulation 12(5)(f) in this case.
7. Regulation 12(5)(f) of the EIR provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the interests of the information provider.
8. The council has confirmed that the withheld information relates to a pre-application planning application made by a third party.

9. The Commissioner notes that the third party in question submitted the information voluntarily and that they have not consented to its disclosure. He also notes that the council's responses to the complainant explain why disclosure of the information would result in adverse effects to the interests of the third party.
10. On the basis of the council's responses to the complainant the Commissioner has concluded that it has demonstrated that the exception is engaged.
11. In reaching this conclusion the Commissioner has also referred to a previous decision notice (ICO reference: IC-46328-M8B2) which was issued in relation to a comparable request for pre-application planning application information¹. He considers that the conclusions reached in that case are transferable to this complaint.
12. In relation to the public interest in this matter, the Commissioner acknowledges that the pre-planning application process enables developers to address any potential issues or difficulties with their development proposals prior to submitting a formal planning application.
13. The Commissioner considers that the ability for developers to submit confidential requests for pre-application advice will arguably save the council and the developer time, money and resources.
14. The Commissioner notes that the complainant is a neighbour of the proposed development and understands why they would have an interest in accessing the information.
15. Whilst the Commissioner accepts that the withheld information might be of interest to those potentially affected by the proposed development, he does not consider that disclosure would significantly enhance understanding of the actual scope or character of the development or enable informed decisions to be made as to whether to support or object to the development.
16. The Commissioner also considers that the public interest in the context of the EIR relates to the broader public interest and, whilst individual interests are legitimate, they do not necessarily carry significant weight.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/4017925/ic-46328-m8b2.pdf>

17. The Commissioner also notes that, subsequent to the pre-application planning application being submitted a formal planning application was submitted and refused by the council. He considers that this demonstrates that the formal planning process provides a structure for public engagement with planning matters and that the public availability of information relating to this serves the public interest in transparency and accountability.
18. Having considered the positions of the council and the complainant and referred to the decision notice cited above, the Commissioner has concluded that, in this case, the public interest favours maintaining the exception.
19. The Commissioner finds that, in this case, the council was entitled to rely on the exception in regulation 12(5)(f) to withhold the requested information.

Right of appeal

20. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

21. 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.
22. 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

Christopher Williams
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF