

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 21 October 2022

Public Authority: Chesterfield Borough Council

Address: Town Hall
Rose Hill
Chesterfield
Derbyshire S40 1LP

Decision (including any steps ordered)

1. The complainant requested a report relating to geo-environmental conditions at Rufford Close, Chesterfield. Chesterfield Borough Council (the "council") withheld the information under the exception for the course of justice - regulation 12(5)(b).
2. The Commissioner's decision is that the council has correctly applied the provisions of regulation 12(5)(b) to withhold the requested information.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 4 November 2021, the complainant wrote to Chesterfield Borough Council (the "council") and requested the following information:

"I therefore request a copy of the report of the geo-environmental conditions at Rufford Close Chesterfield that was commissioned by the Council from IDG GeoEnvironmental Ltd and received by the Council in September 2019."
5. The council's final position is that all the requested information is subject to the exception for the course of justice in regulation 12(5)(b) of the EIR.

Reasons for decision

Regulation 12(5)(b) – the course of justice

6. The following analysis sets out why the Commissioner has concluded that the council was entitled to rely on regulation 12(5)(b) in this case.
7. Regulation 12(5)(b) of the EIR allows public authorities to withhold information where disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial and of a public body to conduct an enquiry of a criminal nature.
8. The withheld information relates to four houses built by the council which were subsequently demolished after hazardous gas was detected. The requested report was commissioned by the council to establish the cause of the gas release and to identify a remedy. The council confirmed that the information was also intended to be used as expert witness evidence in any litigation with parties deemed responsible for the incident.
9. In decision notice IC-126750-X6W4 the Commissioner found that comparable information engaged the exception in regulation 12(5)(b)¹.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4020329/ic-126750-x6w4.pdf>

Having considered the available evidence, the Commissioner finds that the exception is similarly engaged in this case.

10. The complainant and the council have provided the Commissioner with arguments regarding the public interest in maintaining the exception and disclosing the information. The Commissioner recognises that there is a genuine public interest in understanding the environmental reasons for the incident in question and in there being accountability for decision making and public expenditure in this regard.
11. However, as explained in the decision notice referred to in paragraph 9, the Commissioner recognises the importance of the level playing field when litigation is in process or in contemplation. He considers that there is a strong public interest in maintaining the integrity of that process. He considers that the conclusions reached in decision notice IC-126750-X6W4 are applicable to this complaint.
12. Having considered the detailed arguments provided by the council in this regard the Commissioner has concluded that, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure of the withheld information.

Right of appeal

13. 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

14. 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.
15. 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