

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 2 November 2022

Public Authority: London Borough of Islington
Address: Municipal Offices
222 Upper Street
London N1 1XR

Decision (including any steps ordered)

1. The complainant requested information relating to an Environmental Health complaint. London Borough of Islington (the "council") refused the request under the exception for the confidentiality of proceedings – regulation 12(5)(d).
2. The Commissioner's decision is that the council has correctly relied on regulation 12(5)(d) 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 the London Borough of Islington (the "council") and requested the following information:

"All internal correspondence within the London Borough of Islington, email, memo, letters and recordings of telephone calls related to Fit Kitchen Limited and [redacted] between 31 December 2020 and 31 January 2022."

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

Reasons for decision

Regulation 12(5)(d) – confidentiality of proceedings

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)(d) in this case.

7. Regulation 12(5)(d) states:

"... a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

(d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;"

8. In determining whether the exception applies in this case the Commissioner has referred to his own guidance, previous decision notices and the council's submissions.
9. The Commissioner's guidance confirms that "proceedings" can include legal proceedings¹. The council has confirmed that the withheld information relates to Environmental Health Inspections and subsequent legal action it has taken against Fit Kitchen Limited.

¹ https://ico.org.uk/media/for-organisations/documents/1626/eir_confidentiality_of_proceedings.pdf

10. The Commissioner is satisfied that, in this case, the information relates to legal proceedings and that the confidentiality of the proceedings in question is provided by common law. In reaching this view the Commissioner has also referred to the reasoning set out in a previous decision notice which relates to a comparable application of regulation 12(5)(d)². He relies on the same reasoning here and has concluded that the exception is engaged as disclosing the information would adversely affect the confidentiality of the proceedings identified.
11. In relation to the public interest, the Commissioner is mindful that the complainant is a representative of Fit Kitchen Limited and has a specific interest in obtaining the information.
12. However, the Commissioner considers that the public interest in this context relates to the broader public interest, including the public interest in the council being able to carry out its functions in relation to Environmental Health matters and associated legal proceedings without these processes being circumvented or prejudiced. Whilst he is not suggesting it is applicable in this case, the Commissioner nevertheless considers that it is not the purpose of the EIR to facilitate grievances against public authorities, particularly where other more appropriate legal remedies are available.
13. Having considered the available evidence, the Commissioner finds that, in this case, the council was entitled to rely on the exception in regulation 12(5)(d) to withhold the requested information and that the public interest favours maintaining the exception.

² ICO reference: FER0559816, issued February 2015: https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1043348/fer_0559816.pdf

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: 0203 936 8963

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

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