

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004 (EIR)**

**Decision notice**

**Date:** 6 December 2022

**Public Authority:** London Borough of Richmond Upon Thames  
**Address:** Civic Centre  
44 York Street  
Twickenham  
TW1 3BZ

**Decision (including any steps ordered)**

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1. The complainant has requested London Borough of Richmond Upon Thames (the Council) to disclose all correspondence relating to pre-application advice for any proposals for any work that requires Planning Permission at Udney Park. The Council refused to disclose the requested information, citing regulations 12(5)(d), 12(5)(e) and 12(5)(f) of the EIR.
2. The Commissioner's decision is that the Council is entitled to refuse to disclose the requested information in accordance with regulation 12(5)(f) of the EIR. He does not require any further action to be taken.

**Request and response**

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3. On 10 June 2022 the complainant wrote to the Council and requested information in the following terms:  
  
"All correspondence relating to Pre-Application advice for any proposals for any work that requires Planning Permission at Udney Park, for the period of 1<sup>st</sup> Jan 2021 to the present date."

4. The complainant sent further correspondence to the Council on 28 June and 6 July 2022, requesting the same information.
5. The Council responded on 7 July 2022. It refused to disclose the requested information citing regulations 12(5)(d), 12(5)(e) and 12(5)(f) of the EIR.
6. The complainant requested an internal review on 7 July 2022.
7. The Council carried out an internal review and notified the complainant of its findings on 5 August 2022. It upheld its previous position.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 10 August 2022 to complain about the way their request for information had been handled. They believe the Council has incorrectly withheld the requested information.
9. The Commissioner has obtained a copy of the withheld information and obtained further submissions from the Council. He agrees with the Council that the withheld information is exempt from disclosure under regulation 12(5)(f) of the EIR. The following section will now explain why.

### **Reasons for decision**

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10. Information can be withheld under regulation 12(5)(f) if disclosure would adversely affect the interests of the person who provided the information, where that person was under no legal obligation to supply it, did not supply it in circumstances which would entitle the Council to disclose it (apart from the EIR) and has not consented to disclosure.
11. The Commissioner notes that the withheld information is the pre-planning application itself, the advice provided by the Council and any associated correspondence. At the time of the Council's refusal notice the advice had only just been sent out to the applicant.
12. The applicant submitted the information voluntarily and informed the Council during their engagement with it that the information they had supplied was confidential, as it contained sensitive commercial information. The applicant therefore did not consent to its disclosure.
13. As the applicant specifically stated that the information must remain confidential and the information contains sensitive commercial

information, the Commissioner, having viewed the information himself, is satisfied that disclosure would adversely affect their interests. For these reasons, he is therefore satisfied that regulation 12(5)(f) is engaged.

14. The Commissioner recognises the public interest in transparency and accountability and in members of the public being informed and engaged early on in any plans to develop the local area. However, he considers the statutory formal planning process provides that engagement and public scrutiny. The pre-planning process is a useful tool for both applicant and planning authority. It allows any issues or concerns with any ideas or plans to be discussed early on, and ironed out in some cases, before a formal application is submitted. It is beneficial for both sides and there is a need to maintain that private thinking space to enable the formal application process, if indeed engaged after, to run as smoothly and as efficiently at possible. Pre-planning saves the time and resources of both sides.
15. The Commissioner considers disclosure would deter applicants from using the service and volunteering information, often commercially sensitive information, so freely in the future. This is not in the wider interests of the public. It would make the formal planning process more cumbersome, time consuming and costly if the Council was unable to weed out unsuitable proposals before a formal application is received.
16. As stated above, there is also time for those interested or concerned to view any formal plans once they have been put in, consult and raise and objections or statements of support. Often pre-planning applications do not make their way to the formal process. Some plans are abandoned, others are changed to reflect the informal advice they have received. It is not in the public interest to open such informal applications up to public debate and scrutiny when they may not proceed further or change.
17. For the above reasons the Commissioner is satisfied that 12(5)(f) applies and the public interest rests in maintaining the exception.

## Right of appeal

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18. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

19. 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.
20. 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

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**