

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

**Date:** 31 January 2023

**Public Authority:** London Borough of Hammersmith and Fulham  
King Street  
Hammersmith  
London  
W6 9JU

**Decision**

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1. The Commissioner's decision is that London Borough of Hammersmith and Fulham (the Council) is entitled to rely on regulation 12(4)(e) of the EIR to withhold information which was requested about communications in relation to building works. He also finds that the balance of the public interest favours maintaining the exception. He has therefore not gone on to consider the Council's application of regulation 12(5)(f).<sup>1</sup>
2. The Commissioner does not require the Council to take any steps.

**Request and response**

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3. The complainant made the following information request to the Council on 7 January 2021:

"Please provide copies of all written and electronic communications sent to or received by LBHF Planning Enforcement Officer XXX between June 2020 and January 2021, including but not limited to communications with others within the LBHF planning department and the owners of Nrs (XX and XX named) Avenue and/or their agents/architects, in connection with complaints made on about the 24th June 2020 and subsequently that work at Nos (XX and XX named) Avenue had been carried out in breach of planning regulations; LBHF

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<sup>1</sup> <https://www.legislation.gov.uk/ukxi/2004/3391/regulation/12>

reference Nos 2020/00211/COMPWK and 2020/00558/COMPWK concern these complaints.”

4. The Council responded and advised that it held the information requested. However, the information was being withheld under regulation 12(4)(e) (Internal Communications) as the request would involve the disclosure of internal communications. The Council also considered that some of the information would be covered by regulation 12(5)(f) (interests of the person who provide the information).
5. In its internal review the Council upheld its decision to withhold the information requested under regulation 12(4)(e) and regulation 12(5)(f).

### **Reasons for decision**

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6. On the basis of their complaint to the Commissioner, this reasoning covers whether the requested information is environmental information and, if so, the Council's application of regulation 12(4)(e) of the EIR to the request.
7. The requested information concerns electronic correspondence about exterior building works. As such the Commissioner is satisfied that the information is environmental information under regulation 2(1)(a) and 2(1)(c) of the EIR<sup>2</sup>.
8. Under regulation 12(4)(e) of the EIR, a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications. This exception covers all internal communications and the sensitivity of the information is not a consideration for the exception to be engaged.
9. The withheld information in this case comprises of emails between council staff. Largely between planning enforcement officers within the Economy Department at the Council, 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.
10. In its response the Council considered any factors in favour of disclosure and found that environmental information has a presumption of

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<sup>2</sup> <https://www.legislation.gov.uk/ukxi/2004/3391/regulation/2/made>

disclosure. It also found that the Council should be transparent in its work in order to be accountable to the public for its decisions.

11. In their internal review request the complainant asked that the Council consider the public interest in seeing how the Council address concerns from members of the public about breaches of planning applications to ensure the matters are dealt with reasonably, impartially and in accordance with applicable law.
12. 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.
13. Having reviewed the withheld information, the Commissioner’s decision is that the public interest in maintaining the exception outweighs that in disclosure. This is because the Commissioner considers the importance of council officers having the safe space for free and frank conversation outweighs the public interest in this information.
14. The Council has advised the complainant that it has not received any other complaints regarding the exterior building works to the property in question. The Commissioner therefore considers that there is not a wider public interest in the information being released at this time.
15. The Commissioner has also taken into consideration that this appears to be an ongoing issue making it more important for the council officers to have the opportunity to carry out internal communication in confidence.
16. Regulation 12(5) of the EIR requires a public authority to apply a presumption in favour of disclosure. The Commissioner has taken this into account when assessing the public interest and is satisfied that the information should be withheld because the public interest in maintaining the exception outweighs the public interest in disclosing the information
17. It is therefore, the Commissioner’s decision that the Council was entitled to rely on regulation 12(4)(e) to withhold the information. In light of this finding the Commissioner has not gone on to consider regulation 12(5)(f).



## 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.....**

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