

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 8 June 2023

**Public Authority:** Dover District Council  
**Address:** Council Offices  
White Cliffs Business Park  
Dover  
Kent  
CT16 3PF

#### **Decision (including any steps ordered)**

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1. The complainant requested information from Dover District Council (the Council) relating to a specific planning application. The Council disclosed some information within the scope of the request; however, it withheld some information under regulation 12(4)(e) of the EIR, the internal communications exception.
2. The Commissioner's decision is that the Council is entitled to rely on regulation 12(4)(e) (internal communications) of the EIR to refuse to provide the withheld information.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 6 March 2023, the complainant wrote to the Council and requested information in the following terms:

"Copies of all the information held by Dover District Council relating to 22/01341, land adjacent to [address redacted] that is not on the public planning portal, including requests for further information, deadlines,

emails, data, information, surveys, reports, consultee responses etc. requested and received by the planning department relating to the planning application.”

5. The Council responded on 22 March 2023. It provided some information within the scope of the request but refused to provide the remainder, citing regulation 12(4)(e) of the EIR, internal communications, as its basis for doing so.
6. Following an internal review the Council wrote to the complainant on 11 April 2023 upholding its original response.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 16 April 2023 to complain about the application of regulation 12(4)(e) of the EIR and how the public interest test had been applied.
8. In its original response the Council provided some information which was partly redacted under regulation 5(3) and 13 of the EIR (personal data). The complainant has not raised any concerns with the Commissioner about this information or the application of these exceptions and therefore they will not be considered in this case.
9. The scope of the following analysis is to determine if the information withheld by the Council under regulation 12(4)(e) is exempt from the duty to disclose.

### **Reasons for decision**

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#### **Regulation 12(4)(e) – internal communications**

10. Regulation 12(4)(e) of the EIR states that information is exempt from the duty to disclose if it involves ‘the disclosure of internal communications’. It is a class-based exception, meaning there is no need to consider the sensitivity of the information in order to engage the exception. Rather, as long as the requested information constitutes an internal communication then it will be exempt from disclosure.

The withheld information in this case comprises emails between council staff regarding planning application 22/01341, and the discussions and considerations between various departments involved in the consideration of the application. These departments include, but are not limited to, planning enforcement, parks and open spaces, and the heritage team.

11. The Commissioner is satisfied that all of the withheld information falls within the definition of internal communications and therefore, he finds that the exception is engaged. The Commissioner will now go on to consider the public interest test.

### **Public interest test**

12. With regards to the public interest test, the Council outlined its arguments in favour of disclosing the withheld information:
  - It acknowledged that the disclosure of information would promote transparency and accountability about the Council's decision making.
  - Disclosure would allow the public to understand internal deliberations relating to the recommendation to be made in respect of the planning application.
13. The Council also outlined arguments in favour of maintaining its reliance on regulation 12(4)(e):
  - That the internal communications were exchanged between officers regarding the planning application in the belief that they would be private.
  - Disclosing the information may affect the frankness and candour of discussions which could damage the quality of deliberation, particularly in respect of preparing and finalising reports by the Planning Case Officer which will recommend either refusal or granting of the planning application in this case.
  - That the public interest does not require the information to be disclosed because of the need to be able to have these sorts of discussions in a 'safe space', and out of the public glare in order to ensure quality decision-making.
  - That the decision on the planning application in question remains undetermined and open for public comment.

14. The Commissioner recognises that there is public interest in the openness and transparency of the planning process. Furthermore, he is aware that the request relates to a planning matter that is the subject of some debate, and has generated a lot of local interest.
15. However, given that the withheld information relates to a live planning application which is yet to be determined, the Commissioner considers the Council's argument that it needs to maintain a safe space to freely and frankly discuss its merits without external interference is a weighty factor in favour of maintaining the exception in this instance. The Commissioner accepts that disclosure could damage the quality of advice and may lead to poorer decision making with regard to both this, and other, planning matters. This would not be in the public interest.
16. Furthermore, the Commissioner is aware that the Council has, and continues to, publish information about this planning application; which, in his view, goes some way in meeting the public interest in terms of transparency of the planning process.
17. Having reviewed the withheld information, the Commissioner's decision is that the public interest in maintaining the exception outweighs that in disclosure, therefore the Council was entitled to rely on regulation 12(4)(e) to withhold the requested information.
18. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions. As stated in the Upper Tribunal decision *Vesco v Information Commissioner (SGIA/44/2019)*:

"If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure..." and "the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations" (paragraph 19).
19. In this case, the Commissioner's view is that the balance of the public interest favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(e) was applied correctly.

## Right of appeal

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

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

**Ben Tomes**  
**Group Manger**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**