

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 25 July 2023

Public Authority: Herefordshire Council
Address: Plough Lane
Hereford
HR4 0LE

Decision (including any steps ordered)

1. The complainant requested information relating to a specific planning application. Herefordshire Council (the "council") disclosed some information and withheld other information under the exceptions for internal communications (regulation 12(4)(e)) and the course of justice (regulation 12(5)(b)).
2. The Commissioner's decision is that the council correctly applied regulation 12(4)(e) to the withheld information.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 15 February 2023 the complainant wrote to Herefordshire Council (the "council") and requested the following information:

"From November 2021 to the present day, I request any and all communication (sent or received) between Council employees and Councillors that refers to planning application [redacted].

Details of meetings and phone records should also be included. Correspondence regarding the administration of application [redacted] between parties must be included and also, correspondence of events before, during and after the site visit and before, during and after the planning committee meeting.

To include but not to limited to: [redacted], all members of the Planning Committee, any other Councillor or Council employee, any officer involved in the planning process (NDP manager, Historic Building Officer etc) members of legal services etc.."

5. The council responded on 15 March 2023 and disclosed some information. It withheld some information under the exceptions for internal communications (regulation 12(4)(e)) and the course of justice (regulation 12(5)(b)).
6. On 17 April 2023 the council provided its internal review decision to the complainant. Further information was disclosed to the complainant but the council confirmed it was maintaining its position in relation to the application of the exceptions.

Scope of the case

7. On 30 May 2023 the complainant contacted the Commissioner to complaint about the council's handling of their request. The complainant confirmed that they wished the Commissioner to consider whether the council had correctly applied exceptions to the withheld information.
8. The Commissioner has considered whether the council correctly withheld the requested information.

Reasons for decision

Internal Communications – regulation 12(4)(e)

9. Regulation 12(4)(e) is a class-based exception. There is no need to consider the sensitivity of the information to engage the exception. However, the exception is subject to the public interest test.
10. The withheld information in this case comprises emails between council staff regarding the subject of the request. The Commissioner is satisfied that the withheld information falls within the definition of internal communications and that, therefore, the exception is engaged.

Public interest test

11. The Commissioner considers that the underlying rationale for the exception at regulation 12(4)(e) is to protect a public authority's need for a private thinking space. He considers that the extent to which disclosure would have a detrimental impact on internal processes will be influenced by the particular information in question and the specific circumstances of the request.
12. In relation to the public interest in disclosure, the complainant has argued that they consider that the council has acted partially in its handling of their planning application. Disclosure would ensure transparency and, if relevant, provide reassurance that decisions made followed correct procedures.
13. The Commissioner recognises that there is a general public interest in transparency and accountability, particularly in cases where decisions can have a direct impact on the environment.
14. In relation to the public interest in maintaining the exception, the council has argued that planning officers would not be able to carry out their functions effectively if all their internal discussions were subject to public disclosure.
15. The council considers that officers must be able to communicate freely with their line managers, to raise issues and concerns and seek their advice on complex or sensitive matters without fear of external interference. The council has confirmed that officers were communicating in the belief that their emails about this issue would be private and that they could seek the advice and views of someone more senior in confidence.
16. The council has argued that officers need a safe space to be able to debate issues away from external scrutiny, which allows for free and frank discussions to take place. If officers were not able to have this

space, they would be less candid when expressing opinions or may be deterred altogether from giving their professional views on a matter, which in turn would damage the quality of the decision making process because decisions made would not be fully informed and balanced.

17. The council has argued that disclosing the information would result in further correspondence requiring attention which would take up officer time and inhibit its ability to carry out its planning duties.
18. The Commissioner has carefully considered the arguments put forward by the complainant and by the council. He recognises the legitimate public interest in disclosing information that would inform the public about decisions concerning activities that may have an impact (whether positive or negative) on the environment. Accordingly he is mindful that access rights under the EIR are designed to support public access to environmental information, public participation in decision making and access to justice.
19. The Commissioner recognises that the complainant has a genuine personal interest in accessing the information, however, the public interest in this context relates to the broader public interest. In considering this the Commissioner has to balance whether the effects of disclosure, namely the adverse effects to the council's ability to reach decisions, are warranted in order to satisfy the interests of the complainant and whether any broader public interests would be served by disclosure.
20. The Commissioner acknowledges the complainant's argument that refusing to disclose the information suggested that the council might be covering up wrongdoing. This, if true, might provide a broader public interest reason for disclosure. However, it cannot be assumed that a refusal to disclose information is based on a desire to cover up wrongdoing. In the Commissioner's experience there are many cases where the withheld information may be relatively innocuous, but the act of disclosure would have a detrimental effect on the public authority's ability to conduct its business effectively. In any event, the Commissioner has not seen any evidence of wrongdoing, therefore the complainant's argument does not carry significant weight in this case.
21. The Commissioner is mindful that the complainant disagrees with the council's decision regarding the planning application. However, other remedies for raising and addressing such concerns exist as part of the planning process so disclosure is not necessary in this case for the complainant to take these concerns forward.

22. The Commissioner finds that the public interest in this case is not especially balanced. He is satisfied that there is a significant public interest in protecting the council's ability to exchange internal communications in a "safe space" and that the public interest in disclosure in this case does not counterweigh this protection.
23. Consequently the Commissioner finds that the public interest in maintaining the exception at regulation 12(4)(e) outweighs the public interest in disclosing the withheld information. He has concluded that the council correctly applied regulation 12(4)(e) in this case.
24. In reaching his decision in this case the Commissioner has referred to other decision notices he has issued in relation to complaints which identify comparable scenarios. He considers that the conclusions reached in these cases are transposable here¹.
25. A small quantity of information withheld under regulation 12(4)(e) was also withheld under the exception for the course of justice (regulation 12(5)(b)). As the Commissioner has concluded that regulation 12(4)(e) applies to all the withheld information the Commissioner has not gone on to consider the council's application of regulation 12(5)(b).

¹ See, for example: <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4019944/ic-71938-h9n0.pdf>, and <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4025537/ic-227893-b1t3.pdf>

Right of appeal

26. 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

27. 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.
28. 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
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SK9 5AF