

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 31 May 2024

Public Authority: Ellingham, Harbridge and Ibsley Parish Council

Address: PO Box 9710
Ringwood
Hampshire
BH24 9HF

Decision (including any steps ordered)

1. The complainant requested a copy of an email relating to a meeting between Somerley Estate and Ellingham, Harbridge and Ibsley Parish Council (the Council). The Council provided a copy of the email but applied regulation 12(5)(f) (interests of the information provider), to redact some of the content.
2. The Commissioner's decision is that the Council has correctly applied regulation 12(5)(f) to some information within the email.
3. The Commissioner does not require further steps.

Request and response

4. On 4 October 2023, the complainant wrote to the Council requesting information in the following terms:

"As such I would formally request a copy of the communication sent to the parish council from Somerley in response to a proposed meeting between PC and Somerley regarding matters that I had brought to the attention of the PC under the Freedom of information act."

5. The Council responded on 31 October 2023, confirming that it held the requested information and that, given the context of the email, it had dealt with the request under the EIR.
6. However, it applied regulation 12(5)(f) (interests of the information provider) to withhold the entire email.
7. The Council carried out a review of the request and, on 14 November 2023, provided a copy of the communication to the complainant, applying regulation 12(5)(f) to redact some of the content.

Reasons for decision

8. The complainant contacted the Commissioner on 18 December 2023, to complain that the request had been dealt with under the EIR rather than the Freedom of Information Act 2000 (FOIA), and about the application of regulation 12(5)(f) to their request.

Is the requested information environmental?

9. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
10. The withheld information in this case is redactions from an email responding to a request for a meeting to discuss a blocked or contaminated culvert on the Somerley Estate.
11. The Commissioner's view is that the withheld information falls within the scope of regulation 2(1)(a), water, and 2(1)(b), discharges, of the EIR, and therefore the Council handled the request under the correct legislation.

Regulation 12(5)(f), interests of the information provider

12. Regulation 12(5)(f) of the EIR states that:

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

f) the interests of the person who provided the information where that person –

(i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;

(ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and

(iii) has not consented to its disclosure;”

Would disclosure adversely affect the interests of the person/s who provided the information to the Council?

13. The Council explained that there is a history of reports from the complainant relating to a culvert on the Somerley Estate being blocked and/or contaminated which have led to the deterioration of the relationship between the Estate and the complainant.
14. As with all the Regulation 12(5) exceptions, the Commissioner considers that, in order to demonstrate that disclosure “would adversely affect” a confider’s interests (in this case the Somerley Estate), a public authority must demonstrate that the adverse effect is more likely than not to occur.
15. Having seen the withheld information, the Commissioner’s view is that disclosure of the information would be more likely than not to adversely affect the confider’s interests, in that it would lead to a further deterioration of the relationship between the Somerley Estate and the complainant.

Was the person under, or could have they been put under, any legal obligation to supply the information to the public authority?

16. The Council confirmed that Somerley Estate has engaged in informal discussions with it regarding the culvert on this and other occasions. It stated that the Estate has no legal or statutory obligation to share or discuss the matter with the Council.

17. On the basis of these representations from the Council the Commissioner accepts that the Somerley Estate was not and could not have been put under any legal obligation to supply the withheld information to the Council.

Did the person supply the information in circumstances where the recipient public authority, or any other public authority, was entitled to disclose it apart from under the EIR?

18. The Commissioner's guidance states, "where information has been provided by another person, public authorities will only be able to disclose it if there is no duty of confidence or they have a specific power to do so."
19. The Council has confirmed that the information was provided to them voluntarily and that it was supplied in the expectation that it would not be disclosed to a third party.
20. On that basis, the Commissioner is satisfied that the Council was not entitled to disclose the information apart from under the EIR.

Has the person/s supplying the information consented to its disclosure?

21. The Council stated that it has requested consent to disclose the entirety of the email from the confider, but that consent has been refused.
22. Having found that each of the tests for regulation 12(5)(f) to be engaged are met, the Commissioner's conclusion is that the exception provided by regulation 12(5)(f) is engaged. He has therefore gone on to consider the public interest test.

Public interest test

23. The Commissioner is aware that there is a history of complaints about the management of the culvert which lies on the Somerley Estate. Having reviewed the available information, it appears that these concerns originate with the complainant and do not form part of any wider public concerns within the parish.
24. Given this, the Commissioner concludes that interest in the withheld information relates primarily to a personal dispute between the confider and the requester and that this is not representative of any wider public interest in this information.

25. Somerley Estate, as a private enterprise, is not required to provide any information to the Council as part of any statutory obligations. The Commissioner is of the opinion that, given the location of the estate to the Parish, there is a high public interest in maintaining the voluntary supply of information from the Estate to the Council and in maintaining the relationship between the two.
26. He feels that disclosure of the withheld information would potentially damage both the voluntary supply of information and the relationship between the Council and the Somerley Estate, which would not be in the public interest.

Commissioner's decision

27. Given the very limited public interest in the requested information, the Commissioner is of the opinion that there is a higher public interest in protecting the relationship and voluntary provision of information between the Somerley Estate and the Council.
28. The Commissioner has therefore concluded that the public interest in the maintenance of the exception outweighs the public interest in disclosure of the withheld information. The Council was not, therefore, obliged to disclose the withheld information.

Right of appeal

29. 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

30. 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.
31. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Ben Tomes
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