

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

### **Decision notice**

**Date:** 18 March 2019

**Public Authority:** Wiltshire Council

**Address:** County Hall  
Bythesea Road  
Trowbridge  
Wiltshire  
BA14 8JN

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

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1. The complainant has requested information relating to planning matters at a specific property. Wiltshire Council disclosed some information and withheld other information under the exceptions for personal data – regulation 13 and the course of justice – regulation 12(5)(b).
2. The Commissioner's decision is that Wiltshire Council has correctly applied regulation 12(5)(b) to withhold the information.
3. The Commissioner does not require the public authority to take any steps.

## Request and response

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4. On 17 August 2018, the complainant wrote to Wiltshire Council (the "council") and requested information in the following terms:  
  
*"...copies of all correspondence and meeting notes with the applicant Mr & Mrs Miller, their agent, contractor or any other party associated with [address redacted]"*
5. The council responded on 12 September 2018 and disclosed some information. It withheld other information under the exceptions for persona data (regulation 13) and the course of justice (regulation 12(5)(b)).
6. Following an internal review the council wrote to the complainant on 19 October 2018. It stated that it was maintaining its position.

## Scope of the case

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7. On 24 October 2018 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. During the Commissioner's investigation the council confirmed that it was also applying the exception for interests of the information provider (regulation 12(5)(f)) to withhold the information.
9. The Commissioner confirmed with the complainant that her investigation would consider whether the council had correctly withheld the requested information.

## Reasons for decision

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### Regulation 12(5)(b) – course of justice

10. The council withheld correspondence relating to its investigation into potential breaches of planning conditions.
11. Regulation 12(5)(b) of the EIR requires that a public authority can refuse to disclose information if its disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature.

12. The course of justice at regulation 12(5)(b) is a broad exception which encompasses any adverse effect on the course of justice and the Commissioner considers that it is not limited to only information that is subject to LPP. This allows for information that are not subject to LPP to still be covered by the exception, as long as disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature. The Tribunal affirmed this view in the case of *Surrey Heath Borough Council v Kevin McCullen and the ICO (EA/2010/0034)* when they acknowledged that the regulation covered more than just LPP.
13. As such, the Commissioner accepts that 'an inquiry of a criminal or disciplinary nature' is likely to include information about investigations into potential breaches of legislation, for example, planning law or environmental law.
14. The council confirmed that the information relates to inquiries to determine whether the property in question had breached section 171A of the Town and Country Planning Act 1990 by carrying out a development without the required planning permission, with a view to whether an enforcement notice should be issued in accordance with section 172 Town and Country Planning Act 1990.
15. Having considered the council's arguments, and reviewed the withheld information, the Commissioner recognises that the information represents evidence that, at the time of the request, related to a live and ongoing inquiry. It is clear that the public disclosure of such information would not only inhibit the council's ability to effectively conduct an inquiry, but would damage public confidence in such inquiries being undertaken appropriately and with due regard to the rights and expectations of involved parties.
16. In view of the above, the Commissioner is satisfied that it is more probable than not that disclosure of the information would adversely affect the course of justice, and that the exception provided by regulation 12(5)(b) is therefore engaged.

### **The public interest test**

17. Regulation 12(1)(b) requires that, where the exception under regulation 12(5)(b) is engaged, a public interest test should be carried out to ascertain whether the public interest in maintaining the exception outweighs the public interest in disclosing the information. In carrying out her assessment of the public interest test, the Commissioner is mindful of the provisions of regulation 12(2) which states that a public authority shall apply a presumption in favour of disclosure.

*The public interest in disclosure*

18. The Commissioner considers that some weight must always be attached to the general principles of accountability and transparency. These in turn can help to increase public understanding, trust and participation in the decisions taken by public authorities.
19. The complainant has argued that purpose of the request is to seek to uncover any evidence of wrongdoing in the council's handling of its inquiries.

*The public interest in maintaining the exception*

20. The council has confirmed that, at the time of the request, the information related to a live and ongoing inquiry, with any resultant enforcement notice subject to appeal. The council has argued that disclosure of the information would not only impede it from being able to undertake an inquiry effectively, confidentially, and without outside influence, but would compromise the justice and fair treatment expected by involved parties.
21. The Commissioner recognises that the degree of harm which would be done to the course of justice is closely linked to the timing of a request and the associated stage that a relevant process has reached. She accepts that the disclosure of information during an ongoing investigation is significantly likely to cause a greater degree of harm to an enquiry than after its completion. She has, therefore, given due weighting to this in her consideration of where the balance of the public interest lies.
22. The council further argued that disclosing the information would adversely affect the course of justice in relation to enforcement proceedings. It stated that planning enforcement is not a public process, partly because of the possibility of unlawful behaviour, and because it is not the case that the enforcement process will always find against an individual.
23. The council also suggested that disclosure of the information might lead others to infer wrongdoing where there is none, which would be unfair to the individuals who are subject of an enforcement inquiry.

*Balance of the public interest*

24. The public interest inherent in this exception will always be strong due to the fundamental importance of the general principle of upholding the administration of justice, and in particular, the importance of not prejudicing inquiries.

25. In the circumstances of this case, the Commissioner understands that the request took place whilst the inquiry was live and ongoing. The Commissioner considers that it is reasonable to consider that the subject of potential enforcement proceedings would expect the inquiry to proceed fairly and with the opportunity to appeal against any outcome and the evidence on which it is based. There is no indication to the Commissioner that the withheld information is already publically known.
26. The Commissioner recognises that the complainant's arguments for disclosure are based on concerns that the council might not have handled the inquiry appropriately. The Commissioner acknowledges that the complainant has a personal interest in accessing the information, being neighbours of the property to which the request relates, however, the Commissioner has not been presented with any compelling evidence that wrongdoing has taken place and does not consider that such a speculative enquiry justifies any resulting damage to the course of justice caused by disclosure. She also considers that the planning process and other dispute procedures provide mechanisms for such issues to be addressed.
27. Furthermore, the Commissioner considers that the public interest in the context of the EIR refers to the broader public good and, in weighing the complainant's interests against those of the council and its ability to undertake planning matters and inquiries on behalf of the wider public, the Commissioner does not consider that the interests of the complainant tip the balance in this case.
28. The Commissioner does not consider that the arguments in favour of disclosure in this case carry significant, specific weight. She has determined that, in the circumstances of this particular case they are outweighed by the arguments in favour of maintaining the exception under regulation 12(5)(b).
29. The Commissioner has, therefore, concluded that the council has correctly applied the exception and that, in this case, the public interest favours maintaining the exception.
30. In investigating the council's application of regulation 12(5)(b) the Commissioner has taken an holistic approach which recognises that the personal data withheld by the council under regulation 13 is inextricably bound up with the council's inquiry which falls within the purview of regulation 12(5)(b).
31. As she has concluded that all the withheld information has been correctly withheld by the council under regulation 12(5)(b), the Commissioner has not gone on to consider the other exceptions applied in this matter.

## Right of appeal

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32. 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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

33. 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.
34. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**