

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 21 April 2021

Public Authority: City of York Council
Address: West Offices
Station Rise
York
YO1 6GA

Decision (including any steps ordered)

1. The complainant has requested a copy of the council's Business Continuity Plan (BCP) as regards its waste functions. The council refused the request on the basis that Regulation 12(5)(a) applied (international relations, defence, national security, or public safety). On review it upheld its decision but did disclose some sections of the BCP. The complainant argues that the council should have disclosed the document in its entirety.
2. The Commissioner's decision is that the council was correct to withhold the information under Regulation 12(5)(a). She has however decided that the council's response did not comply with the requirements of Regulation 5(2) in that the disclosed information was not provided within 20 working days.
3. The Commissioner does not require the council to take any steps.

Request and response

4. Following earlier correspondence relating to the same matter, on 21 April 2020, the complainant wrote to the council and requested information in the following terms:

"I wish to request under the FOI act a full copy of the CYC Business Continuity Plan that was in place prior to the 1st January 2020."

5. The council responded on 23 April 2020. It refused the request on the basis that Regulation 12(5)(a) applied.
6. Following an internal review, the council wrote to the complainant on 3 July 2020. It disclosed some sections of the BCP; however, it retained its reliance upon Regulation 12(5)(a) to withhold sections 3.3 – 3.8. It also said that on reflection, and under the circumstances at the time, it could have applied Regulation 12(4)(b) due to the resources which would have been required to review the document at the time of the request. It considered, however, that at the time of the review being carried out, it was now able to disclose some information.

Scope of the case

7. The complainant contacted the Commissioner on 10 July 2020 to complain about the way his request for information had been handled.
8. He considers that the BCP should have been disclosed and pointed out that other local authorities publish their own versions of this document on their websites.
9. The Commissioner therefore considers that the complaint is whether the council was correct to apply Regulation 12(5)(a) to withhold sections of the BCP.

Reasons for decision

Is the information environmental information for the purposes of the EIR?

10. The council has dealt with the request under the EIR. Regulation 2 of the EIR defines environmental information as:

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form—

(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);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

11. The information in question relates to the continuity of the council's waste functions in the event of an emergency.

12. The Commissioner considers that the information falls within the definition of environmental information for the purposes of the Regulations. The information falls within the definition of (c). The BCP is a measure, or a plan, which is designed to protect the elements outlined in Regulation 2(a) and (b).

Regulation 12(5)(a)

13. Regulation 12(5)(a) of the EIR states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

(a) international relations, defence, national security or public safety;

14. In this case the council has applied the exception on the basis that disclosure would adversely affect public safety and national security.

15. The Commissioner's guidance on the EIR describes public safety as:

'Public safety' may be interpreted widely. The exception covers information that, if disclosed, would adversely affect the ability to protect the public, public buildings and industrial sites from accident or acts of sabotage; and where disclosing information would harm the public's health and safety.

16. The exception will therefore include measures designed to protect against factors ranging from protecting the public from terrorism incidents, emergencies such as flooding, pandemics, and protecting against the actions of groups intending to disrupt council services, damage property etc...

The council's position

17. The council argues that a disclosure of the information would put sensitive information into the public domain which would allow malicious parties to undermine and bypass procedures which the council has in place to protect public safety in the event of public emergencies. It argues that it has published the information that it considers can be put into the public domain without undermining public safety, and it has disclosed a redacted copy of the BCP to the complainant in response to his request for information.

18. It said that the BCP's sole focus is to allow the council to function in an emergency situation. It argues that if an un-redacted version was released publicly this would reveal any risk factors, or weakness in the plans, and the details of how the council intends to mitigate against them. It argues that this would provide opportunities for the plans to be

sabotaged or undermined in an emergency situation, leaving the health and safety of individuals and the community at significant risk.

19. It argues, for example, that particular people, systems or processes relevant to the emergency plan could be targeted in order to sabotage the continuity plan being carried out effectively. This, it said, would adversely impact on:
 - How it deals with the initial incident
 - How it offers a service after the incident has been assessed
 - How it would recover after the incident and return back to normality
20. It said that the BCP covers incidents such as pandemics, cyber-attacks, loss of systems due to other issues (for example loss of power), fire or damage to buildings/infrastructure, natural disasters (for example floods) and terrorist attacks.
21. It argued that disclosing the information could assist 'individuals or organisations' attempts to hinder recovery and provided examples as to how they might be able to go about doing that if they had access to the withheld information.
 - Contact details. The BCP lists all those involved in the initial phases and recovery. Disclosing their details could potentially make them a target too, such as a cyber-attack or terrorist organisation
 - Communication internally – The BCP includes a list of contact details for all those named, not all are part of Waste Services
 - Communication with external bodies – The BCP includes contact details and account numbers for external suppliers. It argued that disclosure would allow third parties to target or interrupt the communication channels, causing confusion and making the risk to life greater
 - Evacuation plans – This would advise potential threats of the location of staff and, depending on the emergency, what happens to the buildings, allowing the safe locations people are gathering to be targeted.
22. It said that although the request is for the BCP for Waste Services, the plan contains details that will be relevant to a number of emergency situations. It considered, therefore, that a disclosure would have a

significantly detrimental impact on its ability to maintain essential services safely and effectively and protect staff, residents, and visitors.

23. It said that it recognised that some of the information which has been redacted is not detailed information. However, it considered that raising awareness of the type of processes which will be deployed in an emergency situation would allow people to understand the types of processes to target. For example, ICT equipment, websites, emails, telephones, specialist partner organisations, and alternative building locations. The Commissioner recognises, however, that much of this might be relatively easy to deduce in any event.
24. It said that publication would also allow individuals to understand the plans for different types of emergency and to identify how to sabotage those plans, for example what the council plans are in the event of a major fire, flood, or a loss of resource.
25. It said that the likelihood of an adverse affect would be high. It considered that local authorities are a target for cybercrime, terrorism, and other acts to undermine the safe and effective running of local government and services. It said that it is aware of threats to sabotage communication channels, including from campaign groups, via denial-of-service attacks. It considered that a disclosure of some of the information would assist in formulating and carrying out such an attack. Providing details of the communication channels to be used in an emergency situation would leave these channels at risk of being targeted.
26. It is also considered the likelihood of partner organisations being targeted to sabotage their ability to assist in an emergency would be significant, as would the targeting of locations where staff are intended to gather to provide emergency services, evacuation points and safety equipment.

The complainant's position

27. The complainant has pointed out that many other councils publish their BCP's on the internet. He considers that there is a strong public interest in the council doing so as it clarifies that
 - a) the council has such a plan in place, and
 - b) that that plan is robust.
28. He said that: *"This isn't just about me having access to that information as a council member it's also about the Council Taxpaying residents of York having confidence in the systems put in place by the senior officers*

(most living far, far away from York) for the efficient running of services in times of crisis."

The Commissioner's analysis

29. The central issue which the Commissioner needs to consider when deciding whether the exception is engaged in this case is whether disclosing the withheld information would have an adverse effect upon public safety. This involves two central questions which need to be considered. The first is whether a disclosure of the withheld information would, in actuality, be capable of causing the concerns which the council has highlighted if used inappropriately (i.e., would it be capable of being used to undermine the councils BCP plans). The second is whether that affect is likely under the circumstances.
30. Organisations or individuals intent on undermining the council's ability to react would find the information contained within the BCP helpful in achieving the aim of disrupting these services.
31. The issues highlighted by the council regard the withheld information providing access to information on its contacts, its systems, and its processes in the event of an emergency. The risks of providing such information are clear, and the Commissioner accepts the arguments of the council that a disclosure could be used to undermine the BCP plans.
32. The second question is therefore whether a disclosure of the information would be likely to cause that affect.
33. When considering this issue, the Commissioner has taken into account that the councils BCP's range across all of its services, but it is only the BCP relating to waste which has been requested here.
34. The council said that it considers the likelihood that this information would be used to undermine its processes is high.
35. It said that it is aware of threats to sabotage communication channels, including from campaign groups, so that they can create a level of disruption to influence the authority to accept the actions they wish to occur. It noted, for instance, that in a recent case there was a threat of sending significant numbers of emails in a short period of time to disrupt the council's communication channels and ability to provide effective services. It therefore considered that providing details of the communication channels to be used in an emergency situation would leave these channels significantly at risk of being targeted.

36. It said that the likelihood of partner organisations being targeted to sabotage their ability to assist in an emergency would also be significant, as would the targeting of locations where staff would gather to provide emergency services, evacuation points and safety equipment.
37. The Commissioner has taken into account the fact that the UK threat level for international terrorism is currently rated as "SUBSTANTIAL" meaning an attack is "Likely".
38. However, she recognises that the issue is much wider than the threat of terrorist attacks. The current pandemic has affected the provision of waste services in the city, and the background to the request relates to staff shortages affecting waste collections due to the COVID-19 pandemic. The council's approach to staff safety and any reprioritisation of resources would potentially affect its ability to provide the level of service it normally would.
39. Recent campaigns by various organisations and groups of individuals have caused significant disruption to various town and city centres, as well as the highway infrastructure in various parts of the UK.
40. Cyber attacks, from individual hackers up to state sponsored level attacks, are of constant concern to IT infrastructures of large organisations and public authorities as seen in a recent incident at another council¹.
41. The City of York Council has also had significant flooding events over a number of years, including a significant flooding incident in 2015². Further floods have occurred more recently in both 2020 and January 2021. There is therefore a significant possibility that flooding might well give rise to a need to rely upon the BCP to ensure the continuity of its waste services in the future.
42. The BCP's are effectively manuals setting out how the council will react in different situations. The Commissioner recognises that the scope of the BCP in this case relates only to the provision of waste services, and in many cases, it would be unlikely to be seen as an immediate target for issues such as terrorism. Similarly, issues such as flooding would not seem to be an issue which campaign groups or individuals would be

¹ [Cyber attack: Hackers post Hackney Council's 'stolen documents' - BBC News](#)

² [Floods in York – City of York Council](#)

likely to deliberately seek to undermine via attacking it via information disclosed through its waste BCP.

43. Nevertheless, the Commissioner recognises that the subject of waste is a controversial one, and activists might consider targeting the council's waste services as an objective if they believed the service should be run better or differently. The withheld information would allow the possibility of undermining the council's set responses to such incidents.
44. IT services are always under threat from various parties, and a disclosure of the withheld information would provide details of emergency contacts and channels and would be create risk as it would allow the targeting of internal communication systems within the council.
45. These have the potential of derailing the council's ability to carry out its functions and to react in situations where urgent action is needed. A failure of waste services is an issue which has a significant potential to affect, or put at risk, public health and public safety.
46. She also recognises that knowing the council's planned reaction to a disruption to its waste services extends to other BCP's it has in place. The BCP relating to its waste services cannot therefore be considered as an isolated scheme.
47. The Commissioner has also considered the complainant's argument that other local authorities publish their BCP's online. Their acceptance of the level of risk may be different to the council's, or other authorities may view or accept different levels of risk. Different areas will also have different levels of risk dependent upon many different factors. It may also be the case that the content of these BCP's may be more general in nature. The City of York's BCP is essentially a manual, with detailed information, including contact details of individuals. The Commissioner therefore does not place a great deal of weight on this argument; she must simply consider whether the council's arguments in this case are correct, have substance and fall within the necessary test of likelihood.
48. Taking all of this into account, the Commissioner is satisfied that there are existing threats to the council's provision of services, and to the public generally in the City of York, and that a disclosure of the information could provide information which would allow individuals or groups to undermine the council's responses to emergency situations in some circumstances.
49. The Commissioner's decision is therefore that Regulation 12(5)(a) is engaged.

The public interest

50. Regulation 12(5)(a) is subject to a public interest test. The test is set out in Regulation 12(1). The test is whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. When carrying out this test, Regulation 12(2) requires that a public authority shall apply a presumption in favour of disclosure of the information when carrying out this test.

The public interest in the information being disclosed

51. The council said that it had taken into account the following factors in favour of disclosing the information:

"We considered the public interest arguments in favour of releasing the information and acknowledge

- Genuine interest in people being able to understand the plans in place.*
- Have confidence in the plans in place to ensure the council's services will be protected in the event of any type of emergency*
- Allowing the public to participate in appropriate debates about how services can be maintained and improved*
- To be able to hold the council to account in the event of services not being maintained effectively."*

The public interest in favour of maintaining the exception

52. The council said that it has taken into account the nature of the issues it has identified, and the potential serious consequences of disruption being caused to its waste services should its plans be undermined.
53. It said that disclosing the information would provide opportunities for the plans it has to cover emergency situations to be sabotaged or undermined, leaving the health and safety of individuals and the community at significant risk. It considers this risk to be significantly detrimental to the local and wider public interest.
54. It also considered that providing contingency plans would not significantly progress the public interest factors in disclosure over and above that which its current level of disclosure would. However, it would have a significant risk to public health and safety. It therefore concluded that this would be contrary to the public interest.

The Commissioner's conclusions

55. The Commissioner considers that this is a case where there is a relatively small likelihood of the plans being used to undermine the council's BCP plans, but that in the event that that were to occur, the consequences would be extremely serious. She has taken this point into account in her analysis of the public interest arguments.
56. The Commissioner recognises that that the likelihood of emergencies occurring which will require the use of the BCP is real and significant. The circumstances which led to the complainant making his request for information related to staff shortages on waste collection due to the COVID-19 pandemic.
57. She also accepts that some campaign groups can and will research and organise themselves prior to taking action in some circumstances.
58. The risk of significant disruption to the council's waste services could very quickly lead to public health issues.
59. The complainant's argument that it is in the public interest for the public to have access to the BCP in order to reassure them that the plan does exist, and that the plan is robust, does have weight. The disclosure of the redacted report already meets that need to an extent; it shows that the council has a BCP in relation to its waste services. However, it does not provide the level of detail to allow the public to reassure itself that the plan is robust. Clearly if the plans were published in full the public would have a clearer understanding of the risks which the council has identified, and the council's plans for responding if such situations occur. This could lead to interested parties noting missing risks or identifying other solutions to issues.
60. However, there is a risk that identifying the steps which the council would take in specific scenarios, down to the level of specific companies, properties and contact details for specific individuals, would provide valuable information for any parties wishing to subvert or undermine the council's response. In effect, publishing the plans it has in place in order to prove that they are appropriate and robust might serve to actually undermine the robustness of those plans in certain circumstances.
61. Whilst the risk of such concerted steps being taken against the council in respect of its waste services may not be huge, the repercussions of this could be significant and ultimately lead to situations endangering public health and safety.

62. The Commissioner recognises that the information itself may appear to be relatively anodyne for the most part. However, its potential for usage in the 'wrong hands', would lead to a significant weakening of the council's ability to react to emergencies and to continue to provide waste, and other services to the public.
63. The Commissioner therefore considers that the council was correct to apply Regulation 12(5)(a) to withhold the information in this instance.

Regulation 5(2)

64. Regulation 5(2) provides that information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.
65. The complainant made his request for information on 21 April 2020.
66. The council initially refused to provide any information, however it subsequently disclosed information to the complainant at the time of its review, on 3 July 2020.
67. This falls outside of the period of 20 working days. The Commissioner's decision is therefore that the council did not comply with the requirements of Regulation 5(2).

Right of appeal

68. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

69. 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.

70. 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
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