

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 8 September 2022

Public Authority: Leicestershire County Council
Address: County Hall
Glenfield
Leicester LE3 8RA

Decision (including any steps ordered)

1. The complainant requested information relating to defects in a specific road. Leicestershire County Council (the "council") disclosed some information but withheld other information under the exceptions for the course of justice (regulation 12(5)(b)), internal communications (regulation 12(4)(e)) and personal data (regulation 13).
2. The Commissioner's decision is that the council correctly withheld the information under regulation 12(5)(b).
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 4 November 2021, the complainant wrote to Leicestershire County Council (the "council") and requested the following information:

"Please can you supply the Highway Defect public reports for Bosworth Road Walton from 2014 to September 2021."
5. On 26 November 2021 the council replied and disclosed some information. It withheld information regarding the dates of road inspections under the exceptions for the course of justice (regulation 12(5)(b)), internal communications (regulation 12(4)(e)) and personal data (regulation 13).
6. On 26 November 2021 the complainant requested an internal review.
7. Following an internal review the council wrote to the complainant on 16 December 2021 and confirmed that it was maintaining its position.

Scope of the case

8. On 20 December 2021 the complainant contacted the Commissioner to complain about council's handling of their request.
9. The complainant asked the Commissioner to consider whether the council had correctly withheld information about the dates of road inspections.

Reasons for decision

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

10. The council withheld the dates of road inspections or dates to which it believed any defects to the highways existed under the exceptions in regulation 12(5)(b) and regulation 12(4)(e).
11. Regulation 12(5)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –
 - the course of justice, 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.

12. The council's position is that the disclosure of the dates of safety inspections over the specified time span would allow individuals to identify road defects that the council had knowledge of, but had not yet repaired. This would therefore highlight periods of time for which fraudulent claims for damage, such as that which had been sustained elsewhere, could be submitted to the council.
13. The Commissioner understands that if individuals seek to bring compensation claims for poorly maintained highways, they are obliged to provide details of not just the highway and evidence, but also the date or short period of time in which they believe the damage occurred, which they should already have. Consequently, the dates of safety inspections and complaints are used for the purpose of validating claims, and the public disclosure of safety inspection dates could therefore facilitate claims that are fraudulent.
14. The Commissioner has considered the application of regulation 12(5)(b) in relation to the dates of road inspections/dates road defects existed in previous decision notices. In all these decision notices, he has determined that regulation 12(5)(b) was engaged and that the public interest favoured maintaining the exception¹, and so the public authority was entitled to withhold the information.
15. In relation to the engagement of the exception in this case, the Commissioner considers that the arguments and conclusions reached in these previous decision notices apply to this case. He also has no evidence that there are any specific public interest grounds in this case for disclosing the information.
16. The Commissioner has concluded that, in all the circumstances of the case, the exception has been correctly applied to the withheld information and that the public interest in maintaining the exception outweighs the public interest in disclosure of the withheld information. The council was not, therefore, obliged to disclose the information about the dates of road inspections.

¹ ICO reference: IC-45186-B4K7, decision notice issued 1 February 2021, available online here: <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2619209/ic-45186-b4k7.pdf>; ICO reference: FER0611819, decision notice issued 20 June 2016, available online here: https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1624521/fer_0611819.pdf; ICO reference: FER0502491, decision notice issued 5 March 2014, available online here: https://ico.org.uk/media/action-weve-taken/decision-notices/2014/960846/fer_0502491.pdf

17. 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).

18. As covered above, in this case the Commissioner’s view is that the balance of the public interests 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(5)(b) was applied correctly.
19. As he has found that the information has been correctly withheld under regulation 12(5)(b) the Commissioner has not gone on to consider the council’s application of regulation 12(4)(e) to the same information.

Right of appeal

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

Website: 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

Christopher Williams
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF