

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 10 January 2022

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

Decision

1. The complainant requested information from City of York Council ("the Council") relating to the proposed St George's Field Multi Storey Car Park.
2. The Commissioner's decision is that the Council was entitled to rely on regulation 12(4)(e) (internal communications) of the EIR to refuse to provide the requested information.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. The complainant made the following information request to the Council on 21 March 2022:

"I would like to request under FOI or Environmental equivalent request for the briefing /presentation / report given to the PH /CMT weekly briefing between Executive and Officers with regards to the proposed St George's Field Multi Storey Car Park . This summarised the business case analysis of that proposed development . This was a presentation and was presented by [name redacted] about the Multi Storey Car Park business case and was in early February 2022. Most likely on Tuesday 1st February but may have been the following Tuesday 8th February 2022.

The briefing gave an analysis of the possible conclusions with regard the business case decision for the Executive of the proposed St George's Field Multi Storey Car Park."

5. The Council refused to provide the requested information citing regulation 12(4)(e) (internal communications) and regulation 12(4)(b) (manifestly unreasonable) as its basis for doing so.

Reasons for decision

6. This reasoning covers whether the Council is entitled to rely on regulation 12(4)(e) and regulation 12(4)(b) of the EIR to refuse to provide the withheld information.
7. Regulation 12(4)(e) provides an exception for information which constitutes an 'internal communication'. In order for the exception to be engaged it needs to be shown that the information in question constitutes a communication within one public authority, specifically, the authority to which the request is made.
8. The Commissioner has viewed the withheld information, which consists of a presentation that was given by the Council's Head of Regeneration and Economy to the Council's Corporate Management Team. As the presentation was given by a Council employee to other Council employees, the Commissioner is satisfied that the withheld information constitutes internal communications. Therefore, he finds that regulation 12(4)(e) is engaged. The Commissioner will now go on to consider the public interest test.

9. The complainant considers that the Council has not correctly applied regulation 12(4)(e) to their request. The complainant considers the proposed St George's Field Multi Storey Car Park to be an important issue involving major public expenditure and, therefore, they consider that disclosing the requested presentation would be in the public interest as it would provide the public with clarity and transparency on the project.
10. Furthermore, whilst the complainant acknowledged that the requested presentation is not already in the public domain, as multiple news articles have been written about the St George's Field Multi Storey Car Park and the Deputy Leader of the Council has openly discussed the project, the complainant considers that some information contained within the presentation is already within the public domain and therefore, the entire presentation should be disclosed.
11. With regards to the public interest test, in its submissions to the Commissioner, the Council outlined the factors it had identified in favour of disclosing the withheld information. The Council acknowledged that there is generally a public interest in disclosing information to enable the public to hold the Council to account and engage with and understand decisions which may impact the environment and public purse. The Council explained that the St George's Field Multi Storey Car Park is part of the larger Castle Gateway project. As the Castle Gateway project is a large project, the Council accepted that the public have a right to debate and express their views on the project as it will have a significant impact on the environment and public funds.
12. The Council also outlined its arguments in favour of maintaining its reliance on regulation 12(4)(e). The Council explained that at the time of the request, the Castle Gateway project was still a live issue. The Council therefore, considered that disclosing the withheld information would have significantly impacted Council Officers' ability to have open and frank discussions. The Council explained that at the time of the request, Council Officers were still developing ideas and options and there was a need for Council Officers to be able to engage in full and frank discussions without external distractions.
13. The Council explained that as Castle Gateway is a large project, any delays in completing the project would have impacted the Council's ability to effectively deliver the project benefits to the public. The Council considers that disclosing the withheld information would have led to multiple queries from the public. It would have been required to divert Council Officers away from formulating plans in order to respond to the queries which would not have been in the public interest.

14. Therefore, the Council considered that on balance, the public interest in maintaining its reliance on regulation 12(4)(e) outweighed the public interest in disclosing the withheld information.
15. The Commissioner recognises that there is public interest in the openness and transparency of the Council regarding the Castle Gateway project and the proposed St George's Field Multi Storey Car Park. However, as the Castle Gateway project was a live issue at the time of the request, the Commissioner accepts that the Council needed to maintain a safe space to have free and frank discussions about the Castle Gateway project and the proposed St George's Field Multi Storey Car Park without external interference.
16. Furthermore, the Commissioner notes that there has been a large amount of media coverage on the Castle Gateway project and St George's Field Multi Storey Car Park and he is aware of one article which refers to the requested presentation. However, this article was written after the complainant made their request for information and does not discuss the contents of the presentation. Therefore, the Commissioner considers that at the time of the request, the withheld information was not already within the public domain.
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. In this case the Commissioner's view is that at the time of the request, the balance of the public interests favoured 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(4)(e) was applied correctly.
19. As the Commissioner has found regulation 12(4)(e) to have been applied correctly, he has not gone on to consider the Council's application of regulation 12(4)(b).

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: 0300 1234504

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

Ben Tomes
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SK9 5AF