

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 30 June 2023

Public Authority: Swansea Council
Address: Civic Centre, Oystermouth Road
Swansea, SA1 3SN

Decision (including any steps ordered)

1. The complainant has requested information related to a planning application. Swansea Council ("the Council") provided a link where it could be viewed, and stated at internal review it held no further information.
2. During the Commissioner's investigation, the Council provided a new response to the complainant, stating some information was withheld under Regulation 12(4)(e) (internal communications) of the EIR.
3. The Commissioner's decision is that the Council is entitled to rely on Regulation 12(4)(e) of the EIR to withhold the requested information.
4. The Commissioner does not require further steps.

Request and response

5. On 24 February 2022, the complainant made the following request for information under the EIR:

"I would like a full copy of my planning file, which should be considered as an information request and may contain other documents. Please consider this accordingly."
6. The Council responded on 22 April 2022 and provided a link to its website, where the planning application could be viewed. At internal

review, the Council stated it believed it had provided all the information it held.

7. The requester contacted the Commissioner on 7 June 2022 to complain about the way their request for information had been handled.
8. On investigation of the complaint, the Council made a new disclosures of information to the requester on 14 February and 26 June 2023, while withholding the remainder under Regulation 12(4)(e) of the EIR.

Reasons for decision

9. The following analysis sets out why the Commissioner has concluded that the Council was entitled to rely on Regulation 12(4)(e) of the EIR in this particular case.

Internal communications

10. Regulation 12(4)(e) states that information is exempt from disclosure if it involves 'the disclosure of internal communications'. It is a class-based exception, meaning there is no need to consider the sensitivity of the information in order to engage the exception. Rather, as long as the requested information constitutes an internal communication then it will fall under the exception.
11. The Council has stated a small amount of material relating to the request constitutes correspondence between council officers and a local councillor, as it is customary for planning officers to inform relevant ward councillors of new applications. Having viewed the withheld information, the Commissioner is satisfied that the exception is engaged.

Public interest test

12. When regulation 12(4)(e) is engaged, the public authority must carry out the public interest test. Under regulation 12(1)(b), the public authority can only withhold the information if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. Furthermore, under regulation 12(2), it must apply a presumption in favour of disclosure.
13. In considering whether the public interest favoured disclosure, the Council stated disclosure could increase the transparency of policy discussions, public accountability, and the public's ability to assess and influence the quality of policy decision-making.

14. However, the Council also advised it felt the process of approving a planning application should be treated as a "safe space" within which public officials can exchange their views freely and frankly, without fear this may be disclosed to the world at large. The Council argued disclosure could inhibit local democracy by creating a "chilling effect".
15. The Council has confirmed that all other documentation relating to this application has been released to the complainant and that it has been fully open and transparent.

The Commissioner's view

16. The Commissioner recognises that there is a public interest in the openness and transparency of the decision making process to approve planning applications. He also recognises that there is a public interest in the accountability of local government regarding that decision.
17. The Commissioner is sometimes sceptical of public authority arguments regarding 'chilling effects', as officials should be able to defend their positions and be undeterred by the possibility of future disclosure of information. However, he also considers that the 'safe space' and 'chilling affect' arguments made by the Council are weighty factors in favour of maintaining the exception in this case, as planning applications are frequently controversial. He is satisfied that disclosure would be likely to prevent councillors and council officers corresponding internally with frankness and candour, which could damage the quality of advice and may lead to poorer decision-making in the future. The Commissioner is of the opinion that the requested information would be of limited value in assisting the public's understanding of the Council's decision making process in this particular case. In the Commissioner's opinion it does not provide any significant additional insight into how the planning decision was made.
18. Furthermore, the Commissioner notes the bulk of documents relating to this application have already been disclosed under both the EIR and the GDPR, which in his view, goes a significant way in meeting the public interest in terms of transparency.
19. The Commissioner recognises that the complainant has their own strong personal interest in the information currently being withheld, as it concerns their own planning application. However, the Commissioner is not persuaded that there is a strong wider public interest in disclosure, which is a relevant consideration given that a disclosure under EIR is a disclosure to the world at large. The information refers to a single planning application, which would likely be of interest only to a small number of people.

20. Given the often contentious nature of planning decisions, the Commissioner considers that councils should be able to have a free and frank exchange of views to enable robust decision-making. Combined with the fact that the majority of information has been disclosed, he considers that the importance of enabling internal deliberations to inform decision making, which is what the exception is designed to protect, outweighs the public interest in disclosure. The Council is therefore entitled to rely on regulation 12(4)(e) to withhold the information.

Procedural matters

21. Under regulation 5(2) a public authority is required to provide a response within 20 working days. Under regulation 7 a public authority can extend the time for response by a further 20 working days (so allowing them 40 working days in total) to respond to complex or voluminous requests. In this case, the Council took 58 working days to provide a response and was therefore not compliant with the timeframe set out in the EIR. The Commissioner therefore considers the Council breached its obligations under regulation 5(2) EIR in this case.

Right of appeal

22. 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

23. 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.
24. 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

Joanna Marshall
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF