

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 24 April 2023

Public Authority: Buckinghamshire County Council
Address: The Gateway
Gatehouse Road
Aylesbury
HP19 8FF

Decision (including any steps ordered)

1. The complainant requested pre-application planning advice. Buckinghamshire County Council ("the Council") refused the request citing the exception for confidentiality of proceedings (regulation 12(5)(d).
2. The Commissioner's decision is that the Council was entitled to withhold the requested information under regulation 12(5)(d).
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 5 September 2022, the complainant wrote to the Council and requested information in the following terms:

"Communications, advice provided and interactions between Buckinghamshire Council and Cerda Planning (on behalf of Kler Group), precluding and over the course of pre-application planning regarding a proposed development on land North of Brandon Close, Aston Clinton (HP22 5XE). In scope should be all messages, meeting minutes, telephone transcripts and documents supplied to Cerda Planning."
5. The Council responded on 4 October 2022. It stated that the requested information was withheld under regulation 12(5)(d).
6. Following an internal review Council wrote to the complainant on 27 October 2022. It maintained the application of regulation 12(5)(d).

Reasons for decision

Regulation 12(5)(d) – Confidentiality of proceedings

7. Regulation 12(5)(d) of the EIR says that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law.
8. The engagement of the exception rests on three conditions being met.
9. First, the confidentiality referred to by a public authority must specifically relate to the confidentiality of proceedings. In his guidance 'Confidentiality of proceedings (regulation 12(5)(d))'¹, the Commissioner interprets 'proceedings' as possessing a certain level of formality. They will include, but are not limited to: formal meetings to consider matters that are within the authority's jurisdiction; situations where an authority is exercising its statutory decision making powers; and legal proceedings.

¹ https://ico.org.uk/media/for-organisations/documents/1626/eir_confidentiality_of_proceedings.pdf

10. The information withheld under this exception relates to a pre-application advice process offered by the Council. The Commissioner has previously acknowledged in a range of decisions (e.g., FER06996769², FER0900414³, IC-115533-Y4T6⁴, IC-206377-X4X4⁵) that such a process represents a 'proceeding' for the purposes of the exception.
11. The Commissioner is therefore satisfied that regulation 12(5)(d) of the EIR is engaged because the information relates to the Council's pre-application advice process.
12. Second, this confidentiality must be provided by law. The Council has explained that it considers the information to meet the threshold for the common law of confidentiality. This is because the information is not trivial, and was submitted to it voluntarily as part of the pre-application advice process.
13. Having considered the context in which the information has come to be held, the Commissioner is satisfied that this information is subject to the common law of confidentiality.
14. Third, it must be demonstrated that disclosure would have an adverse effect on the confidentiality of the proceedings.
15. The Council has explained that parties who submit information to it as part of the pre-application advice process will do so in the expectation that it is confidential. Publication of the information would therefore undermine this expectation.
16. On this basis, the Commissioner has decided that disclosure would have an adverse effect on the confidentiality of proceedings. Regulation 12(5)(d) has therefore been found to be engaged.
17. The Commissioner must next consider the balance of the public interest. In doing so, he has taken into account the EIR's express presumption in

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2173203/fer0696769.pdf>

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618026/fer0900414.pdf>

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022697/ic-115533-y4t6.pdf>

⁵ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024160/ic-206377-x4x4.pdf>

favour of disclosure and the public interest in transparency and accountability.

18. The Commissioner recognises in this case that there is a public interest that public authorities are appropriately open and transparent about their decision-making processes. This is particularly so in respect of concerns about planning matters.
19. However, and as noted in the above cited decisions, the Commissioner also recognises that there is a strong public interest in ensuring that the Council is able to provide a robust pre-application advice process to prospective planning applicants, the purpose of which is to improve the efficiency and effectiveness of the planning application system, and reduce wasted resources by helping to prevent planning applications being made that are unlikely to be approved. In the Commissioner's view disclosing the specific information requested in this case would discourage full engagement with the pre-application process, both from this applicant and others, for fear of the public dissemination of such information.
20. In the circumstances of this case, the Commissioner also understands that the Council has confirmed to the public that information is held (and therefore, that the pre-application planning process had been utilised), and that this had not progressed to a formal application. The Commissioner considers that such confirmation addresses the public interest in transparency, and specifically, that planning matters are subject to proper administration.
21. The Commissioner also notes his findings in decision FER0900414, where he considered that the absence of any subsequent planning application – as in this case - reduced in the public interest in disclosure of the pre-application advice information.
22. The Commissioner has therefore decided that, in all the circumstances, the public interest in maintaining the application of regulation 12(5)(d) outweighs the public interest in disclosure.

Right of appeal

23. 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

24. 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.
25. 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

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