

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 31 January 2023

Public Authority: Sheffield City Council
Address: PO Box 1283
Town Hall
Sheffield
S1 1UJ

Decision (including any steps ordered)

1. The complainant requested the price paid for the hire of a named park for a music festival in July 2022. Sheffield City Council (the 'Council') refused to provide the requested information citing the EIR Regulation 12(5)(e) (the exception for commercial confidentiality).
2. The Commissioner's decision is that the Council was entitled to rely in Regulation 12(5)(e) of the EIR and correctly handled the request under this legislative regime. However, the Council breached Regulation 11(4) of the EIR by failing to provide an internal review within 40 working days.
3. No steps are required as a result of this notice.

Request and response

4. On 26 July 2022, the complainant wrote to the Council and requested information in the following terms:

"I would like to know the price paid by the company that hired Hillsborough Park for the purpose of putting on the Tramlines music festival between 22nd July 2022 and 24th July 2022."
5. The Council responded on 23 August 2022. It refused to provide the requested information, citing Regulation 12(5)(e) of the EIR (the exception for commercial confidentiality) and said that the associated public interest test favoured maintaining the exception.

6. The complainant requested an internal review on 24 August 2022. Following its internal review the Council wrote to the complainant on 28 October 2022. It maintained that Regulation 12(5)(e) applied to the requested information but also provided some published information about the dates on which various parks in the area (including Hillsborough Park) were closed, together with the associated total income hire costs for those parks.

Scope of the case

7. The complainant contacted the Commissioner on 2 November 2022 to complain about the way his request for information had been handled. He submitted the following grounds of complaint:

"I submit that the public of the Hillsborough area have a right to know the benefits accrued from the closure of their main recreation facility for 3 days during the busy summer season. There is now a massive public interest in scrutiny of the deal with TEL [Tramlines Events Limited] since the financial benefits to the Hillsborough area were slashed by TEL changes prohibiting same day leaving and re-entry to the event. This significantly reduced footfall to local shops, eatery's [sic] and pubs and, as a result, significantly raised the threshold for the Public Interest Test on my FOI request. The public's [sic] right to know and scrutinise the price paid by TEL out-weighs the commercial interest of SCC [the Council] /TEL not to disclose as this revenue is now the main benefit to Hillsborough and SCC for the loss of 3 days access to the public park.

I would also like to point out my FOI is asking for information regarding an event already concluded and in the past so the commercial sensitivity of the information is much reduced.

And finally, that the confidentiality clause in the contract SCC signed with TEL is not in itself, a reason not publish the information I requested as it is clearly stated in the ICO regulations that SCC should have warned TEL that EIR could override if the public interest test is passed."

8. The Commissioner has considered whether the Council was correct to rely on Regulation 12(5)(e) in this case and whether it handled the request under the correct legislative regime.

Reasons for decision

Is the requested information environmental?

9. Information that meets the definition of “environmental information” under Regulation 2 of the EIR must be considered under the EIR rather than the FOIA. The EIR provide separate information access rights.
10. According to Regulation 2(1)(c) of the EIR, information will be environmental if it relates to activities that affect or which are likely to affect the elements and factors of the environment listed in Regulation 2. One element is the land (Regulation 2(1)(a)) and one factor is noise (Regulation 2(1)(b)). Given that the information relates to the Tramlines music festival, it is the Commissioner’s view that the information is environmental. The Commissioner is, therefore, satisfied that the request was correctly handled under the EIR.

Regulation 12(5)(e) – Confidentiality of commercial or industrial information

11. Information can be withheld under regulation 12(5)(e) of the EIR if disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
12. At the time of the request in July 2022, the Council explained that it considered that disclosing the requested hire cost would adversely affect its own commercial interests, and those of the contractor, TEL. The Council has explained that the Tramlines music festival is a summer event which began in 2009 and happens annually (apart from 2020 when it was cancelled due to the Covid 19 pandemic). It said it attracts large audiences and has a “high environmentally friendly profile” and raises funds for charity alongside the three day event. Since 2018 the music festival event has been held in Hillsborough Park.
13. The Commissioner has considered four tests. First, he is satisfied that the requested information is commercial in nature – the price was negotiated between the Council and TEL and is subject to a signed contract between the two parties.
14. Second, he is also satisfied that the information is subject to confidentiality by law because it is not trivial and is not otherwise accessible and so has the necessary quality of confidence – there are contractual obligations of confidence between TEL and the Council.

15. Third, the Commissioner has considered whether the confidentiality is provided to protect a legitimate economic interest. The Council told the complainant:

"The legitimate economic interests of TEL are the costs, including the price of the park, which they seek to recover from their ticket prices and other income. They have a commercial decision to take about what their prices should be and what other income they want to generate. The council also wishes to protect its commercial bargaining position in future negotiations. We want to avoid publishing the price because it would likely result in a loss of revenue from events in the future. If it became known what the price of the park for Tramlines was, other companies will use it as a 'ceiling' in their negotiations with us. We publish our responses to individuals (with their personal details removed.) This information is therefore available 'to the world'."

16. The Commissioner considers that disclosing the requested hire price in existence at the time of the request would undermine the Council's position in a competitive marketplace. It would have a detrimental impact on its ability to get best value for future events, as its commercial bargaining position would no longer be protected. Disclosing the information would also undermine TEL's commercial interests as it would provide its competitors with an insight into the company's costings and impact its ability to stage a successful event.
17. Finally, the Commissioner is satisfied that the confidentiality would inevitably be affected if the Council disclosed this information.
18. Since the four tests have been satisfied, the Commissioner finds that Regulation 12(5)(e) of the EIR is engaged as disclosing the requested information requested would adversely affect the Council's and TEL's commercial interests. He has gone on to consider the associated public interest test.
19. The Council noted that there is a public interest in it being open, transparent and accountable in how it makes decisions and delivers public services. Disclosing the information would help assure the public that the Council undertakes commercial transactions on a competitive, commercial basis. Disclosure would enable the public to better scrutinise how the Council secures revenue.
20. Regarding the public interest in withholding the information, the Council argued that it was mindful of the harm to the legitimate economic interests of TEL and itself, stating:

"Factors in favour of refusing to disclose the information include harm to the legitimate economic interests of TEL and the council.

The council wishes to protect its commercial bargaining in future negotiations and disclosure could give competitors an unfair advantage if disclosed. This could lead to a breakdown of Sheffield City Council's relationship with our suppliers or cause them to seek a claim for a breach of confidence. The council and TEL have negotiated a price and signed a contract accordingly. The contract includes certain contractual obligations of confidence between both parties. We would be unable to break these confidences without damage to both parties. I have considered the impact to both parties in my review. TEL have costs involved with hosting an event such as Tramlines. They are a business and therefore have an interest in ensuring this is not run at a loss. By publishing how much they paid to put on the Tramlines music festival, we would, in effect, be publishing to the world their commercial interests. This would most certainly affect their business decisions. By publishing the price, other companies could take advantage of this and affect the council's ability to also benefit from the commercial agreement.

Their commercial interests would be affected if the council disclosed details of the contract. From the council's perspective, it would serve as a detriment to our ability to deliver best value for money for large scale events in the future."

21. It also said that disclosure would undermine the Council's relationship with TEL, which produces a popular event each year.
22. The Commissioner considers that there is a strong public interest in the Council being able to achieve the best value for money that it can, and in there being a pool of well-performing organisations with which the Council can contract.
23. Other than the public having "the right to know" and reputed loss of footfall in local shops and eateries, the complainant has not brought to the Commissioner's attention any particular concerns about the hire price/event in question that might strengthen the argument for disclosure.
24. In the absence of such concerns, the Commissioner finds that what public interest there is in this matter is met through the various park closure days and costs information the Council actively published on its website.
25. Regulation 12(2) of the EIR states that a public authority shall apply a presumption in favour of disclosure, and the Commissioner has borne this in mind when reaching his decision. However, the above demonstrates that the Commissioner's view is that the public interest in the exception being maintained clearly outweighs that in the information

being disclosed at the time that the request was initially responded to. Therefore, the Commissioner's decision is that the presumption in favour of disclosure required by Regulation 12(2) does not change the outcome of his decision that the exception was correctly applied by the Council in this case.

26. The Commissioner's decision, therefore, is that at the time of the request, the public interest favoured maintaining the Regulation 12(5)(e) exception under the EIR to protect the Council's commercial interests and those of its contractor.

Regulation 11 – Representations and reconsideration

27. Regulation 11(1) of the EIR allows a requester to request an internal review of the original decision should they disagree with the public authority's response to their request.
28. Regulation 11(4) of the EIR requires the public authority to provide the outcome of its reconsideration or internal review within 40 working days after receipt of the representations.
29. In this case, the complainant requested an internal review on 24 August 2022. The Council responded on 28 October 2022 which equates to 46 working days, breaching Regulation 11(4) of the EIR.

Other matters

30. The Commissioner has made a record of the delay in providing the internal review in this case.

Right of appeal

31. 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

32. 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.
33. 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

Laura Tomkinson
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