

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 11 September 2023

Public Authority: Warwickshire County Council
Address: PO Box 9
Shire Hall
Warwick
CV34 4RR

Decision (including any steps ordered)

1. The complainant requested information from Warwickshire County Council (the Council) relating to vehicle access along a public footpath. The Council provided some information to the complainant but withheld the remainder, citing regulations 12(3) (personal information) and 12(5)(f) (interests of the confider) of the EIR as the basis for non-disclosure.
2. The Commissioner's decision is that the Council has correctly applied regulation 12(5)(f) to the complainant's request. As the Commissioner is satisfied that this applies in full, he has not considered the Council's application of regulation 12(3).
3. The Commissioner does not require further steps.

Request and response

4. On 22 November 2022, the complainant wrote to the Council and requested information in the following terms:

"A copies of all documents in the possession of or under the control of WCC relating to the claim or claims of the occupier of [address redacted] to a legal right to conduct motor vehicles over and along footpath W122.

B copies of all documents in the possession or under the control of WCC relating to any claim or claims by the above occupier [name redacted] to a legal proprietary right in the subsoil of footpath W123.

C a detailed response to the three items referred to in my email of 27th May 2022 – numbers 1, 2 and 3.

1. Persuade [name redacted] to either release copies of the alleged title documents to me or supply chapter and verse of the legal authority that she claims protect the documents from disclosure?
 2. Let me have a copy of the initial definitive statement that was filed with WCC when the Definitive Footpath Map was created under the National Parks and Access to the Countryside Act 1949?
 3. Advise my Council how WCC proposes to police Footpath W123 so as to avoid any further unpleasant incidents which may involve injury to persons or adjoining property?"
5. The Council responded on 10 January 2023, stating that it did not hold all of the information requested and cited regulation 12(3) (personal information) and 12(5)(f) (interests of the person who provided the information) to withhold the information that it did hold.
6. Following an internal review the Council wrote to the complainant on 23 March 2023, upholding its original response.

Scope of the case

7. The complainant contacted the Commissioner on 26 May 2023, to complain about the way their request for information had been handled, disputing the application of the exceptions.

8. In relation to the three questions in the complainant's email of 27 May 2022, the information requested in question two has been provided. The Commissioner considers that questions one and three are not valid requests under the EIR. This is because they are not requests for recorded information, but rather are requests for action by, or an explanation from, the Council. For these reasons none of the numbered questions are covered in the analysis below.
9. The scope of the following analysis is to consider the application of regulations 12(3) and 12(5)(f) to the withheld information.

Reasons for decision

Is the requested information environmental?

10. The Commissioner agrees that the requested information is environmental information falling within the scope of regulation 2(1) of the EIR, and therefore the Council was right to handle the request under the EIR.
11. The withheld information in this case, consists of four statutory declarations (SD) and a lease agreement, which were provided by various third parties (the confiders) to the Council.

Regulation 12(5)(f) Interests of the information provider

12. Regulation 12(5)(f) of the EIR states that:

"a public authority may refuse to disclose information to the extent that its disclosure would adversely affect -

f) the interests of the person who provided the information where that person -

(i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;

(ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and

(iii) has not consented to its disclosure;"

Would disclosure adversely affect the interests of the person/s who provided the information to the Council?

13. The Council explained that there is a significant dispute within the local community in relation to vehicle access along the footpath. It stated that this dispute has already escalated to the point of an assault occurring, and that this required police involvement.
14. The withheld information contains names and addresses of the confiders, including maps indicating the location of their various properties. The Council is therefore of the position that disclosure of the withheld information would reveal the identity of the confiders, and that this may cause further disagreement between those on both sides of the dispute.
15. As with all the Regulation 12(5) exceptions, the Commissioner considers that, in order to demonstrate that disclosure "would adversely affect" a confider's interests, a public authority must demonstrate that the adverse effect is more likely than not to occur.
16. Having seen the withheld information, the Commissioner considers it clear that disclosure of the information would identify the confiders and that this would further escalate the dispute within the community to their detriment.

Was the person under, or could have they been put under, any legal obligation to supply the information to the public authority?

17. The Council has confirmed that the withheld information comprises of information relating to the claim of a third party as evidence in support of their position to a disputed right of vehicle access. It stated that its view is that the parties supplying that information to the Council were not under any obligation to do so.
18. The Commissioner agrees that the confiders were not under any legal obligation to supply the information to the Council.

Did the person supply the information in circumstances where the recipient public authority, or any other public authority, was entitled to disclose it apart from under the EIR?

19. The Commissioner's guidance states, "where information has been provided by another person, public authorities will only be able to disclose it if there is no duty of confidence or they have a specific power to do so."

20. The Council has confirmed that the information was provided to them voluntarily and that it was supplied in the expectation that it would not be disclosed to a third party.
21. On that basis, the Commissioner is satisfied that the Council was not entitled to disclose the information apart from under the EIR.

Has the person/s supplying the information consented to its disclosure?

22. The Council stated that attempts have been made to obtain consent to disclosure from the various confiders, but that consent has not been forthcoming.
23. Having found that each of the tests for regulation 12(5)(f) to be engaged are met, the Commissioner's conclusion is that the exception provided by regulation 12(5)(f) is engaged. He has therefore gone on to consider the public interest test.

Public interest test

24. The complainant is acting on behalf of a Parish Council, and has argued that it is in the public interest that it has access to information which has a bearing on its legal responsibilities.
25. The Council recognises that there is a legitimate public interest in promoting the accountability and transparency of local authorities.
26. However, it argues that the third parties will be adversely affected by the disclosure of the withheld information, explaining that this issue relates to community concerns regarding the use of a local footpath for vehicle access.
27. The Council explained that these issues have been ongoing for some years, with various homeowners near to the footpath being in significant dispute over its use. It went on to state that this dispute recently led to an assault which required police involvement.
28. The Council's position is that disclosure of the withheld information would reveal the identity of third parties, and that this may cause further disagreement between those on both sides of the argument relating to the use of the footpath.
29. The Council is concerned that this will likely add further tension to what is already a significantly contentious issue in the local area. It is on this basis that the Council's position is that it is not in the public interest to disclose this information as to do so will have a detrimental effect on community relations.

30. It also considers that it is legitimate to consider the public interest in maintaining the voluntary supply of information to public authorities, which would be threatened as a result of any adverse effects to third parties if documents of this type were to be released. Stating that, in order to perform its statutory duties in these instances, it is not in the public interest to undermine the future supply of such information if it could not maintain the confidentiality that a provider of such information would reasonably expect.

Commissioner's decision

31. Having reviewed the explanations and arguments provided by the complainant and the Council, the Commissioner's view is that it is clear that there is considerable tension in the local area adjacent to the footpath over this issue. Releasing the requested information would likely add to this tension which is not in the public interest.
32. There is also a strong argument that disclosure of the information may discourage other individuals from confiding in the Council regarding this, or future similar matters.
33. The Commissioner has therefore concluded that it is not in the public interest to disclose the withheld information and that the Council was entitled to rely on regulation 12(5)(f) of the EIR.
34. Because the Commissioner has found that the information can be withheld in full under regulation 12(5)(f), it has not been necessary to consider the application of regulation 12(3) of the EIR which was also applied by the Council.

Right of appeal

35. 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

36. 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.

37. 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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