

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

Date: 22 November 2023

Public Authority: Northumberland County Council
Address: County Hall
Morpeth
Northumberland
NE61 2EF

Decision (including any steps ordered)

1. The complainant has requested correspondence and other information about specific planning applications. The Northumberland County Council ("the Council") disclosed some information and withheld the remainder under the exceptions provided by regulations 12(4)(e) (Internal communications) and 12(5)(f) (Interests of the information provider) of the EIR.
2. The Commissioner's decision is that the Council has correctly applied regulations 12(4)(e) and 12(5)(f), but breached the requirement of regulation 5(2) by disclosing information out of time.
3. The Commissioner does not require further steps.

Request and response

4. On 8 March 2023, the complainant wrote to the Council and requested information in the following terms:

"the following information relating to Planning Application [redacted by ICO – referred to as '1' below] & Planning Application [redacted by ICO – referred to as '2' below]

Q.1. All correspondence between the Council and Representatives (and / or neighbouring properties) that have raised concerns in respect of the above Application.

Q.2. All file notes; emails, documents, photographs etc published and unpublished relating to point (1) above."

Clarification received on 09.03.2023: Q.1. All correspondence between all parties involved in respect of assessment of the above planning applications. Q.2. All file notes; emails, documents, photographs, text messages, phone calls etc published and unpublished relating to point (1) above."

5. On 9 March 2023, the complainant provided the following clarification of the request:

"Q.1. All correspondence between all parties involved in respect of assessment of the above planning applications.

Q.2. All file notes; emails, documents, photographs, text messages, phone calls etc published and unpublished relating to point (1) above."

6. The Council responded on 28 March 2023, under the reference of 12190. It referred the complainant to held information that was already publicly accessible and stated that the remainder of requested information was withheld under regulations 12(4)(e) and 12(5)(f).
7. On 29 March 2023, the complainant asked for an internal review of the response.
8. Following an internal review Council wrote to the complainant on 22 May 2023. In this it amended its response:
- In respect of planning application 1 it disclosed the previously withheld information subject to some redactions of personal data.
 - In respect of planning application 2 it maintained the application of regulations 12(4)(e) and 12(5)(f).

Scope of the case

9. The complainant contacted the Commissioner on 1 June 2023 to complain about the way their request for information had been handled, and specifically that the Council was not entitled to rely upon regulations 12(4)(e) and 12(5)(f).

Reasons for decision

Regulation 12(4)(e) – Internal communications

10. Regulation 12(4)(e) of the EIR states that information is exempt if it represents internal communications.
11. Regulation 12(4)(e) is a class-based exception. This means that there is no requirement to consider the sensitivity of the information in order to engage the exception. The exception is subject to a public interest test under regulation 12(1)(b), and the exception can only be maintained should the public interest test support this.
12. The Council has applied regulation 12(4)(e) to internal email correspondence. The Commissioner has reviewed the information and is satisfied that it represents internal communications. As such, the Commissioner is satisfied that regulation 12(4)(e) is engaged.
13. 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 favour of disclosure and the public interest in transparency and accountability.
14. 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 planning applications.
15. However, the Commissioner understands that the planning application that this request relates to is subject to an appeal, and therefore remains a live and unresolved matter. The Commissioner recognises that there is a strong public interest in ensuring that the planning process is not undermined, and that the Council is able to discuss planning applications candidly without external pressure.
16. The Commissioner has considered a significant number of prior cases relating to similar requests for internal communications about live

planning matters. Recent examples include IC-246357-W8Y9¹, IC-233730-P3G2², and IC-227893-B1T3³, and IC-159327-N0M4⁴.

17. In those cases, the Commissioner consistently found there to be a significant public interest that local planning authorities are able to consider such matters in a safe space. Having considered the circumstances in this case, the Commissioner considers that his findings in those prior cases are applicable here.
18. Having considered the public interest arguments, the Commissioner finds the public interest in protecting the Council's ability to discuss live planning matters in a safe space to be the stronger argument.
19. 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).
20. As covered above, in this case the Commissioner's view is that the balance of the public interests favours 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.

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

21. Regulation 12(5)(f) of the EIR states that information is exempt if it would adversely affect the interests of the information provider.
22. Regulation 12(5)(f) is an adverse-affect exception. This means that there is a requirement to consider whether disclosure would result in a

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4026164/ic-246357-w8y9.pdf>

² <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4026037/ic-233730-p3g2.pdf>

³ <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4025537/ic-227893-b1t3.pdf>

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4023573/ic-159327-n0m4.pdf>

harmful consequence in order to engage the exception. The exception is subject to a public interest test under regulation 12(1)(b), and the exception can only be maintained should the public interest test support this.

23. The Council has applied regulation 12(5)(f) to correspondence to it from a planning applicant in respect of the appealed planning application referred to above. The Council has explained that this correspondence is not information required to support a planning application. The disclosure of such information would inhibit the individual from being able to correspond with the Council and speak freely outside the public scrutiny of the Public Access Planning Register.
24. The Commissioner has reviewed the information and considers that it represents information that has been provided to the Council by the planning applicant in correspondence that they would not have expected to be disclosed to the public. The Commissioner is satisfied that the disclosure of the information would adversely affect the interests of that individual. As such, the Commissioner is satisfied that regulation 12(5)(f) is engaged.
25. 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 favour of disclosure and the public interest in transparency and accountability.
26. The Commissioner is aware that the information is correspondence from planning applicant in respect of an appealed planning application. The Commissioner is aware that planning authorities will often receive correspondence to it from parties that is not suitable or appropriate for inclusion on the Public Access Planning Register. There is a strong public interest that, when appropriate, individuals are free to correspond with a public authority in an expectation of confidence.
27. The Commissioner has considered a significant number of prior cases relating to similar requests for the correspondence of parties involved in live planning matters. Recent examples include IC-198869-Y3J1⁵ and IC-184928-B1A2⁶.

⁵ <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4025123/ic-198869-y3j1.pdf>

⁶ <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4023766/ic-184928-b1q2.pdf>

28. Having considered the public interest arguments, the Commissioner finds the public interest in protecting the applicant's provided information to be the stronger argument.
29. 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).
30. As covered above, in this case the Commissioner's view is that the balance of the public interests favours 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(5)(f) was applied correctly.

Procedural matters

Regulation 5(2) – Time for compliance

31. Regulation 5(2) states that information should be made available no later than twenty working days after the date of receipt of the request.
32. In this case the Council disclosed further information at internal review, which was outside of twenty working days. On this basis the Commissioner finds a breach of regulation 5(2).

Right of appeal

33. 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

34. 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.
35. 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