

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 22 January 2024

Public Authority: Department for Levelling Up, Housing and Communities (DLUHC)

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested a copy of a Planning Inspector's Report and Recommendation regarding HM Prison Grendon from DLUHC. DLUHC withheld the requested information under regulation 12(4)(e) of the EIR (internal communications). It also withheld some of the requested information under regulation 12(3) of the EIR, by virtue of regulation 13 (personal data).
2. The Commissioner's decision is that DLUHC is entitled to withhold the entire report under regulation 12(4)(e) (internal communications). He has therefore not gone on to consider whether DLUHC was right to also withhold some of the information within the report under regulation 12(3) of the EIR, by virtue of regulation 13 (personal data).
3. The Commissioner does not require DLUHC to take further steps.

Request and response

4. On 10 June 2023, the complainant wrote to DLUHC and requested information in the following terms:

“Please will you provide me with the following information:

A copy of the Planning Inspector’s Report and Recommendation which has been provided to you by the Planning Inspectorate in respect of:

HM Prison Grendon
Grendon Underwood
Aylesbury
HP18 0TL

Reference: APP/J0405/W/22/3307860”

5. DLUHC responded on 7 July 2023. It refused to provide the requested information. It withheld the requested information under regulation 12(4)(e) of the EIR (internal communications). It also withheld some of the requested information under regulation 12(3) of the EIR, by virtue of regulation 13 (personal data).
6. Following an internal review DLUHC wrote to the complainant on 31 July 2023. It maintained its original position.

Reasons for decision

Regulation 12(4)(e) Internal communications

7. Regulation 12(4)(e) of the EIR states that information is exempt from the duty to disclose 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 the exception will be engaged.
8. The withheld information in this case consists of a single report produced by the Planning Inspectorate which was provided to the Planning Casework Unit at DLUHC to be sent on to the Secretary of State for Levelling Up, Housing and Communities (“the Secretary of State”) for him to make a determination.

9. The Planning Inspectorate is an executive agency, sponsored by DLUHC. The Commissioner's guidance¹ is clear that internal communications include communications between an executive agency and its parent department.
10. DLUHC has confirmed that the report has not been released to any external party. The Commissioner is not aware of any evidence to the contrary.
11. The Commissioner is satisfied that the withheld information falls within the definition of internal communications and therefore, he finds that the exception is engaged. The Commissioner will now go on to consider the public interest test for this information.

Public interest test

12. In considering the public interest in disclosure and in maintaining the exception the Commissioner has considered the content of the report and the context in which it has been produced. The Ministry of Justice has appealed a decision taken by Buckinghamshire Council, as a local planning authority, to refuse planning permission for a new Category C prison. The proposed prison, if built, would be located next to two existing prisons and house up to 1468 prisoners. The Commissioner understands there has been strong objection to the proposal to build the prison from people living in the area. A decision will be taken by the Secretary of State regarding the appeal, this decision will be informed by the report which has been withheld. The outcome of the appeal is, as yet, undetermined. DLUHC has confirmed that the report will be published alongside the decision letter when that is issued. The report includes the Planning Inspector's recommendation as to whether or not planning permission should be granted, and detailed information about the factors taken in to account in reaching their recommendation.
13. The Commissioner acknowledges that there is a strong public interest in ensuring there is transparency about how planning decisions are made. He also acknowledges that this public interest is particularly strong with regards to this proposed development as the size and type of development is likely to have a significant impact on the local area.

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/regulation-12-4-e-internal-communications/what-are-internal-communications/#executive>

14. However, the Commissioner accepts that public authorities need a safe space to develop ideas, debate live issues and reach decisions away from external interference and distraction. The need for a safe space is strongest when the issue is still live.
15. At the time of the request the outcome of the planning appeal was, as yet, undetermined. The Commissioner therefore considers that the issue was live at the time of the request. He therefore accepts that, in the circumstances of this case, at the time of the request, DLUHC, and more specifically, the Secretary of State, needed a safe space to determine its position on the planning application.
16. In addition, the Commissioner considers that the publication of the report along with the decision will meet the public interest in transparency regarding the information that has been taken into account when considering the appeal.
17. There is a public interest in public participation in decision making on matters relating to planning and the environment. However, where the time for objections had been appropriately advertised and provided, and that period has concluded, the process is now at the decision-making stage.
18. A disclosure of additional information outlining the Planning Inspector's recommendation would likely result in further objections being made seeking to rebut recommendations which the objectors do not agree with. However, such objections would fall outside of the normal planning process stages, and would therefore be likely to inhibit deliberations, constrict the free flow of information and discussions between the parties seeking to make the decision, and thereby increase costs and delays in the final decision being reached.
19. Therefore, as the opportunity to object has already been provided, and the objections which were received in this process have been taken into account, the public interest rests in allowing the decision-making process to reach its conclusion without further delay.
20. The Commissioner's decision is therefore that the public interest in maintaining the exception outweighs that in disclosure and DLUHC is therefore entitled to withhold the whole report under regulation 12(4)(e).
21. 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).

22. In this case, the Commissioner’s view is that the balance of the public interest 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) has been applied correctly.
23. As the Commissioner had determined that DLUHC is entitled to withhold the entire report under regulation 12(4)(e) (internal communications), he has not gone on to consider whether DLUHC was right to also withhold some of the information within the report under regulation 12(3) of the EIR, by virtue of regulation 13 (personal data).

Right of appeal

24. 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

25. 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.
26. 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

Victoria James
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF