

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 19 March 2024

Public Authority: Cheshire West and Chester Council
Address: 58 Nicholas Street
Chester
CH1 2NP

Decision (including any steps ordered)

1. The complainant requested information relating to a planning application from Cheshire West and Chester Council ("the Council"). The Council disclosed some information within the scope of the request, however, it withheld other information citing regulation 12(5)(f) (interests of the information provider) and regulation 13 (personal data) as its bases for doing so. The complainant believes that the Council holds further information within the scope of the request. However, the Council's position is that it has disclosed or issued a valid refusal notice for all of the information held within the scope of the request.
2. The Commissioner's decision is that:
 - on the balance of probabilities, the Council does not hold further information within the scope of the request;
 - the Council is entitled to withhold the information withheld under regulation 12(5)(f) (interests of the information provider) on this basis;
 - the Council is entitled to withhold the information withheld under regulation 13 (personal data) on this basis.
3. The Commissioner does not require further steps.

Request and response

4. On 20 June 2023, the complainant wrote to the Council and requested information in the following terms:

“Please can you provide all communications (including, but not limited to, notes on phone calls, emails, faxes, letters, advice notes and meetings, etc.) relating to the planning application: 21/04516/FUL.

This includes any communication relating to these applications, such as those between CWAC Planning officers, the local Ward Councillor, the applicants, the agent and architect, Kingsley Parish Council and all consultees (e.g. the PROW officers, the Biodiversity Team, the Conservation Officers, Local Lead Flood Authority, United Utilities, the Custom and Self Build team, the Highways Team, all public commentators and any other interested parties).”

5. The Council responded on 5 September 2023. It disclosed some information within the scope of the request. It redacted some information within the documents disclosed under regulation 12(5)(f) of the EIR (interest of the information provider) and regulations 12(3) and 13 of the EIR (personal data).
6. Following an internal review the Council wrote to the complainant on 27 October 2023. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way their request for information had been handled. When doing so they stated that they believe the Council holds further information within the scope of their request which it has not disclosed. They also made it clear that they accept that names and job titles have been redacted on the grounds that this information is personal data.
8. This notice will consider whether, on the balance of probabilities, the Council holds further information within the scope of the request. It will also consider whether the Council was entitled to rely on regulations 12(3) and 13 of the EIR (personal data) and regulation 12(5)(f) of the EIR (interest of the information provider) to withhold the information it redacted, other than names and job titles, from the information disclosed.

Reasons for decision

Regulation 5(1) – duty to make environmental information available on request

9. Under regulation 5(1) of the EIR, a public authority must make environmental information available on request if it holds the information and it is not subject to an exception.
10. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any further information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information is held.
11. In this case, the complainant provided the following reasons as to why they believe further information may be held:

“Cheshire West and Chester have refused to share information from my request about this planning application. The planning process is meant to be transparent and during 2023 they have only shared external communications between my agent and their planning officer. During this 5 month (or longer) period there must have been substantial internal communication or involvement from other 3rd parties that CWAC seem eager to shield. I'd like access to all communication and am of course happy that names and job titles are redacted, but feel strongly that by their response and that they had the release reviewed by the planning team, they are hiding pertinent information as to why they made the decisions they did..”
12. During the course of the Commissioner’s investigation the Council provided details of the searches it has carried out to ensure that all information within the scope of the request has been identified.
13. It confirmed that it had carried out searches of its document management system using the application reference number which had brought up the relevant application file. It also searched the relevant planning officer’s One Drive, which is where some documents would have been saved prior to be uploaded to the document management system, using the application reference number and the name of the street on which the site is located as search terms.

14. Regarding the complainant's concern about whether all relevant internal communications have been disclosed, the Council confirmed that it had searched the outlook email mailboxes of relevant Council officers using the application reference number and the name of the street on which the site is located as search terms.
15. The Commissioner considers that the searches the Council has described were appropriate to identify information held within the scope of the request.
16. He notes that the complainant is concerned that the planning team was involved in reviewing the response to their request. However, the Commissioner recognises that it is not uncommon for relevant teams to be consulted in the course of dealing with a request as they often better understand the information held and the consequences of disclosure. The Commissioner is not aware of any evidence to suggest that this has prevented information from being disclosed in this case.
17. The Commissioner is therefore satisfied that, on the balance of probabilities, the Council does not hold further information within the scope of the request.

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

18. 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?

19. The withheld information consists of a small amount of information redacted from correspondence sent to the Council by, or on behalf of, members of the public objecting to the planning application. It includes

information that would allow the objectors to be identified and concerns submitted by the public about this planning application.

20. The Council argues that the information providers can be identified from the withheld information. It also argues that, "some of the comments that have been given against the outline development would have no doubt antagonised the person who has submitted the planning application with the result that these people could then be approached if identified either in the street or at their property and potentially jeopardise their safety".
21. As with all the Regulation 12(5) exceptions, the Commissioner considers that, in order to demonstrate that disclosure "would adversely affect" the information providers' interests, a public authority must demonstrate that the adverse effect is more likely than not to occur.
22. Having seen the withheld information the Commissioner considers that for the majority of the information is clear that disclosure of the information would identify the information providers. In relation to one of the concerns about the application, it is less clear that the information provider would be obviously identifiable from the comment alone. However, the Commissioner nevertheless accepts that they may be identifiable from the comment within the local community and the Commissioner accepts the Council's argument that the comment may lead to them being approached by the person who has submitted the planning application and may potentially jeopardise their safety.
23. Having considered the arguments provided by the Council, the Commissioner is not satisfied that it is more likely than not that the disclosure of the withheld information would jeopardise the safety of the information providers. However, he is satisfied that disclosure of the information would cause distress to the information providers, not least because they would be identifiable from that information. A disclosure of such information may cause bad feeling between the person who has submitted the planning application and the information providers. In these situations, reprisals might be feared by anyone under the circumstances, regardless of who or what they complained about. The fear which would be caused as a result of the disclosure of the information would be against their interests, and it is therefore a strong argument in favour of the exception being engaged.
24. The Commissioner considers, that in the circumstances of this case, the fear itself would constitute an adverse effect on the information providers, regardless of whether the reprisals would actually be likely to occur. This fear of this would be harm which is real, actual and of substance (i.e., more than trivial).

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

25. The Council has confirmed that the information providers provided the information to the Council voluntarily and that there is no legal obligation for the information providers or any other individual to object to or support a planning application.
26. The Commissioner agrees that the information providers were not, and could not have been put, under any legal obligation to supply the information to the Council.

Did the person(s) 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?

27. 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."
28. The Council has confirmed that the withheld information was provided to them voluntarily and that it was supplied in the expectation that it would not be disclosed to a third party. The Council stated in its submissions to the Commissioner that when the information providers submitted their objections to the Council they had the option to make them publicly available via the planning portal but chose not to. While the Council has disclosed the majority of their comments under the EIR, it argues that the information providers would not expect any information that would identify them or place them at higher risk of reprisal would be disclosed.
29. For the above reasons, 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?

30. The Council confirmed in its submissions to the Commissioner that the information providers have not consented to its disclosure. As noted above, the information providers had the option to make their submissions publicly available and chose not to.
31. 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

32. While there is always a degree of public interest in transparency regarding how the Council has handled planning matters, the Commissioner considers the public interest in disclosure of the withheld information to be minimal. The amount of information that has been withheld is minimal, the Council has disclosed the correspondence regarding objections with just a small amount of information withheld under this exception. The Commissioner considers that the information already disclosed already meets the public interest in transparency regarding how the Council has handled this planning matter.
33. In the Commissioner's view the relatively weak public interest in disclosure of the withheld information is far outweighed by the public interest in ensuring that members of the public feel able to submit their views on planning applications without fear of being identified to the world at large.
34. The Commissioner's decision is therefore that the Council was entitled to rely on regulation 12(5)(f) of the EIR to refuse to provide the information withheld on this basis.

Regulation 13 - personal data

35. Regulation 13(1) provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.
36. In this case the relevant condition is contained in regulation 13(2A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
37. The complainant has made it clear in their complaint to the Commissioner that they accept that names and job titles have been redacted on the grounds that this information is personal data. The Commissioner will not therefore consider whether the Council is entitled to withhold the names and job titles that have been redacted.

¹ As amended by Schedule 19 Paragraph 307(3) DPA 2018.

38. In addition to names and job titles, the Council has also withheld contact details of junior Council officers, a member of staff at an ecological consultancy, members of the public that submitted objections to the application and of a planning consultant who submitted an objection on behalf of members of the public. In addition it has withheld a small amount of other information about some of the objectors that would allow them to be identified.
39. The Commissioner is satisfied that the requested information is the personal data of the individuals listed above.
40. The Commissioner acknowledges that the complainant considers that they have a legitimate interest in disclosure of the withheld information.
41. However, the Commissioner must balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms.
42. In this case, the Commissioner is satisfied that the individuals concerned would have the reasonable expectation that their personal data would not be disclosed to the wider world in response to an EIR request.
43. The Commissioner does not consider there to be any wider public interest in disclosure of the withheld information.
44. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that disclosing the information in question would contravene a data protection principle as it would not be lawful. Therefore, he has decided that the data is exempt under regulation 13(1) by virtue of 13(2A)(a).
45. It follows that the Council is entitled to withhold this information.

Right of appeal

46. 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

47. 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.
48. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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