

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 2 May 2024

Public Authority: London Borough of Bromley
Address: Stockwell Close, Bromley
BR1 3UH

Decision (including any steps ordered)

1. The complainant has requested copies of any unprocessed right of way applications submitted to the London Borough of Bromley. The London Borough of Bromley ("the Council") withheld the information under Regulation 12(4)(d) (material in the course of completion).
2. The Commissioner's decision is that 12(4)(d) is not engaged.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose the information, subject to appropriate redactions under Regulation 13 (personal data)
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. The complainant wrote to the Council and requested information in the following terms:

"Please provide a copy of the application for any application made to the council under Section 53(5) of the Wildlife and Country side Act which has been duly made but not yet determined."

6. The Council responded on 3 July 2023. It stated that a copy of the register of applications was available to view on its website.
7. The complainant requested an internal review, stating this register listed the applications but did not provide copies of them. Following an internal review, the Council stated it considered the application forms exempt from disclosure under regulation 13 of the EIR.
8. During the Commissioner's investigation, the Council reconsidered the request and applied regulation 12(4)(d) (material still in the course of completion) to withhold the information.

Reasons for decision

9. Regulation 12(4)(d) of EIR states that information is exempt if it relates to material still in the course of completion, to unfinished documents or to incomplete data.
10. Regulation 12(4)(d) 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 only question is whether the withheld information falls within the class described in 12(4)(d). 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.
11. The Council has applied regulation 12(4)(d) to the unprocessed applications it received, referring to it as "information intended for future publication".
12. Although FOIA has such an exemption under section 22, EIR does not have a direct equivalent. In order to engage regulation 12(4)(d) a public authority must demonstrate that the requested information relates to:
 - material which is still in the course of completion;
 - unfinished documents; or
 - incomplete data.
13. In this case, the applications themselves are complete documents albeit the approval process is not yet complete. The information must be the material itself which is in the course of completion, rather than any wider 'project' or 'process'. Therefore the exception is not engaged and there is no requirement to consider the public interest test.

Procedural matters

Regulation 11 – internal review

14. Regulation 11 of the EIR covers public authorities' obligations in relation to the carrying out of internal reviews of the handling of requests for information.
15. Regulation 11(4) requires authorities to provide an internal review decision within 40 working days of the date of receipt of a request for review. In this case the complainant submitted their review request on 7 August 2023, but the Council did not carry out a review until 31 October 2023.
16. The Commissioner has, therefore, concluded that the Council failed to comply with regulation 11(4) in this case.

Right of appeal

17. 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

18. 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.
19. 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

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