

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

Date: 12 February 2024

Public Authority: Lincolnshire County Council
Address: County Offices
Newland
Lincoln
LN1 1YLX

Decision (including any steps ordered)

1. The complainant requested information related to the updating of the Lincolnshire Minerals and Waste Local Plan. Lincolnshire County Council (the "council") withheld the information under the exceptions for material in the course of completion (regulation 12(4)(d)) and manifestly unreasonable (regulation 12(4)(b)).
2. The Commissioner's decision is that the council correctly applied regulation 12(4)(d) to withhold the requested information.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 19 April 2023, the complainant wrote to Lincolnshire County Council (the "council") and requested the following information:

"All recorded information held by Lincolnshire County Council including notifications, forms, letters, emails, minutes of meetings, dates of telephone calls, notes of telephone calls, file notes, diary notes, proposals, assessments, reports in respect to the following decisions and actions. This information also to include all communications with external organisations, e.g. local and central government organisations, legal firms, consultants, other landowners and gravel companies (Breedon/Cemex): -

1. Decision not to carry the consented MS29 into the proposed new "Updating of the Lincolnshire Minerals and Waste Local Plan".
 2. Decision to include SG17 in the "Updating of the Lincolnshire Minerals and Waste Local Plan" as a nominated site with a plant and bagging site in close proximity to the community of West Deeping.
 3. Development and approval of the document entitled "Updating of the Lincolnshire Minerals and Waste Local Plan" from conception up to publication on 10 November 2022.
 4. Decision not to include the public in the current consultation phase of the "Updating of the Lincolnshire Minerals and Waste Local Plan" when it was put out for selected consultation on 10 November 2022, notwithstanding the impact this would have on the health, safety, wellbeing and quality of life of the community of West Deeping and the wider communities of Lincolnshire.
 5. Decision to delay the current consultation phase of the "Updating of the Lincolnshire Minerals and Waste Local Plan" by a year to 2024.
 6. Policies and procedures that were employed on the development of the "Updating of the Lincolnshire Minerals and Waste Local Plan" to ensures Lincolnshire County Council complied with its legal obligations for the administration, implementation, investigation and enforcement of safety legislation and the Human Rights Act in order that the community of West Deeping and the wider communities of Lincolnshire are not placed at risk."
5. The council responded on 12 May 2023. It stated that it was refusing the request, confirming that it was relying on the exception for material in the course of completion (regulation 12(4)(d)).

6. Following an internal review the council wrote to the complainant on 11 July 2023. It stated that it was maintaining its position in relation to the application of regulation 12(4)(d). The council explained that it was additionally relying on the exception for manifestly unreasonable requests (regulation 12(4)(b) to refuse the request.

Scope of the case

7. On 13 November 2023 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner noted that the complainant had submitted a different complaint about another request made to the council which had resulted in the issuing of a decision notice on 14 November 2023¹. The Commissioner noted that the decision notice related to a request for similar information about the Lincolnshire Minerals and Waste Local Plan and that the decision notice upheld the council's use of regulation 12(4)(d) to withhold the information.
9. Having considered the available evidence, which included new submissions from the council, the Commissioner was satisfied that as both the relevant facts and context were sufficiently similar, it was likely that any decision notice issued in relation to this matter would reflect the conclusions of his previous decision notice.
10. As it appeared to the Commissioner that the complaint had no reasonable prospect of success he advised the complainant of this and suggested they may wish to withdraw their complaint.
11. The complainant declined to withdraw their complaint and asked the Commissioner to decide whether the information should be disclosed and whether the request was correctly handled under the EIR.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4027478/ic-244702-d9t4.pdf>

Reasons for decision

Is the requested information environmental?

12. The council handled the request under the EIR. The complainant believes that the request should have been processed under the FOIA because the purpose of the request was to establish if the decisions taken by the council in relation to the Lincolnshire Minerals and Waste Local Plan are a breach of its obligation to protect the life and the quality of life of UK citizens as provided under safety legislation and the Human Rights Act.
13. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

14. The Commissioner notes the complainant's comments about the purpose of their request, however, he does not consider that this is relevant to the consideration of whether the information is or is not environmental in nature.
15. The council's website states that the Lincolnshire Minerals and Waste Local Plan consists of the following two parts:

"1 Core strategy and development management policies - this outlines the principles for the future winning and working of minerals and the form of waste management. It also provides the criteria under which we consider minerals and waste development applications.

2 Site locations - this includes specific proposals and policies for the provision of land for mineral and waste."²
16. Whilst it might be that the requested information has a bearing on the matters referred to by the complainant, the information was created for the purposes identified in paragraph 15 and it relates to decisions taken in respect of the state of the environment, environmental factors and measures affecting or likely to affect these elements. The Commissioner is, therefore, satisfied that the request identifies environmental information as defined in regulations 2(1)(a)-(c) of the EIR.
17. He has, therefore concluded that the council correctly handled the request under the EIR.

Regulation 12(4)(d) – material in the course of completion

18. Regulation 12(4)(d) of the EIR provides that a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents, or to incomplete data.
19. Regulation 12(4)(d) is a class-based exception, which means that if the information falls within its scope, then the exception is engaged. It is not necessary to demonstrate that disclosure would have any particular adverse effect in order to engage the exception. However, regulation 12(4)(d) is subject to the public interest test.

² <https://www.lincolnshire.gov.uk/planning/minerals-waste>

20. As noted above, the Commissioner has previously issued a decision (the "previous decision") in relation to a request the complainant submitted to the council for comparable information, namely, information relating to the Lincolnshire Minerals and Waste Local Plan ("LMWLP")³.
21. The previous decision concluded that, as the updating of the LMWLP was still in the process of completion at the time of the request, the public interest favoured maintaining the exception.
22. The Commissioner notes that the request here was submitted around the same time as the request in the previous decision (during April 2023). Having considered this and new submissions provided by the council, the Commissioner considers that the context within which both requests were received is the same.
23. As noted above, he is also satisfied that the request relates to information falling in the same category as that considered in the previous decision. It follows that the conclusions reached in the previous decision also apply here. He, therefore, considers that the public interest considerations and conclusions contained in the previous decision are directly transposable to this decision notice. He has not reproduced them here⁴ but he relies on them in concluding in this case that he considers that the council correctly applied regulation 12(4)(d) and that the public interest favours maintaining the exception.
24. As he has concluded that the council was entitled to withhold the information under regulation 12(4)(d) he has not gone on to consider its application of regulation 12(4)(b) to the same information in this case.

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4027478/ic-244702-d9t4.pdf>

⁴ All relevant arguments can be found in the previous decision here: <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4027478/ic-244702-d9t4.pdf>

Right of appeal

25. 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

26. 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.
27. 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

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