

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

**Date:** 19 March 2013

**Public Authority:** Melton Borough Council  
**Address:** Council Offices  
Nottingham Road  
Melton Mowbray  
Leicestershire  
LE13 0UL

**Decision (including any steps ordered)**

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1. The complainant has requested a copy of minutes of a planning sub-group of the public authority.
2. The Commissioner's decision is that Melton Borough Council (MBC) correctly relied on EIR regulation 12(4)(e) (internal communications) not to release requested information.

**Background**

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3. Melton Borough Council is in the process of replacing its planning framework for the borough with the Melton Local Development Framework. This will cover the period up to 2026 and includes the Sustainable Urban Extension (SUE) Area Action Plan which proposes approximately 1000 new homes and supporting facilities.
4. The process involves the drafting of various documents including the Core Strategy Development Plan Document to which the requested documents relate. At the time of the request, the document was undergoing a 6 week public consultation, and is currently being considered by the Planning Inspectorate for approval.
5. The council set up the Melton Local Development Framework Task Group (the MLDF Task Group) to assist in the creation of the Melton Local Development Framework. The council's constitution states that task groups will be set up on an ad-hoc basis by policy committees to carry

out specified tasks, and a report shall be submitted to the relevant committee at the completion of the task. Task groups may be open to the press and public or may be closed. The MLDF Task Group is closed and had not yet completed its task as a decision about the Core Strategy Development Plan Document had not yet been reached.

6. The MLDF Core Strategy Plan was published in February 2012<sup>1</sup>.

### **Request and response**

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7. On 9 December 2011 the complainant wrote to MBC and, amongst other things, made the following request for information -
  - Copies of the minutes from the various meetings of the Melton Local Development Framework Task group between 1 April 2009 and 18 November 2009.
8. MBC's substantive response to the complainant was provided on 29 February 2012. It refused to provide the requested information citing the exception provided by EIR regulation 12(4)(e) (internal communications).
9. On 4 July 2012 the complainant asked MBC to review its decision. On 18 July 2012 MBC informed the complainant that the undertaken internal review had upheld its original decision.

### **Scope of the case**

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10. The complainant contacted the Commissioner on or about 4 September 2012 to complain about the way his request for information had been handled.
11. On 21 December 2012 MBC provided the Commissioner with a copy of the documents it was withholding from the complainant and confirmed that they were withheld under regulation 12(4)(e). These documents were the MLDF Task Group "Minutes of Meeting" for the following dates,

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[http://www.melton.gov.uk/environment\\_and\\_planning/planning/planning\\_policy/local\\_development\\_framework.aspx](http://www.melton.gov.uk/environment_and_planning/planning/planning_policy/local_development_framework.aspx)

- Wednesday 1st July 2009
  - Tuesday 22 September 2009
  - Monday 9th November 2009
12. On 10 January 2013 Commissioner wrote to MBC explaining, amongst other things, that the MLDF Task Group minutes for Tuesday 22 September 2009 were readily accessible to the public via a simple internet search.
13. MBC replied (on 13 February 2013) that the 22 September 2009 minutes were attached to the "Report to the Full Council of the 18 November 2009" and made available to the public on the council's website. MBC explained that the public availability of these notes was evidence that it had not adopted a "blanket ban" on releasing information but had decided matters on a case by case basis.
14. On 5 March 2013 the complainant confirmed to the Commissioner that he was not complaining about not being provided with the 22 September 2009 minutes. The Commissioner has therefore not considered this set of minutes as part of his decision.

## **Reasons for decision**

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15. Regulation 5(1) of the EIR provides that "a public authority that holds environmental information shall make it available on request". A public authority may only refuse to disclose information where an exception applies.
16. If an exception applies, the information is still to be disclosed unless "in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information" (regulation 12(2)). This is assessed by having regard to the overriding presumption in favour of disclosure. The result is that the threshold to justify non-disclosure is a high one.

### **Regulation 12(4)(e)**

17. Regulation 12(4)(e) of the EIR states –

"For the purposes of paragraph 1(a), a public authority may refuse to disclose information to the extent that...

(e) the request involves the disclosure of internal communications."

18. Regulation 12(4)(e) is a class based exception so it is not necessary to demonstrate prejudice or harm to any particular interest in order for its engagement.
19. MBC's position is that all the withheld information constitutes internal communications, given that the MLDF Task Groups fall under Melton Borough Council's Constitution, Part 2 Article 9, and Part 5 Task Group Protocol (available on the Council's website). It explained that they are internal meetings where officers and elected Members may communicate, not formal meetings of the Council open to the public.
20. The Information Tribunal has expressed reservations about adopting a 'standard test' in determining what amounts to an 'internal' communication (see paragraph 94, *DfT v ICO EA/2008/0052*). The Commissioner agrees that interpreting what type of information will be caught by the exception '... will depend on the context and facts in each situation' (paragraph 94). With this in mind, in judging what constitutes an 'internal' communication, the Commissioner will consider the substance and form of the relationship between parties, the particular circumstances of the case and the nature of the information in question.
21. The withheld information records discussions about planning matters concerning Melton Mowbray. Having regard to how the withheld information was generated (see paragraph 19 above) the Commissioner is satisfied on the balance of probabilities that it amounts to internal communications and thereby engages the exception regulation 12(4)(e).

### **Public interest test**

22. Regulation 12(4)(e) is subject to the public interest test. Regulation 12(2) of the EIR sets a presumption in favour of disclosure and the Commissioner has borne this requirement in mind in carrying out his assessment of the public interest test.

### Public interest arguments in favour of maintaining the exception

23. MBC argues that by maintaining the exception this lessens the chilling effect. That is, members of the Task group will contribute more fully if they are not afraid that what they say will be publically disseminated. It argues that elected members are an easy target of false or malicious claims of planning bias. If members fear that will have to defend their inputs they will be reluctant to contribute fully to the debate. This would stymie the true effectiveness of the group.
24. MBC is adamant that the exception affords it, via the group, a private thinking space. It asserts that such a space greatly facilitates the development of ideas needed for good policy making.

25. MBC also states that the withheld information does not itself constitute policy of the Council and thus it would be unfair and unnecessarily time consuming for it to have to defend or explain the contents of the withheld information.

Public interest arguments in favour of disclosing the withheld information

26. The Commissioner notes that MBC was not particularly expansive with either the Commissioner or the complainant as to the public interest factors in releasing the information. The Commissioner's view is that it is incumbent on public authorities, when considering the public interest test, to ensure that it considers all relevant factors.
27. The complainant has argued strongly, both to MBC and the Commissioner, that the release of the information is necessary to enable public scrutiny of a contentious planning process.
28. The public interest arguments in favour of maintaining an exemption must relate specifically to that exemption, but this is not necessarily the case when considering the arguments in favour of disclosure. The Information Tribunal in Hogan<sup>2</sup> made this point at paragraph 60:

"While the public interest considerations against disclosure are narrowly conceived, the public interest considerations in favour of disclosure are broad-ranging and operate at different levels of abstraction from the subject matter of the exemption."

29. There is a general public interest in promoting transparency, accountability, public understanding and involvement in the democratic process. EIR is a means of helping to meet that public interest, so it must always be given some weight in the public interest test.
30. As well as the general public interest in transparency, which is always an argument for disclosure, there may also be a legitimate public interest in the subject to which the information relates. If a particular policy decision has a widespread or significant impact on the public, there is a public interest in furthering debate on the issue. As such, this can represent an additional public interest argument for disclosure.

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<http://www.informationtribunal.gov.uk/DBFiles/Decision/i42/MrCMHoganandOxfordCityCouncilvInfoComm17Oct06.pdf>

31. There is also a public interest in fully understanding the reasons for public authorities' decisions in order to remove any suspicion of manipulating the facts, or 'spin'.

Balance of the public interest

32. The complainant has eloquently laid out in correspondence with MBC why releasing the withheld information would make a significant contribution to the democracy of the planning process. It would allow the public to see what was said and considered by the Task group.
33. The complainant asserts that disclosing the withheld information will inform the public on how the Task Group reached decisions and made recommendations. By way of example the complainant says that in September 2009 the Task Group decided not to accept a recommendation to build to the South of Melton but made its own recommendation to build to the North contrary to the evidence base at the time.
34. The Commissioner makes no comment on the accuracy of the above assertion by the complainant. The Commissioner does note that releasing the withheld information would invariably shed light on this assertion. However this in turn would almost certainly lead to some questions from the public that the MBC would have to respond to. This scenario is that which the MBC wishes to avoid, hence its safe space arguments. On this point the Commissioner concurs with the rationale of the MBC. Dealing with a drip-drip of correspondence and counter – points, as a result of a premature release of the withheld information, is something that can place an unreasonable drain on a public authority's resource.
35. The MBC has explained to the Commissioner how releasing the withheld information will constrict its ability to have a "free space" to consider complex and perhaps controversial matters. It explained clearly the role of elected representatives in such task groups, the pressures they may face if the information is prematurely released and the negative effect this may have on the local democratic processes.
36. The Commissioner is particularly swayed by MBC's submission regarding the benefits that giving a "safe space" to the Task group brings. That is, it allows the full consideration of wide ranging matters not stymied by the fear of premature public dissemination of those considerations. Such a constraint on what may be considered, harms and limits the functions of the group and this is detrimental to the public interest.
37. The Commissioner notes that the planning process was at the time of the request (and is) still very much on-going with the matter still to be

heard by the Planning Inspector. In such circumstances the public interest in maintaining the exception does not wane as much as it would when final decisions have been made.

38. Similarly, at the time the request was made the MLDF Core Strategy Plan had yet to be published which supports the assertion that the Task group functions were still on-going. Though it has since been published the Commissioner's decision is based on prevailing events at or around the time the request for information was made.
39. Notwithstanding that there is a presumption in favour of releasing environmental information, the Commissioner has been persuaded by MBC that the public interest test favours the maintenance of the exception. The Commissioner accepts, on the facts of this matter, this Task Group required a well-defined space where complex and even controversial matters could be mulled over and considered. This significantly contributed to the planning and democratic process of MBC.
40. Due to the above the Commissioner finds that MBC was correct to rely on regulation 12(4)(e) to withhold the "Minutes of Meeting" for Wednesday 1st July 2009 and Monday 9th November 2009 and that the public interest test favours maintaining the exception.

## Right of appeal

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41. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

42. 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.
43. 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 .....**

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner’s Office**  
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