

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 14 August 2013

Public Authority: Leicestershire County Council
Address: County Hall
Glenfield
Leicestershire
LE3 8TG

Decision (including any steps ordered)

1. The complainant requested information on the options for major junction changes at Hugglescote Crossroads. Leicestershire County Council (the Council) held diagrams falling within the scope of this request, but refused to disclose these, citing the exception from the EIR provided by regulation 12(4)(d) (material that is still in the course of completion, unfinished documents, incomplete data).
2. The Commissioner's decision is that the public interest in the maintenance of this exception does not outweigh the public interest in disclosure and, therefore, the information must be disclosed.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose the information withheld under regulation 12(4)(d).
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 Freedom of Information Act 2000 and may be dealt with as a contempt of court.

Request and response

5. On 11 January 2013, the complainant wrote to the Council and requested information in the following terms:

"The information I wish to see are the options for major junction changes at Hugglescote Crossroads. These have recently been produced by the County Highways Authority".
6. The Council responded on 24 January 2013. The request was refused, with the exception from the EIR provided by regulation 12(4)(d) (material that is still in the course of completion, unfinished documents, incomplete data) cited.
7. Following an internal review the Council wrote to the complainant on 15 February 2013. It stated that the refusal under regulation 12(4)(d) was upheld.

Scope of the case

8. The complainant contacted the Commissioner on 8 March 2013 to complain about the refusal of his information request. The complainant specified at this stage that he disagreed with the reasoning given by the Council for the refusal of his request.

Reasons for decision

Regulation 2

9. The first question for the Commissioner to address here is whether the information is environmental in accordance with the definition given in regulation 2(1) of the EIR, which defines environmental information as follows:

"any information in written, visual, aural, electronic or any other material form on –

(a) the state of the environment, such as air and atmosphere, water, soil, land and landscape and natural sites including wetlands...

(b) factors, such as substances, energy, noise, radiation or waste, emissions...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...and activities affecting or likely to affect the elements and factors referred to in (a) and (b)...".

10. The view of the Commissioner is that this information is 'on' a plan that falls within the scope of regulation 2(1)(c). As the wording of the request suggests, the information requested by the complainant concerns planning and construction. Information relating to the planning process will generally be considered environmental due to the impact that this process will inevitably have on several of the elements and factors referred to in regulations 2(1)(a) and (b). The information in question is, therefore, environmental under regulation 2(1)(c) and it is correct to consider this request under the EIR.

Regulation 12(4)(d)

11. This regulation provides an exception from the duty to disclose where the request relates to material in the course of completion, or to unfinished documents, or to incomplete data. Consideration of this exception is a two-stage process. First the information must fall within one of the classes specified in the exception. Secondly, this exception is qualified by the public interest, which means that the information must be disclosed if the public interest in the maintenance of the exception does not outweigh the public interest in disclosure.

12. As to whether this exception is engaged, the Commissioner's published guidance on this exception¹ states that:

"...draft documents will engage the exception because a draft of a document is by its nature an unfinished form of that document."

13. The information in question consists of diagrams detailing the proposed changes to the junction. These are marked "DRAFT" and the Commissioner accepts that these were in the course of completion in that they were early drafts of options for this junction. The exception provided by regulation 12(4)(d) is, therefore, engaged.

¹

http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Detailed_specialist_guides/eir_material_in_the_course_of_completion.ashx

14. Having found that this exception is engaged, the next step is to consider the balance of the public interest. Regulation 12(2) is specific that a presumption in favour of disclosure of environmental information must be applied when the balance of the public interest is considered. This is along with any factors that favour disclosure of the specific content of the information in question. Weighed against this presumption and other factors in favour of disclosure are any factors that apply in favour of maintenance of the exception in relation to the information in question.
15. Covering first the arguments in favour of disclosure, the complainant argued that the information should be disclosed in order to make local residents aware of the options being considered so that they may be aware of the possible impact on this area. The Commissioner agrees that there is a valid argument in favour of disclosure due to the impact that the changes may have on people living in this area.
16. Whilst information recording proposed changes to Hugglescote crossroads may seem of minor interest when compared to information about, for example, a much larger transport project, these changes will have an impact on the lives of people living in this area and who regularly use this section of road. Disclosure would enhance understanding of the proposed changes and promote dialogue and debate about which option should be chosen. The Commissioner considers this to be a public interest factor in favour of disclosure of considerable weight.
17. Moving to the factors in favour of maintenance of the exception, the Council argued that disclosure may result in inhibition to staff in future when preparing drafts in similar situations. It also argued that disclosure would result in unnecessary public anxiety by releasing information about options for the crossroads that are not under serious consideration.
18. The Commissioner recognises that the arguments given by the Council reflect the kind of concerns that are relevant to this exception. However, these arguments must be weighed within the context of what the withheld information in question consists of.
19. As stated above, that information is diagrams of options for the proposed changes to Hugglescote crossroads. The view of the Commissioner is that this information could not be said to be of any great sensitivity or controversy. Whilst the Commissioner has recognised above that there are people for whom these changes will be significant, this is a purely local concern. If even the most invasive of options were eventually to be chosen, this would have no impact beyond the immediate area of the crossroads.

20. Given that the withheld information relates to a relatively minor, largely non-controversial nor sensitive development, the view of the Commissioner is that the risk of inhibition to staff in future could be mitigated by explaining to staff the circumstances in this case. This explanation could make clear that the information was considered disclosable in this case due to its relatively benign nature. Furthermore it could be specified that disclosure in this case should not be taken as an indication that similar information in any other case would also be disclosed, particular in cases where the development in question is larger in scale and the issues surrounding it of greater sensitivity.
21. As to the argument that disclosure could result in unnecessary public anxiety, the Commissioner considers it highly unlikely that disclosure of the information in question here would have that effect. Again, whilst there are those in that area with a legitimate interest in this information, having viewed the content of the information the Commissioner doubts that there are those who would suffer such an extreme reaction to even the most invasive of the potential options that it would be in the public interest to uphold the exception in order to avoid that reaction. Instead, the Commissioner considers it more likely that disclosure would have a beneficial impact in that it would promote constructive public debate.
22. The interest protected by this exception is that of ensuring that public authorities have a safe space in which to carry out the drafting process, away from the possibility of disclosure which may be disruptive to that process. In this case as the view of the Commissioner is that disclosure would not be disruptive to that process, and as no indication has been given as to when the finalised information may be disclosed, the Commissioner does not believe there to be a strong public interest in favour of maintaining this safe space.
23. He would stress that this decision should not be taken as having any wider application beyond this case. This notice concerns the specific information in question here. The Commissioner recognises that in other cases where similar information is in question there will be greater sensitivity surrounding that information and it may be correct to reach a different conclusion.
24. In this case, for the reasons given above and taking into account the presumption in favour of disclosure specified in regulation 12(2), the conclusion of the Commissioner is that the public interest in the maintenance of the exception provided by regulation 12(4)(d) does not outweigh the public interest in disclosure. At paragraph 3 above the Council is required to disclose this information.

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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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

Jon Manners
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