

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 12 March 2019

Public Authority: Milton Keynes Council

Address: Corporate and Core Civic Offices
1 Saxon Gate East
Milton Keynes
MK9 3EJ

Decision (including any steps ordered)

1. The complainant has requested information about how the Council ensured compliance with Part M of the Building Regulations 2010, the public sector Equality Duty, and BS8300 in the design and planning of the Odeon Cinema at Milton Keynes Stadium. The Council provided some information falling within the scope of the request but refused the remainder citing regulations 13 – third party personal data, 12(5)(e) – confidentiality of commercial information and 12(5)(a) – international relations, defence, national security or public safety.
2. The Commissioner's decision is that Milton Keynes Council has correctly engaged regulation 13 only for the names and contact details of junior administrative staff in the Council and all third party individuals. It is not engaged for any other withheld information. The Council has correctly engaged regulation 12(5)(e) for architectural design drawings only and the public interest in maintaining the exception outweighs the public interest in disclosure. It is not engaged for any other withheld information. The Council has not demonstrated that regulation 12(5)(a) is engaged. The Commissioner also finds the Council has breached Regulation 9 by failing to provide the complainant with reasonable advice and assistance.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.

- Disclose all withheld information, except the personal data detailed above and architectural design drawings.
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. On 17 May 2018 the complainant wrote to Milton Keynes Council and requested information in the following terms:

'I'm trying to find planning documentation for the Odeon cinema at Milton Keynes stadium. Especially in terms of building layout, accessibility and compliance with the Equalities Act, Part M of the building regulations and BS6300. I wonder if you can send me any details that you may have or point me in the right direction?'*

* This should read BS8300 (complainant typing error).

6. On 4 June 2018 a member of staff from the Council's Planning Department responded. They provided details of how to access current and historic planning documents. The complainant responded on the same day, explaining that he required:

'specific information, including correspondence between the contractors, Odeon Cinema, other interested third parties and council employees about disability access - especially with regards the requirements in The Equalities Act 2010, Part M of the Building Regulations and BS6300.'*

7. On 8 June 2018 the Planning Department responded, providing details of planning applications in connection with the same building. They confirmed that further information would be provided the following week, and copied Building Control in saying that department would be able to assist with the part of the request relating to The Equalities Act 2010, Part M of the Building Regulations and BS6300*. The complainant also emailed Building Control on the same day clarifying that he wanted correspondence relating to references 13/04037/PAS and 14/18041/OTH. On 12 June 2018 the Planning Department provided the complainant with further information, largely in the form of emails, falling within the scope of the request.

8. On 11 June 2018 Building Control contacted the complainant seeking clarification regarding his involvement with the property concerned, and noting the nature of some copyrighted materials. The complainant replied on the same date, challenging the use of copyrighting in response to FOIA requests, and clarifying his request with:

'I am interested in the documents, communications and correspondence between council officers, architects and third parties relating to the application of the Equalities Act 2010, BS6300 and Part M to the planning and control process for the construction and fit out of these buildings. Please could you provide me with that information relating to the Odeon Cinema at Milton Keynes Stadium'

9. On 14 June 2018 the complainant also contacted the Council's FOI team to express dissatisfaction with the response from Building Control on 11 June 2018.
10. On 27 June 2018 Building Control responded formally to the complainant, refusing to supply information falling within the scope of the request as it was third party personal data.

Scope of the case

11. The complainant contacted the Commissioner on 3 July 2018 to complain about the way his request for information had been handled. He was concerned about the disparity between the Planning and Building Control departments handling of his complaint, with the former willing to disclose information and the latter not. He also considered it in the public interest to see whether the Council complied with its responsibilities under section 149 of the Equalities Act 2010 (known as the public sector Equality Duty).
12. During the Commissioner's investigation, in addition to the application of regulation 13, the Council also identified information that it withheld under regulation 12(5)(e) - confidentiality of commercial or industrial information and 12(5)(a) - international relations, defence, national security or public safety. The Commissioner therefore considers the scope of the case to be whether Milton Keynes Council was correct to withhold information under regulations 13, 12(5)(a) and 12(5)(e) of the EIR.

Reasons for decision

13. It is necessary at this point for the Commissioner to explain the nature of the information withheld by the Council's Building Control Department and the way in which the exceptions under the EIR have been applied. The Council's Building Control department has identified in excess of 150 files, drawings and documents associated with the design and construction of the cinema and surrounding areas. It also includes communications with third parties about the specifics of the cinema design.
14. The Council has said that as the request relates to all issues of disability access and use, a large proportion of plan, section, and elevation drawings, along with smaller detail drawings, will fall within scope as they will show doors, ramps, counters, surfaces, and elevations will show doors, ramps and gradients etc.
15. The Commissioner twice asked the Council to clearly mark the withheld information with the relevant procedural sections of the EIR. It failed to do so, saying:
 - 'The exceptions that we are applying are:*
 - *Regulation 12(5)(e) Confidentiality of commercial or industrial information*
 - *Regulation 13 Personal Information*
 - These apply equally to all of the withheld information'*
16. This blanket application of multiple exceptions is inappropriate in any circumstance as it fails to show that proper consideration has been given to each piece of withheld information and the exception being applied. As a result the arguments put forward by the Council concerning the withheld information are muddled and significantly undermined by this approach.

Regulation 13 - personal data

17. Regulation 12(3) provides that third party personal data can only be disclosed in accordance with regulation 13, which sets out the detail of the exceptions. If disclosure of the information would breach any of the data protection principles, it must not be released. There is no additional public interest test.
18. As the Council's response to the request was after 25 May 2018, the date the new Data Protection Act 2018 (DPA 2018) and General Data Protection Regulation (GDPR) legislation came into force, the Commissioner considers that the DPA 2018/GDPR applies. This means that 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 set out in Article 5 of the General Data Protection Regulation EU2016/679 ('GDPR') ('the DP principles'), it must not be disclosed.

19. The first step for the Commissioner to determine is whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA').

Section 3(2) of the DPA defines personal data as:-

'any information relating to an identified or identifiable living individual'

20. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA.
21. To be classed as personal data, information must relate to a living person and that the person must be identifiable from that information. The Council asserts that the information in the Building Control file is all personal data on the basis that the building's owner can be identified from this. The Council has referred to previous decision notices where the Commissioner has stated that individuals can be identified from buildings. The Council has spoken to the building owners' representatives, who have confirmed they object to disclosure of information in the file held by the Building Control department. The Council also states that the information includes correspondence from another enquirer about cinema design, which is also personal data.
22. After checking with the Council regarding who actually owns the building (as opposed to its representatives) the Council has confirmed to the Commissioner that the building is owned by a company and not an individual. Consequently the Commissioner is not satisfied that the information identified as in scope by the Council and to which it has applied a blanket application of regulation 13, constitutes the personal data of living individuals. She therefore finds that the regulation 13 is not engaged on this basis.
23. However, in her role as data protection regulator, and regardless of the Council's problematic blanket application of regulation 13, the Commissioner must give consideration to the personal data of living individuals that are identified in the withheld information. The Council has provided the names, associated organisations and roles of individuals in a table (data subjects), and the Commissioner accepts that this information is personal data.

24. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the EIR. The second element of the test is to determine whether disclosure would contravene any of the data protection principles. The Commissioner considers that the most relevant data protection principle in this case is principle (a).

Would disclosure contravene principle (a)?

25. Article 5(1)(a) GDPR states that:-

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject"

26. The Council has provided arguments concerning the principles within the Data protection Act 1998. It cites the second data protection principle – 'shared for limited purposes', but then goes on to provide information as to how disclosure would breach principle one (processing must be fair and lawful). Although the Council has not considered the request under the correct regime, its arguments for withholding the personal data are still relevant.

27. The Council provided the following clause from its 'Agreement' with the Cinema owner regarding confidentiality:

'Information between you and Building Control is treated as confidential. Our files are not available for inspection by other parties as planning files are and we are happy to sign a confidentiality agreement should it be necessary.'

28. As already determined, regulation 13 is not engaged on a blanket basis to all the information as the cinema owner is a company and not an individual. However, even if it were, as with the privacy notice above such a clause does not exempt the Building Control Department from its EIR (or FOIA) obligations.

29. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that "*processing shall be lawful only if and to the extent that at least one of the*" conditions listed in the Article applies. One of the conditions in Article 6(1) must therefore be met before disclosure of the information in response to the request would be considered lawful.

30. The Commissioner considers that the condition most applicable in this case would be Article 6(1)(f) of the GDPR which states:-

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or

fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"

31. In considering the application of Article 6(1)(f) in the context of a request for information under EIR it is necessary to consider the following three-part test:-
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

The Commissioner considers that the test of "necessity" under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

32. The personal data being considered in this case is that of Council staff and third parties who communicated with each other about the design of the cinema. The complainant has requested these communications because he believes they will provide an explanation of how the Council ensured, or did not ensure, compliance with the necessary building regulations and the public sector Equality Duty. The Commissioner accepts that this is a legitimate interest.

Is disclosure necessary?

33. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity which involves the consideration of alternative measures, and so disclosure would not be necessary if the legitimate aim could be achieved by something less. Disclosure under EIR must therefore be the least intrusive means of achieving the legitimate aim in question.
34. The Council has stated that its policy is not to disclose the details of Building Regulation files, and provided the following from its privacy notice:

'The information you provide will be held and processed by the Building Control team. It may also be shared with our technical consultants, other Council departments and statutory bodies for

the purposes of checking compliance with the technical and procedural requirements of the Building Regulations, and other legislation under the empowerment of the Council and the other statutory bodies.'

35. The Commissioner draws attention to the words '*and other legislation under the empowerment of the Council and the other statutory bodies*', noting that the confidentiality of information provided is subject to other statutory requirements of the Council, and the Commissioner wishes the Council to note that any confidentiality statement, or privacy notice, cannot be used to absolve the Council of its responsibility under the EIR.
36. The question for the Commissioner to determine is whether the legitimate interests of the complainant can be met by less intrusive means. The information requested is not already in the public domain and cannot be found elsewhere. The nature of the personal data, in that it reveals the organisations and roles held by staff regarding the design of the cinema, is necessary in terms of meeting the complainant's request for '*documents, communications and correspondence between council officers, architects and third parties*'. The Commissioner therefore concludes that disclosure of the personal data is necessary to meet the complainant's legitimate interests, and can see no other, less intrusive means of meeting these interests.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms for the senior / decision-making staff details

37. It is necessary to balance the legitimate interests in disclosure against the data subjects' interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under EIR in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
38. The Commissioner has produced guidance on Personal Information¹ and the application of section 40 and regulation 13 which provides key considerations when determining reasonable expectations. In the case of the third parties identified in the withheld information, the Commissioner is not of the view that they would expect their personal

¹ <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf>

data to be released to the world at large through this EIR request (see the confidentiality clause in the Council's agreement cited above) and she considers there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. Consequently disclosure of the names and contact details of third parties would not be lawful. Regulation 13(1) is therefore engaged and the Commissioner has not gone on to consider fairness and transparency under principle (a).

39. For the avoidance of doubt, this third party data also includes the name and contact details of the 'enquirer' that the Council refers to, but not to the content of any communications, save for reference to identifiable third party individuals.
40. In relation to the personal data of Council staff, the Commissioner's guidance on 'Requests for personal data about public authority employees'² distinguishes between the reasonable expectations of junior and senior staff. It is unlikely that staff involved in administrative duties with little decision-making responsibility would expect that their personal details are disclosed to the world at large, and therefore the Commissioner determines that for the administrative staff in the withheld information there is insufficient legitimate interest to outweigh their fundamental rights and freedoms, and that the disclosure of the information would not be lawful. Regulation 13(1) is therefore engaged for these staff. For staff involved in the design process and decision-making about the cinema, including senior staff, the personal data relates solely to their professional capacities. For these staff, the Commissioner considers that the legitimate interests of the complainant and wider public in terms of accountability outweigh the data subjects' rights and freedoms and therefore disclosure of the information would be lawful.
41. Even if it has been demonstrated that disclosure of the requested information under EIR would meet the condition for lawful processing under Art. 6(1)(f) DPA, it is still necessary to show that disclosure would be **fair** and **transparent** under the principle (a). Under principle (a), the disclosure of the information must be fair to the data subject, but assessing fairness involves balancing their rights and freedoms against the legitimate interest in disclosure to the public.

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https://ico.org.uk/media/1187/section_40_requests_for_personal_data_about_employees.pdf

42. The Commissioner accepts that despite the seniority of staff, release of personal data needs to be considered on a case by case basis. The confidentiality clauses provided by the Council relate to third parties supplying information as part of the Building Control process and not Council staff, and therefore staff cannot expect to be protected by such clauses. Additionally, the more senior staff are, the more likely they are to be held to account for their decisions. Given that the personal data concerns exchanges about the design of the cinema, the Commissioner is not convinced that release of this would cause unjustified damage or distress to the individuals. The Commissioner is therefore of the view that processing of this data would not be unfair.
43. The Council has not provided any evidence that it has asked staff about the disclosure of their personal information in response to this request, and therefore the Commissioner can draw no conclusions as to the transparency of the processing. However, overall she is of the view that regardless of the specific transparency of processing of personal data in response to this request, disclosure would be fair in the circumstances and any residual concerns regarding transparency are overridden by the legitimate interests. Therefore for the personal data of senior Council staff, and any Council staff involved in decision-making about the cinema design (for example Building Control team Leader), regulation 13(1) is not engaged.

Regulation 12(5)(e)

44. The exception under regulation 12(5)(e) of the EIR provides that public authorities are entitled to refuse to disclose information where to do so would adversely affect the confidentiality of commercial or industrial information, where such confidentiality is provided by law. If the exception is engaged, it is then subject to the public interest test.
45. In assessing whether the exception is properly engaged, the Commissioner applies a four stage test, of which all must be met:
 - The information is commercial or industrial in nature
 - Confidentiality is provided by law
 - The confidentiality is protecting a legitimate economic interest
 - The confidentiality would be adversely affected by disclosure
46. The Council's blanket application of 12(5)(e) to over 150 documents, files and emails with no distinction between them makes consideration of this exception very problematic. It is not for the Commissioner to sift the withheld information to determine whether the exception applies (in some cases it clearly doesn't), and the Council has been provided with two opportunities to do this (the Commissioner only normally offers one).

47. Nonetheless, the Commissioner must consider the arguments presented by the Council despite the obvious shortcomings. The Council has determined that the withheld information is commercial in nature as it includes designs from commercial companies that are 'commercially valuable and copyrighted'. This information has been provided by three separate companies. The Council has also said that the Building Control team acts in competition with private companies as 'Approved Inspectors', and that none of its competitors are required to disclose information from clients that they hold. The Building Control Department, as Approved Inspectors, charges for its services. The Commissioner therefore accepts that, for the **architectural design drawings only**, the information is commercial in nature.
48. For the rest of the withheld information that is not architectural design drawings, the Council has not advanced any arguments regarding its commerciality and therefore the regulation is not engaged.
49. As with its application of regulation 13, the Council has cited its 'Agreement' with the companies and references the confidentiality clause therein. It says that information was submitted on the understanding it would remain confidential. This is not only due to the confidentiality clause but also that fact the Council is in competition with other companies and such confidentiality, explicit or implicit, is necessary to secure clients. The Commissioner accepts that, at the time the information was provided to the Council, there was an expectation of a common law duty of confidence by the Council and the companies supplying it.
50. Turning to the legitimate economic interest that the confidentiality is designed to protect, the Commissioner must consider that of the companies supplying the design drawings and the Council separately.
51. For the companies, the Council has stated that design drawings are protected by copyright and that 'theft of intellectual design is a significant risk' and 'would be of value to ... competitors'. One firm has also said that sharing of the information en-masse could also 'lead to them being inundated with contacts and questions by well-meaning but unknowing members of the public'. The Council has also said:

'We cannot place a specific value on a piece of architectural design or intellectual property, but our clients have all told us that their designs are financially valuable, and we have no reason to disbelieve this. The building in question is a multi-million pound development which relies on its design to maximise returns on investment. The designers were appointed for their specialist design skills to maximise occupancy and use, and therefore these returns. The appointment of designers is

competitive and relies upon bidders to show that they have the specialist knowledge and ability to provide a highly efficient design. The disclosure of this information would put the copyright holders at a significant disadvantage in this process.'

52. The Commissioner draws the Council's attention to the separate exception under the EIR where disclosure of information would adversely affect intellectual property rights 12(5)(c). The Council has not relied on this exception and therefore the Commissioner has not considered it. In terms of identifying the companies' economic interests, the Council has not provided a clear explanation of exactly what these interests are. How the drawings would be of value to competitors is unclear, especially as they are now four years old, and unsolicited contact from the public is not a legitimate economic interest. The cinema design and build had been complete for several years prior to the complainant's request, and therefore the Commissioner cannot see how *'disclosure of this information would put the copyright holders at a significant disadvantage in this process.'* The Commissioner therefore finds that the Council has not adequately demonstrated that for the companies supplying the information, the confidentiality of such information is protecting a legitimate economic interest.
53. Turning to the legitimate economic interest of the Council, it has explained that as it competes for business with private companies in its role as 'Approved Inspector' for building control services, its economic interest is its ability to secure clients in the open market. The potential of the Council's Building Control department to secure clients would be adversely affected as companies would choose not use them if they knew that their information would be subject to disclosure, but not if the company used a private provider. The Council has stated:
- 'Building Control would also be put at a commercial disadvantage as several of our clients have confirmed that they would not use our services if we released information where our competitors do not.'*
54. The Council has expressed concern to the Commissioner that disclosure of the withheld information, supplied in confidence by third parties paying for services that it is free to procure from elsewhere without such possibility of disclosure, would have a seriously detrimental effect on the Building Control functions of the Council. The Commissioner is therefore satisfied that the confidentiality of the architectural drawings supplied by the three companies is protecting a legitimate economic interest of the Council (its ability to secure clients) and that making this information publicly available would harm that interest. Based on this, exception 12(5)(e) is engaged.

The Public Interest Test

55. Regulation 12(5)(e) is subject to the public interest test. This means that even when the exception is engaged, public authorities have to consider whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. Under regulation 12(2) of the EIR, public authorities are required to apply a presumption in favour of disclosure. Thus, even if the information is confidential and disclosure would harm someone's legitimate economic interests, it may still be disclosed.
56. There is always a public interest in the accountability and transparency of public authorities, and in processes that promote good decision making and uphold integrity. The EIR implement the EU Directive 2203/4/EC on public access to environmental information and the public interest in this is clearly stated:

'Increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.'

57. As the Commissioner has accepted that regulation 12(5)(e) is engaged **only** for the architectural design drawings, the public interest test will apply solely to this information.
58. The Council acknowledges that there is a public interest in knowing that a public building has been constructed in accordance with the building regulations, and that access to the requested information may indicate that this has been achieved.
59. However, the Council relies on the fact that a completion certificate (publicly available) has been issued for the building that confirms compliance with all requirements of the building regulations. It considers that:

'release of the technical information held on the file is not necessary as the building control process is well established and, in itself, provides reassurance that a construction has been built in line with the regulations. There would also be a significant detriment to the commercial activity of all parties involved in the building control process'

And that

'the considerable need to maintain commercial confidentiality of the technical designs from the point of view of the building'

owners and their representatives and consultants, as well as of the Council, far outweighs any benefit that the enquirer may or may not have in viewing the documentation held on file'

60. The complainant considers that the facilities for disabled people within the cinema are not adequate and wishes to understand how the Council ensured that the cinema complied with Part M of the Building Regulations (building regulation in England to ensure that people are able to access and use buildings and their facilities), section 149 of the Equality Act 2010 (the public sector Equality Duty) and BS8300 (the British Standard that sets out how buildings should be designed, constructed and maintained to create an accessible and inclusive environment for disabled people).
61. The complainant refers to guidance issued by the Government that clarifies the relationship between the Building Regulations 2010 and Equality Act 2010:

Compliance with the requirements of Part M does not signify compliance with the much broader obligations and duties set out in the Equality Act. This is a source of frequent misunderstanding. Part M sets out minimum requirements to ensure that a broad range of people are able to access and use facilities within buildings. The Equality Act requires reasonable adjustments to be made in relation to accessibility. In practice, this means that due regard must be given to any specific needs of likely building users that might be reasonably met.'

62. Consequently, compliance with the building regulations, for which Building Control issues a compliance certificate, will not necessarily (or even be likely to) demonstrate wider compliance with the public sector Equality Duty. For clarity BS8300 is an independent standard with which compliance is not compulsory.
63. The Commissioner therefore understands that the complainant wishes to see all information held about the design of the cinema to see how/if the Council ensured compliance not only with the necessary building regulations but also the public sector Equality Duty.
64. It is unclear to the Commissioner whether the architectural design drawings will provide the information the complainant is seeking. There are many of them, and as building access covers a whole range of physical aspects from door widths, floor surfaces, window heights/positioning, parking spaces, and elevations to name a few, the Council has supplied an extensive number of drawings which may potentially be linked with access and use of one kind or another. However, it is not the role of the Commissioner to interpret architectural

design drawings and as the Council has classed them as in scope she must, in this case, consider them as such.

65. The Commissioner therefore accepts that in theory, the withheld information may be of use in assisting the public to understand the design of the cinema to assess whether the Council complied with Part M of the building regulations and the public sector Equality Duty. However, she also accepts that the Council's position that release of this information would be of significant detriment to the Council's Building Control function by damaging client relationships and the resulting loss of business. She therefore concludes that the public interest in maintaining the exception outweighs the public interest in disclosure.
66. For the avoidance of doubt, this only applies to architectural design drawings. Any information not of this description (with the exception of that identified as engaging regulation 13 – personal data) should be disclosed to the complainant.

Regulation 12(5)(a)

67. Regulation 12(5) states:

'For the purposes of paragraph (1)(a) a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

(a) international relations, defence, national security or public safety.

68. In its initial response to the Commissioner's investigation letter, the Council stated:

'Please note that much of the information shown in the attached drawings shows secure "back of house" areas, and details of security systems which would be of use to those with criminal or terrorist intent.'

However it did not state that it was applying exception 12(5)(a) nor mark any of the withheld information accordingly.

69. In a follow-up response to the Commissioner, the Council elaborated with:

'As part of this exercise, we have mentioned in our previous correspondence with you that in disclosing the information there is a risk of criminal or terrorist intent. This would result in the risk to public safety being compromised. Whilst we had not previously identified this as a specific exception, we would

therefore like to put forward the case for engaging the exception relating to Regulation 12(5)(a).'

70. Despite stating that the exception applied, the Council still did not mark any of the information with the exception or identify any drawings which would reveal the information specified (i.e. back of house or security systems). Additionally, the Council failed to provide any specific public interest arguments to support its application of the regulation. The Commissioner therefore considers that the Council has failed to provide specific arguments linked to the information provided to engage the exception.

Regulation 9

71. Regulation 9 of the EIR places a duty on public authorities to provide advice and assistance to applicants regarding requests for environmental information. Regulation 9(1) specifically states

'A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.'

72. During the investigation the Council has noted the wide-ranging nature of the request, and told the Commissioner it:

'meant that we have not been able to respond to the complainant with any information which might have allayed his concerns. To explain the full requirements of Part M of the Building Regulations would involve an in depth explanation of many hundreds, if not thousands, of pages of guidance.'

73. The Commissioner has viewed Part M of the building regulations and notes it is actually 69 pages long, not hundreds or thousands as stated by the Council. Whilst there may be other associated guidance, the complainant has not requested an explanation of these as part of his request.
74. By its own admission the Council has recognised that the broad interpretation of the request has not provided the complainant with the information he requires. The Commissioner therefore finds that the Council has breached regulation 9 by failing to provide reasonable advice and assistance. By choosing not to apply regulation 9, but rather withhold all information held by Building Control concerning the cinema, and apply exceptions inaccurately and in a blanket fashion, the Council has caused significant problems for all parties. The Commissioner advises the Council to ensure staff handling information requests are fully aware of all provisions within the legislation in order to provide the most appropriate response to requesters.

Other matters

75. The Commissioner has already highlighted the problems with the Council's blanket application of the EIR exceptions to the withheld information. Not only has it undermined the Council's arguments for the exceptions, but it also demonstrates a poor grasp of the legislation and little knowledge or understanding of the Commissioner's accompanying guidance, which provides useful advice and interpretation for public authorities. The Commissioner reminds the Council of its obligations under both the EIR and FOIA and the need to respond to requests and the Commissioner's communications with accuracy and acumen.

Right of appeal

76. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

77. 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.
78. 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

Andrew White
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