

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 17 June 2022

Public Authority: North Yorkshire County Council
Address: County Hall
Racecourse Lane
Northallerton
North Yorkshire
DL7 8AL

Decision (including any steps ordered)

1. The complainant has requested information relating to the fuel safety checks at Bagby Airfield from North Yorkshire County Council (the council). The council provided some information; however, it withheld the majority under Regulation 12(5)(a) of the EIR (Public safety).
2. The Commissioner's decision is that the council was correct to apply Regulation 12(5)(a) to withhold the information from disclosure.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 12 June 2020 the complainant wrote to the council and requested information in the following terms:

“Under the Freedom of Information Act you supply me with copies of any site visit reports, notes to file, drawings, photographs of the facilities, Officers condition reports on petroleum facilities at Bagby Airfield since Jan 8th 2019.”

5. The council responded on 29 March 2021. It partly refused the request on the basis that Regulation 12(5)(a) applied. It said that the arm of the exception relating to public safety was applicable. However, it disclosed some information to the complainant, stating that it had decided to disclose material which directly related to its decision to issue a certificate. It therefore disclosed the electrical test certificate, the tank specification and a number of photographs of the site.
6. Following an internal review, the council wrote to the complainant on 2 June 2021. It disclosed further information; however, it maintained its position that the remaining information was exempt under Regulation 12(5)(a).
7. The council clarified that the exempted information includes 172 photos, a proposed fuel facility plan and elevations material, a different fuel site plan of the fuel facility, a general site plan, notes made to proposed site plan, a plan for a clubhouse, a plan for a fuel site, a fuel facility site plan, and notebook entries from officers.

Scope of the case

8. The complainant contacted the Commissioner 14 June 2021 to complain about the way his request for information had been handled.
9. The Commissioner is satisfied that as the information relates to site plans and proposed plans for the airfield, the information falls under the EIR to be considered.
10. The following analysis relates to whether the council was correct to withhold the information it has under the exception in Regulation 12(5)(a) of the EIR.

Reasons for decision

Regulation 12(5)(a) – international relations, defence, national security or public safety

11. Regulation 12(5)(a) allows a public authority to refuse to disclose information if its disclosure would adversely affect – (a) international relations, defence, national security or public safety’.
12. The council argues that disclosing the withheld information would adversely affect public safety.
13. To demonstrate that disclosing the information would harm one of the interests in 12(5)(a), the council needs to:
 - a. identify a negative consequence (adverse effect) of the disclosure that is significant (more than trivial) and is relevant to the exception claimed;
 - b. show a link between the disclosure and the negative consequence, explaining how one thing would cause the other;
 - c. show that the harm is more likely than not to happen.
14. When considering whether an exception is engaged the Commissioner's approach is to consider what harm would occur if the information was placed in the public domain and freely accessible to all. The question therefore is whether making the information freely accessible to anyone and everyone would cause that harm.
15. To support its arguments, the council provided the Commissioner with the sections of the withheld information. This included officer notes and other material. It agreed with the Commissioner to only provide a sample of the photographs it holds given that there are a large amount of these.

The council's arguments

16. The council highlighted that Bagby airport is a contentious issue amongst the local community, with a number of objectors unhappy at the airport's actions.
17. It states that there has previously been an alleged case of vandalism/sabotage against the fuel facility, with paper towels being forced into one of the entry valves of the tank, and an air flow filter blocked.

18. It argues that any intentional criminal damage or sabotage to the fuel facility at the airport would create a clear risk to public safety, and that a disclosure of the withheld information would assist individuals in planning acts of sabotage or criminal damage to the site. A disclosure of the information would therefore heighten the level of risk to the public and users of the airfield.
19. The council considers that the likelihood of occurrence is probable. The site has a large number of objectors, and it argues that that contentious climate is likely to continue well into the future. It argues that, when coupled with the alleged previous attacks on the site, a disclosure of the withheld information raises the level of risk if the information is made publicly available.
20. It considers that a relatively small increase in the risk of sabotage becomes a substantial increase in likelihood over a long period of time (in that even a small probability of something happening daily, makes something likely to happen over a long enough time period).

The complainant's arguments

21. The complainant argues that the central issue is the safety of the fuel facilities at Bagby Airfield. He alleges that the council appears to accept that fuel can be stored on the site without all of the normal safety procedures which would be required of other sites, such as petrol stations.
22. He said that, previously, a buried fuel chamber was found to have rusted, and the fuel leaked into the soil. He argues that this raises concerns that the council's monitoring of the airport may be inadequate. He therefore argues that the safety monitoring information which the council holds should be disclosed in order that the public can reassure itself that the council is carrying out its safety functions adequately and that the site is being monitored appropriately to ensure public safety.
23. He argues that greater transparency over the checks and the specifics about the site would aid in reducing the concerns which the local community has about the safety of the fuel facility at the airport, and may also help in that the public may be able to identify any weaknesses with the safety of the site.
24. He does not consider that one alleged incident should undermine the public's ability to check that the council is properly monitoring the safety of the site.

The Commissioner's analysis

25. Looking to the tests identified by the Commissioner in paragraph 13 above:
26. a) The Commissioner is satisfied that the negative consequences identified by the council are significant and relate to the harm which the exception is intended to prevent. Clearly the risk of sabotage or criminal damage to fuel facilities is a risk to public safety and potentially national security¹. The council has therefore identified a relevant risk which is associated to the exemption in Regulation 12(5)(a).
27. b) A disclosure under the EIR is considered to be a disclosure to the whole world, and should be considered in that light. The Commissioner is satisfied that disclosing details of fuel facilities at an airport risks individuals using that information as a means to plan sabotage, terrorism or criminal damage.
28. c) The Commissioner notes that the airport is contentious, and that there has been an allegation of a previous attempt to damage the facility. The contentious nature of the site does raise the possibility that individuals might seek to cause criminal damage or to sabotage the site to temporarily prevent the airport being used. The Commissioner also notes that terrorism is a pertinent risk to all airfields, even a small airfield such as Bagby.
29. The Commissioner also accepts the council's argument that although the risk may be small on a day-to-day basis, that risk, extended over a long period of time, would increase the likelihood of such an incident occurring to the point where it can be said that that harm is more likely than not to occur if the requested information were to be disclosed.

The Commissioner's conclusions

30. Having considered the tests set in the Commissioner's guidance, the Commissioner is satisfied that disclosing details of the plans and specifics of the fuel facility would have an adverse effect upon public safety, and therefore that the exception in Regulation 12(5)(a) is engaged.

¹ [fs50853537.pdf \(ico.org.uk\)](#)

31. The Commissioner has therefore carried out the public interest test required by Regulation 12(1). In doing so, he has taken into account the presumption towards the disclosure of the information which is set out in Regulation 12(2).
32. The test, set out in Regulation 12(1)(b) is whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

The public interest

The public interest in the information being disclosed

33. The Commissioner recognises that greater transparency over the actions and decisions of the council may help to alleviate the concerns within the community. The complainant's arguments do have merit. There has been legal action over the council's management of the airport previously, dating back to 2010². There is a public interest in creating greater transparency over the information which the council used to reach its decisions on the safety of the site.
34. The likelihood of harm from a serious accident occurring at the airport may be small, however the damage which would be caused by an incident relating to the fuel facility could be severe.
35. Members of the community may be concerned at previous fuel leakage issues. There is a valid public interest in information on the council's monitoring of the site in order to ensure that it is carrying out its regulatory functions in this respect appropriately.

The public interest in the exception being maintained

36. The likelihood of harm from sabotage or terrorism occurring at the airport may be small, however there is potential for the damage caused by such an occurrence to be severe.
37. The Commissioner notes that the council disclosed the information relevant to it making its decision to award the safety certificate in response to the request for information.

² [Victory for action group in battle over airfield | Yorkshire Post](#)

38. The Commissioner understands the council's concerns that a disclosure of the withheld information to the whole world would increase the risk to public safety, and have the opposite effect to that wished by the complainant.
39. There is a clear public interest in ensuring the safety of the site. The Commissioner understands the wish of the complainant and his associates to ensure that the site is being monitored appropriately, and that public safety is not being put at risk. However, there are likely to be more appropriate ways to ensure that public safety is maintained which do not, in fact, raise the levels of risk at the site.
40. The Commissioner notes that the council has disclosed the central information which it relied upon to make its decision regarding site safety. Disclosing the additional information may help in regard to increasing knowledge of the information which the council had before it when reaching its decision to award the certificate, and it would allow interested parties to form a fully informed overview of the safety of the site themselves, but at the expense of reducing the security of the site.

The Commissioner's conclusion of the public interest test

41. The Commissioner has decided that the public interest in maintaining the exception in Regulation 12(5)(a) outweighs that in the information being disclosed in this case.
42. The public interest in the information being disclosed, and therefore creating greater transparency over the checks and monitoring carried out by the council on the airport, is outweighed by the additional risks which would be associated with disclosing detailed information on the fuel facility at the airport to the whole world.

Regulation 12(2)

43. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions. As stated in the Upper Tribunal decision *Vesco v Information Commissioner (SGIA/44/2019)*, "*If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure...*" and "*the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations*" (paragraph 19).

44. As covered above, in this case the Commissioner's view is that the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in Regulation 12(2), is that the exception provided by Regulation 12(5)(a) was applied correctly.
45. The council was not, therefore, obliged to disclose the requested information.

Right of appeal

46. 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@justice.gov.uk

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

47. 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.
48. 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

Ian Walley
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