

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 19 April 2023

**Public Authority:** Manchester City Council  
**Address:** Town Hall  
Manchester  
M60 2LA

#### **Decision (including any steps ordered)**

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1. The complainant requested information relating to feedback for Phase 2 of the Levenshulme and Burnage Active Neighbourhood project and any email correspondence between Burnage Ward Councillors and the project team/Highways regarding the project from Manchester City Council ("the Council"). The Council disclosed some information within scope of the request; however, it withheld some information under regulation 12(4)(e) of the EIR, the internal communications exception.
2. The Commissioner's decision is that the Council was entitled to rely on regulation 12(4)(e) of the EIR to withhold the requested information.
3. The Commissioner does not require any steps to be taken as a result of this decision.

## **Request and response**

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4. On 14 October 2022, the complainant wrote to the Council and requested information in the following terms:
  - "1. Please could I receive the very latest public consultation feedback for Phase 2 of the Levenshulme and Burnage Active Neighbourhood project. And specifically, a summary of the latest consultation feedback received for three interventions in the ward of Burnage: firstly, the proposed works at the junction of Slade Lane & Albert Road & Moseley Road; secondly the proposed works at the junction of Burnage Lane & Grangethorpe Drive & Crossley Road; and finally, the proposed works along Errwood Road.
  2. Further to this please could any email correspondence between Burnage Ward Councillors and the project team/Highways regarding this project also be disclosed and shared."
5. On 11 November 2022, the Council disclosed information within scope of part one of the request. However, it withheld information under regulation 12(4)(e) of the EIR with regard to part two of the request.
6. The Council upheld its reliance on regulation 12(4)(e) of the EIR at internal review on 11 January 2023.

## **Reasons for decision**

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7. The following analysis sets out why the Commissioner has concluded that the Council was entitled to rely on regulation 12(4)(e) of the EIR in this particular case.
8. Regulation 12(4)(e) is a class-based exception. There is no need to consider the sensitivity of the information to engage the exception. However, the exception is subject to the public interest test.
9. The withheld information in this case comprises emails between council staff and councillors, largely between councillors and council officers from the Highways Service who oversee the Active Neighbourhood projects across the city, and attachments to these emails. The Commissioner is satisfied that all of the withheld information falls within the definition of internal communications, therefore the exception is engaged. The Commissioner has gone on to consider the public interest test.

10. The Council considered the following factors in favour of disclosure:

- "The general public interest in transparency and accountability in decision-making by the Council.
- The general public interest to understand why a decision was made.
- Further the understanding of and participation in the debate of current issues.
- The general public's interest in how the Council's Active Neighbourhood projects are developed.
- The general public's interest in how projects officers and Councillors correspond in such projects."

11. The Council considered the following factors in favour of maintaining the exception:

- "The need for Council Officers from the Highways Service and Councillors to communicate amongst themselves in private, in particular:
- The need to protect the Council's internal deliberating and decision making, also known as the 'safe space argument.' This ensures that officers have a safe space to discuss, review and comment on all proposals whilst undertaking their due diligence. The Council considers this argument to be applicable (even though the Burnage & Levenshulme project is at the implementation stage) because there are a number of similar Active Neighbourhood projects currently under development across the City, involving the same Council officers and Councillors and concerning similar issues.
- The disclosure of these communication will inhibit the free and frank discussions, known as the 'chilling effect.' If the Council were to lose the ability to correspond internally with frankness and candour, this will inevitably damage the quality of advice and lead to poorer decision-making in similar schemes. The Council considers this argument to be applicable (even though the Burnage & Levenshulme project is at the implementation stage) because there are a number of similar Active Neighbourhood projects currently under development across the City, involving the same Council officers and Councillors and concerning similar issues."

12. After considering the above factors, and having applied the presumption in favour of disclosure, the Council determined that the public interest favours maintaining the exception.
13. The Commissioner acknowledges the public interest in transparency regarding decision making about the Active Neighbourhood Scheme. However, his view is that the 'safe space' and 'chilling affect' arguments made by the Council are weighty factors in favour of maintaining the exception in this case due to the fact that similar Active Neighbourhood Projects are currently under development across the city. He is satisfied that disclosure would be likely to prevent Councillors and Council Officers corresponding internally with frankness and candour, which could damage the quality of advice and may lead to poorer decision-making with regard to the Active Neighbourhood Projects which are still being developed. This would not be in the public interest.
14. Having reviewed the withheld information, the Commissioner's decision is that the public interest in maintaining the exception outweighs that in disclosure, therefore the Council was entitled to rely on regulation 12(4)(e) to withhold the requested information.

## Right of appeal

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15. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

16. 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.
17. 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

**Joanna Marshall**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**