

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

Date: 23 February 2024

Public Authority: London Borough of Hounslow (“the Council”)
Address: 7 Bath Road
Hounslow
Middlesex
TW3 3EB

Decision (including any steps ordered)

1. The complainant has requested all correspondence relating to particular planning applications. The Council responded with some information redacted in reliance of EIR regulation 13 – personal information. The Council relied on regulation 12(4)(e) – internal communications to withhold further information. The Council relied on the same exceptions to withhold further information found during the course of the Commissioner’s investigation. The Council also relied on FOIA section 21 to refuse to provide information already in the public domain.
2. The Commissioner’s decision is that regulation 12(4)(e) is engaged but the public interest favours disclosure. The Council was not correct in citing FOIA section 21 although it had complied with its duties under regulation 5 by directing the applicant to its website.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld internal communications including senior officers’ names but with redactions for junior officers’ personal data.

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 2023 the complainant wrote to the Council and requested information in the following terms:

“Can you please provide as a freedom of information request all correspondence in relation to planning application - P/2023/0909 + P/2023/0910 especially internal emails.”

6. The Council responded on 4 June 2023. It provided some information redacted in reliance of regulation 13 – personal data and withheld some information in reliance of regulation 12(4)(e) – internal communications. The Council advised the complainant that it had not provided correspondence between it and the complainant as this was already in their possession. The Council did not cite an exception or exemption regarding this information.
7. Following an internal review the Council wrote to the complainant on 29 July 2023. It stated that it was upholding its initial response.

Scope of the case

8. The complainant contacted the Commissioner on 27 July 2023 to complain about the way their request for information had been handled with regard to internal communications. They commented:

“The refusal to allow the FOI/EIR request is reported as the exemption is designed to allow free discussion between officers in concluding the final decision. It seems to me that if the decision is already taken then the public interest merits disclosure.”

9. During the course of the Commissioner’s investigation the Council located further information on two occasions. It advised that it wished to withhold some of the information relying on the same exception regulation 12(4)(e), along with regulation 13(1) to withhold the names of staff members. It noted that the remainder of the information comprised external correspondence with the complainant which was therefore already in their possession.

10. The Commissioner notes the Council's reliance on an FOIA exemption to withhold information already accessible by other means, namely section 21. As the Council had correctly determined that the request should be addressed under the EIR it should not have relied on an FOIA exemption in its response. A public authority may comply with EIR regulation 5 (duty to make available environmental information on request) by directing an applicant to where it is available. In this case the Council advised that some information was available on its website. The Commissioner therefore finds regulation 5 applies in these circumstances.
11. The Commissioner considers the scope of his investigation to be the application of regulation 12(4)(e) and regulation 13(1).

Reasons for decision

Is the requested information environmental?

12. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, 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, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be

affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

13. The Commissioner has seen the withheld information and is satisfied that it falls within the definition of environmental information at regulation 2(1)(c) as it relates to planning applications affecting the property and surrounding area. Accordingly he has considered the complaint under the EIR.

Regulation 12(4)(e) – internal communications

14. Regulation 12(4)(e) states that information is exempt from disclosure if it involves 'the disclosure of internal communications'. It is a class-based exception, meaning there is no need to consider the sensitivity of the information in order to engage the exception. Rather, as long as the requested information constitutes an internal communication then it will be exempt from disclosure.
15. The Commissioner has reviewed the withheld information and is satisfied that the limited information consists of communications between officers at the Council. The information clearly comprises internal communications. The Commissioner therefore considers that the exception at regulation 12(4)(e) is engaged.

Public interest test

16. As with the other exceptions under the EIR, when regulation 12(4)(e) is engaged, the public authority must still carry out the public interest test in order to decide whether the information should be withheld. Under regulation 12(1)(b), the public authority can only withhold the information if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. Furthermore, under regulation 12(2), a presumption in favour of disclosure must be applied.
17. The Council explained that disclosure of the internal correspondence would increase public awareness and understanding of the Council's planning application processes and would support its transparency agenda.
18. In favour of maintaining the exception the Council advised the Commissioner:

"The withheld information is internal correspondence between LB Hounslow staff involved in the processing of this application. The reasons and background for the decisions taken in the planning application are publicly available and stated in the officer's report."

19. The Council expressed its concerns that disclosure:

"...may lead the requestor to take a view on the internal discussions that isn't representative of the overall discussions or all the information that was considered when the council decided on this application."

20. The Council went on to make 'safe space' arguments, explaining that staff require a safe space to discuss all aspects of a planning application and to be open with their views. The Council considers that this:

"...helps protect members of the public from poor decision making based on incomplete or diluted information as more junior colleagues may not wish to highlight their full findings or document these if they thought these internal communications would be made public.

Disclosing these emails may also therefore produce a chilling effect on the range and depth of discussion between Planning colleagues should these emails be disclosed. This would minimise and subdue communications between planning staff members. This would not be in the public interest as any planning decision may not be made with all the facts and information necessary to do so."

21. As quoted in paragraph 8 the complainant considers that the decision on this application is completed. The Council considers that as its decision had been appealed at the time it provided its internal review, the matter was still on-going and this added weight to its position.

Balance of the public interest

22. The Commissioner considers that the underlying rationale for the exception at regulation 12(4)(e) is to protect a public authority's need for a private thinking space. He considers that the extent to which disclosure would have a detrimental impact on internal processes will be influenced by the particular information in question and the specific circumstances of the request.

23. In his decision notices the Commissioner has often provided his view that public officials are expected to be impartial and robust in meeting their responsibilities, and not easily deterred from expressing their views by the possibility of future disclosure.

24. Although the Council considers that the subject matter of the request remains under appeal the Commissioner must remind the Council that the Upper Tribunal confirmed in *Montague v The Information Commissioner and The Department of Trade* (UA – 2020 -000324 & UA -

2020-000325)[1 April 2022]¹ , the time for judging the competing public interests in a request is the time when the public authority should have given a response in accordance with the timeframe required by FOIA or EIR. Therefore the appropriate time in this case was on or around 15 June 2023 (i.e. 20 working days after the complainant's request on 17 May 2023). The Council provided its response on 4 June 2023 at which time the decision on the applications was complete. The Council advised the Commissioner that an appeal on the decision was received on 8 June 2023, after the time of the response. The Commissioner notes that the window for appeal was open at the time of the response, however, he is not attributing additional weight to this point in the light of his consideration of the specific withheld information and any substance it holds in regard to defending an appeal. Nevertheless the Commissioner accepts that the subject matter of the request was clearly recent.

25. The Commissioner accepts that there is a need for a safe space for officers to exchange internal communications with regard to views on any planning application. However, in this case, having considered the content of the withheld information, the Commissioner is not persuaded that disclosure of the material would result in necessary communication between officers being deterred or compromised. The Commissioner notes that the vast majority of the withheld information is already available to the public on the Council's website. He considers that disclosure of the internal communications would further support the Council's transparency and openness in its handling of planning applications without any likely effect on Council processes.
26. In balancing the public interest he must determine whether disclosure of the requested information best serves the public interest. In the circumstances of this case the Commissioner considers that the arguments advanced in favour of maintaining the exception do not outweigh the public interest in disclosure.
27. The Commissioner's decision is that on balance the public interest favours disclosure of the withheld information. Notwithstanding this decision, the Commissioner will go on to consider the application of regulation 13 to the content of the information.

Regulation 13 – Personal data

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https://assets.publishing.service.gov.uk/media/6273a6ec8fa8f57a41d53ee9/UA_2020_000324_000325_GIA.pdf

28. In providing information in response to the request the Council redacted that information in reliance of regulation 13 to withhold the personal information of third parties. The complainant has not raised this as a concern in making their complaint. Their concern focuses on the content of the withheld internal communications.
29. In its submissions to the Commissioner in the first instance the Council did not apply regulation 13 to the names and email addresses of staff contained in the withheld information. Following the Commissioner's correspondence with the Council regarding the withheld information and his expectations concerning the officials named in that information, the Council provided the seniority of the officers concerned. The Commissioner notes that five of the seven officers are junior with the name of one of the two senior officers already in the public domain.
30. It is the Commissioner's established position that unless there are any case specific circumstances, the names of junior officials are exempt from disclosure on the basis of regulation 13(1) whilst senior officials should have the expectation that their names will be disclosed. This is in accordance with his guidance² and previous decision notices³
31. In conclusion the Commissioner has decided that the senior officials' names should be disclosed and the junior officials' names withheld and redacted from the disclosure.

²https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

³ <https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4022447/ic-110922-t9r1.pdf>
<https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4022310/ic-114449-b7p7.pdf>

Right of appeal

32. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

33. 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.

34. 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

Susan Hughes
Senior Case Officer
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