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

Decision notice

Date: **3 June 2019**

Public Authority: **Armagh City, Banbridge & Craigavon Borough Council**

Address: **Craigavon Civic & Conference Centre**

66 Lakeview Road, Craigavon

BT64 1AL

Decision (including any steps ordered)

1. The complainant has requested information from Armagh City, Banbridge & Craigavon Borough Council ("the Council") in relation to a proposed redevelopment of an area within Craigavon.

2. The Commissioner's decision is that the Council has not correctly applied the exception as set out in regulation 12(4)(d) of the EIR to the withheld information.

3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.

- To disclose a copy of the withheld information to the complainant.

4. The Council 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 19 January 2017, the complainant wrote to the Council and requested information in the following terms:-

> "Under Freedom of Information, can you please confirm the revenue generated from the conferencing facilities at Craigavon Civic Centre in the financial year 2015/16.
>
> As Council are working to attract a hotel to the area, can you confirm if a needs based assessment has been conducted? I am concerned that we will end up with a derelict building on our lake shore. Could I ask that you have a hard copy of the South Lake Masterplan ready for me when I meet you on 23 January."

6. The Council provided the complainant with some documents in relation to her request, however it responded on 20 January 2017, refusing to provide a copy of the South Lake Masterplan and citing section 43(2) of the FOIA as a basis for non-disclosure. However, the complainant was not satisfied with that response and requested an internal review on 30 January 2017. The result of that internal review was provided to the complainant on 6 March 2017. The reviewer upheld the original decision.

Scope of the case

7. The complainant contacted the Commissioner on 18 July 2017 to complain about the way his request for information had been handled.

8. The Commissioner wrote to the Council seeking its detailed submissions on 19 July 2018. The Council responded to the Commissioner on 26 July 2018, providing its submissions as to its application of the above exemption.

9. The Commissioner has considered the Council's handling of the complainant's request. Following the Commissioner's intervention, the Council has now reconsidered the complainant's request under the Environmental Information Regulations 2004 (EIR) and has applied the exception as set out in regulation 12(4)(d) of the EIR as a basis for non-disclosure. The Commissioner has considered whether the Council is correct to apply that exception.

Reasons for decision

Regulation 12(4)(d) Material still in the course of completion

10. Regulation 12(4)(d) of the EIR states that a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.

11. The exception sets out three distinct categories and the information must fall within one of these for the exception to be engaged. The first category is that the request relates to material which is in the course of completion. The "material" in question may be a final policy document that is to be produced later, therefore although the requested information may be contained in a document which is in itself complete, if that document is intended to inform a policy process that is still ongoing, the information may engage the exception.

12. The interpretation of unfinished documents is more simple in that a document will be unfinished if the public authority is still working on it at the time the request is received. Furthermore, a draft version of a document will remain an unfinished document even once a final, finished version of that document has been produced.

13. Incomplete data is data that a public authority is still collecting at the time a request for information is received.

14. The Council states that the withheld information (the South Lakeshore Masterplan) provided an articulation of a vision for the South Lakeshore area including conceptual ideas. It was commissioned by the former Craigavon Council who engaged consultants to explore the regenerative potential of the South Lakeshore area. It is not a formally adopted masterplan of the new Council (Armagh City, Banbridge and Craigavon Borough Council) and is therefore considered an unfinished document.

15. The Commissioner has considered whether this falls within the definition of 'unfinished documents' as the Council states that work ceased on the document during the review of public administration (when the Council changed to Armagh City, Banbridge and Craigavon Borough Council.) The Council states that this was a statement of ambition outlining how it might aim to develop an area. Therefore the plan was never completed or adopted by the new Council and remains a draft document.

16. The Commissioner has considered all of the points above. She notes that the consultancy firm which drafted the plan was appointed in December 2014 and the plan is dated September 2015. There is nothing to suggest that the plan is a draft plan, and indeed it appears from the point of view of the consultancy firm to be a complete plan, albeit a conceptual design. The plan includes several recommendations for the redevelopment of the area and is described as *'a sound basis for delivering this area's development potential in a considered, co-ordinated manner and enhancing its integration into the wider functioning of Central Craigavon.'*

17. The Commissioner notes that there is nothing in the withheld information or the Council's arguments to suggest that the process of developing the plan is ongoing and that the plan is unfinished. It appears to the Commissioner to be a complete plan. It does not appear to have been superseded by any final plan, so there is no evidence to suggest that it is a draft document. It is a document which, although it was never adopted by the new Council, cannot be considered to be an unfinished document.

18. The Commissioner has also considered whether the withheld information could be considered to be 'material in the course of completion.' In order to determine whether material is complete, it is necessary for the Commissioner to consider whether the information, which in itself may be finished, is part of a wider ongoing policy process. If it is, it is then likely that material relating to that process will remain 'in the course of completion.' In this case, although there is an ongoing planning process to develop the particular area featured in the withheld information, there is no indication that the withheld information forms part of that ongoing process, as it has not been adopted or developed by the new Council within the past four years.

19. As the Commissioner has not received sufficient evidence to suggest that the withheld information is either material still in the course of completion, an unfinished document or incomplete data, she has concluded that the exception as set out in regulation 12(4)(d) of the EIR is not engaged and has therefore not gone on to consider the public interest test.

Right of appeal

20. 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

21. 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.

22. 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 .....

Deirdre Collins

Senior Case Officer

Information Commissioner's Office

Wycliffe House
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