

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

Decision notice

Date: 5 December 2022

Public Authority: London Borough of Redbridge
Address: Lynton House
255-259 High Road
Ilford
IG1 1NY

Decision (including any steps ordered)

1. The complainant has requested London Borough of Redbridge (the Council) to disclose a list of companies, housing associations and developers that received pre-planning advice during a specified time period. They also asked for the form of advice or consultation and the planning application reference for those that proceeded to a formal application. The Council disclosed a small amount of information but refused to disclose the remainder under section 43 of FOIA.
2. The Commissioner's decision is that the request should have been processed under the EIR and regulations 12(5)(e) and (f) do not apply.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose the remaining withheld information to the complainant.
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 11 February 2022, the complainant wrote to the Council and requested information in the following terms:

"A list of all companies, house associations and/or developers that received pre-planning advice from the council with regards to planning applications. Please do not include private individuals or house-holds in this list.

Please specify for each client/applicant, whether they paid for a concept meeting, bespoke pre-application enquiry, major proposal, pre-submission validation check, follow-up meeting or conduction NMA/MMA meeting or general enquiry meeting.

Please do not include small or medium minor proposal PPAs. Please specify the planning application reference for each development where that exists. Please provide that information in spreadsheet list form for the dates between 1st January 2019 and 31st December 2021."

6. The Council responded on 18 February 2022. It refused to disclose the requested information, citing section 43 of FOIA.
7. The complainant requested an internal review on 21 February 2022.
8. The Council carried out an internal review and notified the complainant of its findings on 21 March 2022. It disclosed how many Major/Strategic level pre-applications were completed during the period specified in the request but still refused to disclose the remainder under section 43 of FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 11 May 2022 to complain about the way their request for information had been handled. They do not agree the remaining withheld information is commercially sensitive and therefore it should be disclosed.

Reasons for decision

10. The request was initially handled under FOIA. It was pointed out to the Council during the Commissioner's investigation that the request should have been processed under the EIR. He has received no objection to this.

11. Pre-planning applications and advice are plans and activities defined under regulation 2(1)(c) of the EIR which will affect the elements of the environment outlined in regulation 2(1)(a) (the land, landscape, soil and so on), whether they proceed to full application or not. The requested information therefore falls within the definition of environmental information and the request should therefore have been processed under the EIR.

Regulation 12(5)(e)

12. Information can be withheld under regulation 12(5)(e) of the EIR if disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
13. The Council argued that pre-applications are confidential and treated as commercially sensitive. Disclosure could expose it to litigation action.
14. The Council also stated that not all pre-applications result in formal applications. If it started to disclose the requested information it would lose the trust of the developer, as they would not engage or pay for the advice. This would then damage the Council financially and reputationally.
15. Although the requested information is commercial in nature and would have been provided to the Council in confidence, the Commissioner does not accept that disclosure of the requested information would adversely affect the legitimate economic interests of the Council or the developer.
16. The mere knowledge that pre-planning advice was requested, the means of providing it and whether it went to formal application is not information that could be useful to a developer's competitors or damage its ability to negotiate with contractors or suppliers. The pre-planning application itself and the advice the developer received maybe, but this is not the information being requested here. The requested information is much more high level than that and more about the usage of the service by developers over a given period, what forms of advice or consultation they used or received and if it moved forward to a formal application.
17. The Commissioner also does not accept that disclosure of the requested information would result in the Council losing the trust of those that use the service or discourage them from using it in the future. Again, only high level information has been requested; not the pre-application proposals themselves or any advice received. Pre-planning is a very useful tool for both sides. It allows applicants to share initial plans upfront with the planning authority, ahead of any formal application to

allow open dialogue on what may or may not be acceptable in planning terms. It saves time and resources on both sides. The Commissioner does not agree a developer of the scale specified in the request would be easily deterred from using this service.

18. For the above reasons, the Commissioner has concluded that regulation 12(5)(e) of the EIR is not engaged.

Regulation 12(5)(f)

19. Information can be withheld under regulation 12(5)(f) if disclosure would adversely affect the interests of the person who provided the information, where that person was under no legal obligation to supply it, did not supply it in circumstances which would entitle the Council to disclose it (apart from the EIR) and has not consented to disclosure.
20. For this exception to apply, the Council needs to demonstrate the harm that would arise from disclosure to the person(s) that supplied the information.
21. The Council stated that it is its stance not to release details of pre-applications. These are confidential between the enquirer and the Council and there is no statutory obligation to disclose prior to submission of a planning application. It argued that the purpose of this service is to allow a safe space for conversations to take place on what is and what is not acceptable at the early stage. It confirmed that disclosure of pre-application details, where there has been no decision to develop nor planning application submitted only causes controversy and speculation. It stated that there are many examples where a developer has requested a pre-application meeting and objections have been received ahead of any application being submitted, if at all.
22. Disclosure would result in the Council losing the trust of those that would usually use the service.
23. The Council has failed to demonstrate what harm disclosure would cause to the developers that supplied the information. The Commissioner does not agree that the disclosure of the requested information in this case would cause them harm or detriment, nor deter them from engaging informally with the Council in future plans.
24. For these reasons, the Commissioner has concluded that regulation 12(5)(f) of the EIR is not engaged.
25. There is no need to go on to consider any public interest arguments, as neither exception has found to be engaged.

Right of appeal

26. 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

27. 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.
28. 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:

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF