

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

Decision notice

Date: 27 November 2013

Public Authority: Shropshire Council

Address: Shirehall
Abbey Foregate
Shrewsbury
Shropshire
SY2 6ND

Decision (including any steps ordered)

1. The complainant has requested information regarding a residential site licence made by a caravan park tenants association. Shropshire Council ('the council') withheld information under the exception at regulation 12(5)(f) of the EIR. The Commissioner has decided that the council has not provided sufficient evidence to apply this exception.
 2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the requested information.
 3. The public authority must take this step 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.
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Request and response

4. On 27 March 2013, the complainant wrote to the council and requested information in the following terms:

“Copies of the letters from the Association Secretary dated 21 January 2011 and 27 January 2013, and any other correspondence, files notes and notes of telephone conversations relating to the application for a Residential Site Licence made in 2012.”

5. The council responded on 25 April 2013 and refused to provide the requested information citing the exception at Regulation 12(5)(f) of the EIR.
6. The complainant requested an internal review on 28 May 2013. The council provided its internal review response on 13 June 2013. It disclosed the site licence application made by the complainant dated 27 March 2012 and some email correspondence with council officers but stated that it was maintaining its position to withhold the remaining information relating to communication between the council and an association applying for a licence under Regulation 12(5)(f).

Scope of the case

7. The complainant contacted the Commissioner on 18 June 2013 to complain about the way his request for information had been handled.
8. The Commissioner considers the application of Regulation 12(5)(f) to the withheld information.

Reasons for decision

Regulation 12(5)(f)

9. Regulation 12(5)(f) of the EIR states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the interests of the person who provided the information where that person
- i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
 - ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose

it; and

iii) has not consented to its disclosure.

10. The Commissioner has considered whether disclosure would adversely affect the interests of the provider of the information.
11. It is the Commissioner's view that the purpose of this exception is to protect the voluntary supply to public authorities of information that might not otherwise be made available. It operates on the principle that if those who provide information on a voluntary basis suffer as a consequence of providing that information, they will not be so willing to volunteer information in the future. Therefore, to engage the exception it is necessary to demonstrate that disclosure would result in some adverse effect on the provider of the information.
12. The Commissioner is conscious that the threshold to engage an exception under regulation 12(5) of the EIR is a high one compared to the threshold needed to engage a prejudice based exemption under the FOIA:
 - Under regulation 12(5) for information to be exempt it is not enough that disclosure of information will have an effect, that effect must be 'adverse'.
 - Refusal to disclose information is only permitted to the extent of that adverse effect. Therefore if an adverse effect would not result from disclosure of part of a particular document or piece of information, then that information should be disclosed.
 - It is necessary for the public authority to show that disclosure 'would' have an adverse effect, not that it may or simply could have an effect. With regard to the interpretation of the phrase 'would' the Commissioner has been influenced by the Tribunal's comments in the case *Hogan v Oxford City Council & Information Commissioner*¹ in which the Tribunal suggested that although it was not necessary for the public authority to prove that prejudice would occur beyond any doubt whatsoever, prejudice must be at least more probable than not.
13. The council has not stated what the adverse affect on the interests of the person who supplied the information would be, either in its initial

¹ Appeal number EA/2005/0026 & 0030

response, its internal review or in its response to the Commissioner's specific enquiries. It stated that the expectation of the third party would be that the information would not be made public and as it did not have permission to disclose its correspondence with the caravan association to other individuals, it considered that exception 12(5)(f) was engaged. The Commissioner does not consider that this provides detail as to what the adverse affect would be and, having viewed the withheld information, he does not consider that any adverse affect is obvious.

14. The Commissioner considers that the council has been provided with sufficient opportunity to provide its rationale for withholding the requested information. The rationale should have been in place since the request was refused and therefore opportunities for providing this existed at the original refusal, at the internal review and when requested by the Commissioner. The council was informed by the Commissioner that it must justify its position and was provided with the Commissioner's guidance on how he deals with complaints² which clearly states that it is the public authorities responsibility to satisfy the Commissioner that information should not be disclosed and that it has complied with the law.
15. As the council did not provide details of what the adverse affect on the interests of the person who supplied the information would be in this case, the Commissioner has no choice but to conclude that the exception is not engaged.

²http://www.ico.org.uk/for_organisations/freedom_of_information/guide.aspx

Right of appeal

16. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

17. 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.
18. 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

Andrew White
Group Manager
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Wycliffe House
Water Lane
Wilmslow
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