

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 4 September 2014

Public Authority: Devon County Council

Address: County Hall
Exeter
EX2 4QD

Decision (including any steps ordered)

1. The complainant has requested a copy of a draft Traffic Management Plan for the Sidmouth Folk Festival which he believes was used by Devon County Council ("the Council") to approve that event.
2. The Commissioner's decision is that the Council is entitled to withhold the draft Traffic Management Plan in reliance of Regulation 12(4)(d) of the EIR.
3. The Commissioner does not require the Council to take any further steps in this matter.

Request and response

4. On 16 January 2014, the complainant wrote to the Council and asked the Council to be provided with a copy of the draft Traffic Management Plan ("TMP") for the Sidmouth FolkWeek, which was produced by JR Events Services Limited.
5. The Council acknowledged the complainant's information request on 22 January 2014 and informed him that his request would be dealt with under the EIR and under reference 04707.
6. On 5 February 2014 the Council sent the complainant its response to his request. The Council informed the complainant that it does not hold a copy of the Folk Festival Traffic Management Plan and advised him that the final plan is held by JR Event Services Ltd. The Council provided the

complainant with an exchange of emails between itself and JR Event Services Ltd which concern a meeting to discuss proposals for the 2014 Folk Festival, but advised the complainant that it holds no communication between itself and the East Devon District Council ("EDDC").

7. On 5 February 2014 the complainant wrote to the Council to complain about its response to his request for information. In his email the complainant clarified that he was requesting the first draft of the Traffic Management Plan which he presumed been used by the Council to approve the Folk Festival. The complainant asked why the Council had failed to provide him with a copy of the draft Traffic Management Plan.
8. On 6 March the Council wrote again to the complainant having concluded an internal review of the handling of his information request. The Council advised the complainant that it is unable to provide him with a copy of the draft TMP on the basis that it is exempt from disclosure under Regulation 12(4)(d) or the EIR – where the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.
9. The Council informed the complainant that disclosure of the draft version of the TMP would 'not substantially assist public debate about current plans for the Sidmouth Folk Festival' and the first version of the TMP contains 'some information which is now considered to be out of date, misleading or incorrect and is in the course of being revised'. The Council also explained that disclosure of the draft TMP could prejudice the current negotiations with third parties during the course of developing the final TMP.

Scope of the case

10. The complainant contacted the Commissioner 15 May 2014 to complain about the way his request for information had been handled.
11. The Commissioner made enquiries of the Council to determine whether the Council is entitled to rely on Regulation 12(4)(d) of the EIR to withhold the draft TMP document.

Reasons for decision

Regulation 12(4)(d)

12. Regulation 12 (4)(d) provides a public authority with an exception to its duty to disclose environmental information where the information sought relates to material which is still in the course of completion, to unfinished documents or to incomplete data.
13. The Council has furnished the Commissioner with a copy of the TMP which it held at the time of the complainant's request. The TMP is subtitled as 'Draft Version One – 24 November 2013' and each page is electronically watermarked with the word 'Draft'.
14. The Council has assured the Commissioner that, at the time of the complainant's request, the TMP had not been finalised and remains in draft form. It has still to be ratified by the events licensing authority.
15. The Council has pointed out to the Commissioner that the draft TMP has been subject to further revisions by the event organiser and the process to create a final TMP for the event is still on-going.
16. Having examined the document sought by the complainant, and in view of the assurances given by the Council, the Commissioner has determined that the draft TMP is subject to Regulation 12(4)(d) on the basis that it is an unfinished document.
17. The Council may continue to withhold the draft TMP where, in all circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing it. Consequently the Commissioner is required to consider the public interest test.

The public interest test

18. The Commissioner considers that some weight must always be given to the general principle of achieving accountability and transparency through the disclosure of information held by public authorities.
19. Disclosure of information can assist the public in understanding the basis and how public authorities make their decisions and this in turn may help foster greater trust in public authorities.
20. The Commissioner also acknowledges that disclosure of information can lead to greater public participation in the public authority's decision making processes, particularly through representations made to councillors by their constituents.

21. In this case, disclosure of the requested information may help the public to understand some of the issues which are to be considered by the Council in respect of the Sidmouth Folk Week; specifically in the arrangements associated with the management of traffic during that event.
22. The Commissioner acknowledges the impact of the folk week on the local community, particularly in respect of the disruption the event is likely to cause by virtue of road closure, the installation of temporary traffic lights and the influx of potentially large numbers of visitors to the town.
23. Disclosure of the draft TMP could assure the public that the Council was satisfying any obligations it has in respect of any statutory functions it has, associated with the planned folk week and with the traffic arrangements for that event.

Arguments in favour of maintaining the exception

24. The event organisers, JR Events Limited, supplied the draft TMP to the Council as part of a non-statutory consultation process, and did so with the expectation of confidentiality.
25. The Council has no statutory responsibility for approving the TMP, as this responsibility rests with Devon and Cornwall Police and East Devon County Council – the local licensing authorities.
26. The Council has assured the Commissioner that it has not approved the draft TMP, contrary to the complainant's belief, nor has it approved any subsequent revisions. The Commissioner understands that neither Devon County Council nor the licensing authority has approved the draft document, although certain of its officers have expressed support for the principles on which it is based.
27. At the time of the complainant's request the event organisers were in the process of acquiring a licence for the folk week. This process involved negotiations with local land owners and other interested parties and these negotiations were still to be concluded at the time of the request. The Commissioner understands that this process is still on-going.
28. The Council asserts that disclosure of the draft TMP at the time of the complainant's request could have potentially prejudiced the organisers negotiations with those land owners and other interested parties.
29. The Council assures the Commissioner that the document sought by the complainant, being incomplete, contains out of date information and is therefore potentially misleading.

30. The Council, as a non-statutory consultee, is not a party to the on-going negotiations which the event organisers are engaged in. As such, the Council is not in a position to put the information into context, to update that information or to correct any inaccuracies it contains.
31. Due to the necessary involvement of a number of parties in developing the TMP, the Commissioner considers that there is a need for a 'safe space'. This 'safe space' would allow free communication between the parties and allow time for the careful and proper consideration of the issues raised, without the threat of the inappropriate and untimely disclosure of documents.

Balance of the public interest

32. The Commissioner has carefully considered the withheld information and the representations made by the complainant and the Council. The Commissioner has also weighed what he considers are the main arguments germane to the public interest test.
33. The Commissioner has given particular weight to the fact that the event organisers were under no obligation to provide the Council with the draft TMP and that they did so with the expectation of confidence.
34. He is minded that the draft TMP was provided on a voluntary basis and he is open to the argument that disclosure of the draft TMP could potentially deter the organisers of this event and other organisers of similar events from sharing this type of information with the Council in the future.
35. Finally he is obliged to give particular weight to the fact that the draft TMP is incomplete and that it contains inaccurate and potentially misleading information. The Commissioner accepts that the contents of the Draft TMP could distract public debate and this may prejudice the organisers' negotiations with other interested parties.
36. In view of the above, The Commissioner has decided that greater weight must be given to those arguments which favour maintaining the exception provided by Regulation 12(4)(d) and he has therefore decided that the Council is entitled to withhold the draft TMP sought by the complainant.
37. In addition to its reliance on Regulation 12(4)(d), the Council has also raised Regulation 12(5)(f) – prejudice to the interests of the person who provided the information, as a further exception to disclosure which it would also seek to rely on. In view of his decision in respect of Regulation 12(4)(d), the Commissioner has not gone on to consider Regulation 12(5)(F).

Right of appeal

38. 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

39. 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.
40. 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
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