

## Environmental Information Regulations 2004 (EIR)

### Decision notice

**Date:** 24 January 2017

**Public Authority:** Horsham District Council

**Address:** Parkside  
Chart Way  
Horsham  
West Sussex  
RH12 1RL

#### Decision (including any steps ordered)

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1. The complainant has requested information from Horsham District Council ("the Council") about the proposed restoration of a quarry site. The Council disclosed some information and withheld the remainder under the exception provided by section 12(4)(e) of the Environmental Information Regulations ("the EIR"). The complainant subsequently contested the Council's application of this exception.
2. The Commissioner's decision is that part of the withheld information does not constitute internal communications for the purposes of regulation 12(4)(e). The remaining withheld information does constitute internal communications, but the public interest test favours disclosure.
3. The Commissioner requires the public authority to take the following steps:
  - Disclose the withheld information, ensuring that any personal data is redacted in accordance with the Council's obligations under the Data Protection Act 1998.
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

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5. On 25 November 2015 the complainant requested:

*...copies of all correspondence and details of all meetings and discussions between yourselves and any other third parties since 2012 about the CEMEX Sandworks site at Water Lane, Storrington.*

*This should include any discussions and correspondence regarding any of their other sites where there are any implications for the Water Lane site.*

6. On 26 November 2015 the Council requested clarification about which aspect of the quarry site the request sought information for.

7. On 7 January 2016 the complainant provided clarification:

*I can confirm that I am interested in seeing all documents relating to the proposed country park on CEMEX owned land and all future plans for sand extraction, land filling and the future uses or development of the main site accessed off Water Lane.*

8. On 10 February 2016 the Council responded that no information was held, and referred the complainant to West Sussex County Council.

9. On 12 February 2016 the complainant disputed that information must be held.

10. On 1 March 2016 the Council responded and disclosed information that it had since identified.

11. On 4 March 2016 the complainant requested an internal review and provided further clarification about the information that was sought:

*It is clear from the report you sent that the country park has been the subject of detailed consideration. I would be grateful if you could clarify by whom and when? Could you also please advise who prepared the report, what department they are in and for who the report was prepared.*

12. On 23 March 2016 the Council provided the outcome of its internal review. It advised that no further held information had been identified.

## Scope of the case

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13. The complainant initially contacted the Commissioner on 31 March 2016 to complain about the Council's response, and specifically that further recorded information was held.
14. The Information Commissioner's Office ("the ICO") wrote to the Council on 29 July 2016 to request submissions on the searches for information that it had undertaken in response to the request. The Council subsequently confirmed that some additional information had since been forwarded to the requestor, and that other held information had been identified but which was withheld under regulation 12(4)(e).
15. The ICO wrote further to the Council on 14 November 2016 to request submissions on the application of regulation 12(4)(e). The Council subsequently provided copies of the withheld information and its arguments for the applied exception.

## Reasons for decision

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### Is the information environmental?

16. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR. Under regulation 2(1)(c), any measures that will affect, or be likely to affect, the elements referred to in 2(1)(a), will be environmental information. The withheld information relates to the development of land. The Commissioner therefore considers that the request should be dealt with under the terms of the EIR.

### Regulation 12(4)(e) – Internal communications

17. Regulation 12(4)(e) of the EIR states that a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications.
18. The Commissioner's public guidance on this exception<sup>1</sup> defines a communication as encompassing any information which someone intends to communicate to others, or even places on file (including saving it on an electronic filing system) where others may consult it.

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<sup>1</sup> <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/refusing-a-request/>

19. The EIR does not provide a definition of what is meant by 'internal'. However, the Commissioner's guidance provides clarification on the scenarios where communications can be defined as such. Such a scenario is where the communications have taken place solely within a public authority.
20. Regulation 12(4)(e) is a class based exception. This means that there is no requirement to consider the sensitivity of the information in order to engage the exception. However, the exception is subject to a public interest under regulation 12(1)(b), and the exception can only be maintained should the public interest test support this.

Does the information represent internal communications?

21. Having examined the withheld information, the Commissioner has identified that part of the information appears to represent communications between the Council and another public authority, as well as with other third parties of unknown status. As specified in the Commissioner's guidance (pages 7-8), such communications are not defined as 'internal'. Consequently, the exception cannot be applied to this information.
22. In respect of the remaining withheld information, the Commissioner has identified that it consists of emails and attachments which have passed between Council officers. On this basis, the information can be properly characterised as internal communications for the purposes of this exception.

Public interest test

23. Where regulation 12(4)(e) is engaged, it is subject to a public interest test required by regulation 12(1)(b). The test is whether in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
24. When carrying out the test the Commissioner must take into account a presumption towards the disclosure of the information, as required by regulation 12(2).
25. The Council has provided the Commissioner with its public interest test reasoning, which is paraphrased below.

*The public interest in disclosing the withheld information*

26. The disclosure of the information may support the general aim of openness and transparency, and enable the public to greater understand Council processes.

*The public interest in maintaining the exception*

27. The Council must maintain a private space in order to undertake work on drafts before formulating completed work. Without this, individuals may seek to oversee and potentially adversely influence these internal processes.

*The Commissioner's conclusion*

28. In requesting the Council's submissions, the ICO informed the Council thus:

*Please ensure that your submissions focus on the content of the information that has actually been withheld rather than simply being generic public interest arguments.*

The ICO also referred the Council to the Commissioner's guidance on the application of regulation 12(4)(e). This guidance explains that:

*There is no automatic or inherent public interest in withholding an internal communication. Arguments should relate to the particular circumstances of the case and the content and sensitivity of the specific information in question. (Page 2)*

29. In reviewing the Council's submissions, the Commissioner considers that it has only provided generic arguments, and has seemingly failed to provide public interest reasoning that is based on the content of the withheld information, or the context to which it relates. Consequently, the Council has failed to explain whether the substantive matter remains live, how sensitive the information is to the substantive matter, or whether the disclosure of the information may have a 'chilling effect' on similar matters in the future.
30. Whilst the Commissioner has referred to the content of the withheld information, it is not appropriate that the Commissioner attempt to formulate specific public interest arguments on behalf of the Council.
31. In the absence of any compelling and specific arguments provided by the Council, and based on the presumption in disclosure required by regulation 12(2), the Commissioner must find that the public interest test favours disclosure.

## **Other matters**

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32. In the circumstances of this case the Council has seemingly failed to undertake full searches for relevant information following receipt of the

request. This has consequently extended the duration of the ICO's investigation.

33. The Commissioner would therefore refer to the Council to its obligations under the EIR, and in particular the importance of complying with regulation 5 (*Duty to make available environmental information on request*) and regulation 14 (*Refusal to disclose information*).

## Right of appeal

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34. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

35. 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.
36. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**