

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 6 March 2018

**Public Authority:** Greenwich London Borough Council  
**Address:** Town Hall  
Wellington Street  
Woolwich, London  
SE18 6PW

### **Decision (including any steps ordered)**

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1. The complainant made a freedom of information request to Greenwich London Borough Council for a copy of the Event Management Plan (EMP) for an event operated by the Greenwich International Festival. The Council refused the request under the regulation 12(5)(a) (public safety) and regulation 12(5)(e) commercial confidentiality exceptions.
2. The Commissioner's decision is that regulation 12(5)(a) has been correctly applied to only some of the information contained within the EMP but that where the exception is engaged the public interest in maintaining the exception outweighs the public interest in disclosure. The Commissioner also found that regulation 12(5)(e) was not engaged and that therefore a significant portion of the EMP should be disclosed.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - The Council shall disclose a copy of the Event Management Plan to the complainant but may redact the information detailed in annex A of this notice.
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 (or the Court of Session in Scotland) 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 6 June 2017 the complainant submitted a request to the Council for information related to an event operated by the Greenwich and Docklands International Festival. The request read as follows:

*"Please would you provide me with copies of relevant license application, supporting application documents, and any documentation relating to any licensing decisions for the Greenwich and Docklands Festival Event on 24th June 2017 in Cutty Sark Gardens."*

6. The complainant subsequently added an additional question:

*"Please include within this request any event management documentation or event management plans related to this event which licensing may hold."*

7. The Council responded to the request on 3 July 2017. It disclosed some information but redacted personal data under the regulation 13(1) personal data) exception. It also withheld some information in its entirety under the regulation 12(5)(e) (commercial confidentiality) and regulation 12(5)(a) (public safety) exceptions.
8. The complainant subsequently asked the Council to carry out an internal review and it presented its findings on 1 August 2017. The review upheld the decision to withhold the 'Event Management Plan' (EMP) under the regulation 12(5)(e) and regulation 12(5)(a) exceptions.

## **Scope of the case**

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9. On 8 August 2017 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
10. The Commissioner considers the scope of her investigation to be to consider whether the Council was correct to rely on regulation 12(5)(e) and/or regulation 12(5)(a) to withhold the EMP.

## **Reasons for decision**

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11. The withheld information in this case is a copy of the EMP for an event organised by the Greenwich International Festival on 23 June 2017. The

Commissioner has first considered the Council's application of the regulation 12(5)(a) exception.

**Regulation 12(5)(a) – International relations, defence, national security or public safety**

12. Regulation 12(5)(a) provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—

*(a) international relations, defence, national security or public safety;*

13. In this case the Council has applied the exception on the basis that disclosure would adversely affect public safety and national security. It argued that the information contained within the EMP would assist those who may be planning terrorist attacks. It said that terrorist activity is counter to national security and clearly a terrorist attack would harm public safety.
14. The Council argued that disclosure of the EMP would place significantly more detailed information into the public domain than is currently available about GDIF's commercial events. This information could, it said, be of assistance to terrorists seeking to target GDIF's high profile events.
15. In discussing the likelihood of GDIF's commercial events being targeted for attack, the Council argued that high profile commercial events are vulnerable to being attacked and referred to the 2017 terrorist attack on the Ariana Grande concert in Manchester as evidence that such threats were real. It said that high profile events with large crowds in attendance are possible targets for terrorist attack and that attacks could not be underestimated by "unnecessarily putting out information into the public domain".
16. The concept of public safety is readily understood but "national security" is not defined in the EIR. However the term is used in other legislation including the Freedom of Information Act where section 24 of that Act provides an exemption where this is required for the purposes of safeguarding national security. The Commissioner has issued guidance on this exemption which provides examples of where section 24 is likely to apply. In particular, it explains that an exemption for national security would apply to information which could assist a terrorist attack.

*"Safeguarding national security also includes protecting potential targets even if there is no evidence that an attack is imminent."<sup>11</sup>*

17. The Commissioner is also mindful that terrorists can be highly motivated and may go to great lengths to gather intelligence. This means there may be grounds for withholding what seems harmless information on the basis that it may assist terrorists when pieced together with other information they may obtain.
18. The Commissioner has reviewed the EMP and accepts that some of the information contained within it could assist anyone trying to target the festival. However, a great deal of the information is relatively innocuous or else does not relate to security arrangements or other information related to public safety. It appears that the Council has applied the exception to the EMP in its entirety but in the Commissioner's view only some of the information would fall under the exception.
19. In its response to the complaint the Council provided correspondence from the festival organisers, Greenwich and Docklands Festival (GDF) which described its concerns about disclosure of the EMP. In this it set out which sections of the EMP in particular raised concerns about public safety if disclosed. It described this information as follows:

*"The EMP includes detailed information about measures and methodologies taken by GDF and our suppliers to ensure public security and safety during our events across the whole festival. This includes details of security staffing provision, protocols for dealing with suspect packages, coded alerts, emergency and evacuations plans and counter terrorism procedures, as well as protocols for handling scenarios involving lost children and vulnerable people."*

20. Having reviewed this particular information the Commissioner accepts that disclosure would assist anyone trying to target events run by GDF in future, such as a terrorist or anyone else with criminal intent. In the Commissioner's view disclosure would give encouragement to those with ill intent or help them plan an attack. The Commissioner also recognises that disclosure would be likely to increase the confidence of any attacker even if that confidence is ultimately misguided or irrational.

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<sup>11</sup> [https://ico.org.uk/media/for-organisations/documents/1174/safeguarding\\_national\\_security\\_section\\_24\\_foi.pdf](https://ico.org.uk/media/for-organisations/documents/1174/safeguarding_national_security_section_24_foi.pdf)

21. The Commissioner understands that the Greenwich and Docklands Internal Festival is produced by GDF, a company Limited by Guarantee, which as well as producing this yearly festival also runs a number of other commercial events. It explained that the pattern and nature of its events is similar and so disclosure of this information would assist anyone attempting to target future events. As the Council itself acknowledged, there is a real terrorist threat and a clear causal link can be drawn between disclosure and threats to national security and public safety. In reaching this decision the Commissioner has taken into account the fact that the UK threat level for international terrorism is currently rated as "Severe" meaning an attack is "Highly Likely". The Commissioner is also aware that in a number of cases terrorists have made use of 'open source' information to help plan an attack. Taking all of this into account the Commissioner is satisfied that regulation 12(5)(a) is engaged in respect of some of the information contained with the EMP.
22. The Commissioner would stress, however, that most of the information in the EMP does not fall under regulation 12(5)(a). Only where the Council or GDF has identified specific information where there would be concerns around national security or public safety, and a causal link can be drawn between disclosure and the harm that would be caused, will the exception apply. The Commissioner has also found that even where GDF has identified information as being of concern much of this, on closer inspection, is not sensitive. For instance, much of the information which GDF has highlighted as comprising its security procedures for the festival is relatively innocuous. The information is made up of material about the credentials and history of the companies involved in providing security rather than information which might be of use to someone seeking to target an event run by GDF. It appears to the Commissioner that the Council has applied the exception in a blanket fashion to all of the information in the EMP without properly considering the nature of the information and why it should be withheld.
23. The Commissioner has set out the information to which regulation 12(5)(e) applies at Annex A of this notice. She has now gone on to consider the public interest test, balancing the public interest in disclosure of this information against the public interest in maintaining the exception.

### **Public interest test**

#### **Public interest arguments in favour of disclosure**

24. The complainant argued that disclosure of "risks in respect of the festival" would not cause harm but would allow the public to better

understand the risks involved with the festival which would assist them in deciding whether or not they want to attend.

25. The complainant also said that it was in the public interest for the public to be able to scrutinise detailed plans submitted for the purposes of a licence application. He referred to the fact that licence applications are public as are details of the licensing process. The Council had, he said, referred to the EMP in its licence conditions and therefore the public interest favoured disclosure to allow the public to assess the conditions of the licence.
26. The Council itself acknowledged that there was a public interest in disclosure in order to reassure visitors to GDF's events.

### **Public interest in maintaining the exception**

27. The Council argued that having found that disclosure would adversely affect national security and public safety, there was a very strong public interest in avoiding these outcomes. It said that in its view the public interest in avoiding an adverse effect to public safety through terrorism carries the most weight.

### **Balance of the public interest arguments**

28. The Commissioner has considered the competing arguments and accepts that there is a public interest in disclosure insofar as this would promote transparency and accountability and in particular, would allow the public to better understand the reasons behind licencing conditions. However, the Commissioner is also mindful that there is a great deal of information about the event to which the EMP relates already in the public domain. This was made available in the licence application for the event and the granted licence itself. The Commissioner also understands that the public were notified about the nature of the event and local residents received consultation letters explaining how to contact GDF in the event of queries, complaints or concerns either in advance of or during the event. Therefore, the Commissioner considers that the public interest in transparency is limited although she accepts that there remains a public interest in disclosure so as to provide the "full picture" about the licensing application.
29. However, this has to be balanced against the harm that would be caused by disclosure. The Commissioner takes the view that there is a strong public interest in avoiding threats to national security or disclosing information which would put people in danger. Only when there are compelling arguments for disclosure will it justify releasing information which has the potential to put the public in harms way or assist

someone in preparing a terrorist act. No such arguments exist in this case and consequently the Commissioner has found that in all the circumstances the public interest in maintaining the exception outweighs the public interest in disclosure.

### **Regulation 12(5)(e) – Commercial confidentiality**

30. Regulation 12(5)(e) provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect

*(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law*

31. In considering the application of regulation 12(5)(e) the Commissioner believes that the following four criteria have to be met:
- 1) The information has to be commercial or industrial in nature;
  - 2) The information has to be subject to a duty of confidence provided by law;
  - 3) The confidentiality has to be required to protect an economic interest; and
  - 4) That economic interest, and thereby its confidentiality, has to be adversely affected by disclosure of information.
32. The withheld information in this case, the EMP, was provided to the council by GDF as part of a licence agreement for a commercial event. The information sets out the operational and safety plans required to facilitate the event. In setting out its concerns around disclosure, GDF explained that its business model depends on its ability to earn fees from delivering outdoor arts events throughout the year for paying customers and that it was through these event management fees that it was able to deliver its "flagship summer festival" the Greenwich and Docklands Internal Festival to the public for free. Having considered these arguments the Commissioner is satisfied that the information is commercial in nature since it relates to the way in which GDF earns fees for managing events and that this element of the test is met.
33. For the exception to apply the information must also be subject to a duty of confidence provided by law – this can include confidentiality under the common law of confidence, contractual obligation, or statute. In this case the Council explained that GDF were not obligated to provide an EMP but rather did so as a matter of best practice, on the understanding that the document would only be released to specific external organisations. The GDF reiterated this and said that on submitting the EMP to the Council its expectation was that it would be

for the confidential viewing of Council staff only. It said that it considered the EMP to be a private working document which would be used as a delivery tool for the relevant local authorities for their comments and advice during the planning phases in advance of the event. It was not submitted in the understanding that it would become public, it said.

34. The Common law duty of confidence will arise where information has the necessary quality of confidence and it was provided under an obligation of confidence. Information will have the necessary quality of confidence if it is more than trivial and is not in the public domain. In this case the EMP is not trivial as it concerns the delivery of a substantial commercial event and it has not previously been made public. The Commissioner is satisfied that it has the necessary quality of confidence. The Commissioner also accepts that the information was provided under an obligation of confidence. The EMP contains information about how GDF planned to manage the event and this was only provided to the Council for the purposes of the licence application. It was not obliged to provide this and in the Commissioner's view a reasonable person in receipt of the information would have understood that it was given in confidence.
35. The next stage to consider is whether the confidentiality is necessary to protect an economic interest. The Commissioner considers that to satisfy this element of the exception disclosure would have to adversely affect a legitimate economic interest of the person the confidentiality is designed to protect. In the Commissioner's view it is not enough that some harm *might* be caused by disclosure. The Commissioner considers that it is necessary to establish on the balance of probabilities that some harm *would* be caused by the disclosure.
36. The Council argued that disclosure would adversely affect GDF's economic interests because the EMP was "live" and formed the basis of its business plan and procedures. It said that if disclosed competitors would be able to use the information to produce their own management plan at a fraction of the cost incurred by GDF. It also suggested that disclosure could lead to GDF being harmed by rival disgruntled event management companies making complaints or objections thus affecting its economic interests and assisting its competitors.
37. On this point, and as the Commissioner has already mentioned above, having reviewed the withheld information she has found that a great deal of the information is relatively innocuous or else it is difficult to see how the information is commercially sensitive. For instance the EMP includes information about the venue, its capacity, details about the number of toilets on the site and drinking water. Indeed much of the EMP is made up of standard information which one would expect to find



in a plan of this kind or else is so specific to this event that it would be of little use to a competitor in planning their own events. In the absence of any detailed explanation from the Council or GDF the Commissioner fails to see how this kind of information meets the high threshold of engaging the regulation 12(5)(e) exception. The Council has also failed to explain how disclosure of the EMP could be used to raise objections or complaints and it has failed to specify which parts of the plan raise these concerns. In the Commissioner's view this argument amounts to little more than speculation and attracts little or no weight.

38. In replying to the Council GDF also expressed concern that the EMP contained information and data created by and belonging to third parties. In particular, it said that it had concerns over the privacy of those third parties and the confidentiality of their data, contact information and intellectual property. However, neither the Council nor GDF have identified who these third parties are or how disclosure would adversely affect them. Moreover, the Council have only applied regulation 12(5)(e) on the basis that disclosure would adversely affect the economic interests of GDF, rather than any "third parties". Therefore, the Commissioner cannot take these arguments into account when considering whether section 12(5)(e) applies.
39. As mentioned above in relation to regulation 12(5)(a), GDF did highlight to the Council which sections of the EMP it considered were particularly sensitive and would be damaging to release publicly. However, most of the sections it highlighted relate to security and safety procedures, which as the Commissioner has already found, would fall under the regulation 12(5)(a) exception. None of the information appears to relate to GDF's economic interests apart from those sections which concern third party information and as the Commissioner has already explained, neither the Council nor GDF have adequately explained why this information meets the test for applying regulation 12(5)(e). Whilst GDF may consider some of the information contained within the EMP to be confidential and supplied by third parties, this is not sufficient to engage the exception. It must be able to demonstrate how disclosure would adversely affect a person's economic interests.
40. The Commissioner would stress that it is incumbent on a public authority to be able to demonstrate that a link can be drawn between disclosure of specific information and a specific harm that would be caused as a result. Again, it appears to the Commissioner that the Council has applied the exception in a blanket fashion without properly considering the nature of the actual information that has been withheld. In the circumstances the Commissioner has found that regulation 12(5)(e) is not engaged.

## Right of appeal

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41. 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)

42. 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.
43. 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 .....**

**Paul Warbrick  
Senior Case Officer  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

**Annex A – information to which regulation 12(5)(a) applies**

Section 8, pages 29-33

Section 9, pages 34 – 36

Section 10, pages 37 – 43

Section 11, page 50 – 51 (Only entries relating to terrorism threats, illegal items and emergency and evacuations plans should be redacted).

Section 11, page 53 (only the entry on Site Equipment / Infrastructure should be redacted)

Appendix C, section 1, pages 11 – 28, pages 25 – 44 (using the page numbering as it appears on the document)