

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 9 May 2019

Public Authority: Department for Communities Northern Ireland

Address: foi@communities-ni.gov.uk

Decision (including any steps ordered)

1. The complainant has requested information from the Department for Communities Northern Ireland (DfC) in relation to the proposed redevelopment of Casement Park. The DfC disclosed some of the requested information to the complainant, however it refused to disclose certain information ('the withheld information') citing regulation 12(5)(a) of the EIR as a basis for non-disclosure.
2. The Commissioner's decision is that the DfC has correctly applied the exception as set out in regulation 12(5)(a) to the withheld information.
3. Therefore, the Commissioner requires no steps to be taken.

Request and response

4. The complainant on 27 April 2017 made the following request for information to the DfC:-

"According to the Minutes of the 31 January 2017 meeting of the DfC Regional Stadia Programme Board, with reference to the proposed redevelopment of Casement Park, the Department is procuring the services of "specialist Movement Consultant expertise to assist with the examination of risks and development potential solutions to the wider movement of pedestrians beyond the stadium, in certain emergency scenarios".

At its meeting of 31 January 2017, the DfC Stadia Programme Board explicitly recognised the relevance of the issues around emergency exiting to the appraisal of the planning application. The Minutes of that meeting state that Programme Board Members "acknowledged that [*the*] outcome [*of the Movement Consultant's work*] could be of interest to the planning process" (Para 3.4, Stadia Programme Board Minutes). As the GAA has now submitted a planning application for the redevelopment of Casement Park, I am requesting the terms of reference/specification of requirements for the work that will be undertaken by the 'Movement Consultant'.

I am also requesting:

- A copy of DfC's Business Case for the procurement of the services of a Movement Consultant.
 - Information on how the Movement Consultant services will be procured, i.e., whether select list, open tender, etc."
5. The DfC responded to the complainant on 17 May 2017. It refused to disclose some of the requested information ("the withheld information") citing regulation 12(5)(a) of the EIR as a basis for non-disclosure. It did disclose some information in relation to the complainant's request.
 6. The complainant then requested an internal review of the DfC's decision on 18 May 2017, the result of which was communicated to him on 18 July 2017. The reviewer upheld the original decision. After the complainant sought further clarification of the DfC's decision, the DfC wrote to him on 22 August 2017 sending some clarifying information and further explaining its reasoning.

Scope of the case

7. The complainant contacted the Commissioner on 27 September 2017 to complain about the way his request for information had been handled.
8. The Commissioner has considered the DfC's handling of the complainant's request, in particular its application of regulation 12(5)(a) of the EIR to the withheld information.

Reasons for decision

Regulation 12(5)(a) – international relations

9. Regulation 12(5)(a) provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect international relations, defence, national security or public safety.
10. The DfC advised the complainant that the withheld information related to a hypothetical emergency scenario and that the DfC considered that release of this information into the public domain, for example confirming what emergency measures are adopted, could render such operations more vulnerable to attack and this in turn could adversely affect public safety and the responding agencies.
11. Having perused the DfC's arguments and the views of the emergency services as described in paragraph 21 below and in the Confidential Annex, the Commissioner therefore concludes that disclosure of the withheld information could increase vulnerability to attack and thereby adversely affect public safety. As such, she is satisfied that the exception as set out in regulation 12(5)(a) of the EIR has been correctly applied to the withheld information, and has now gone on to consider whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs that in disclosure of the withheld information.

Public Interest Test

12. The test, set out in regulation 12(1)(b), is whether in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
13. It is important to consider both the specific harm that disclosure would cause to the relevant interest at stake in the particular case, i.e. in this case, public safety, and whether there is any wider public interest in disclosure of the withheld information.
14. When carrying out the test there is a presumption towards the disclosure of the information, as set out in regulation 12(2).

Public interest factors in favour of disclosure

15. The Council has explained that it is aware of the need for openness, transparency and accountability in the way in which it conducts its business. It therefore considers that some factors lend weight in favour of the information being disclosed, especially as this is a case which concerns the expenditure of public money.
16. The DfC is also aware that disclosure of the information would inform public awareness of and participation in its decision-making processes and would demonstrate compliance with relevant legislation and public consultation.
17. Disclosure of the information would inform the public regarding the redevelopment of Casement Park, a matter in which there is considerable public interest.
18. The DfC therefore considers, and the Commissioner agrees, that some factors lend weight in favour of the withheld information being disclosed.

Public interest factors in favour of maintaining the exception

19. The DfC stated that it requires a 'safe space' away from public scrutiny. Disclosure of draft/incomplete material would undermine the integrity of the decision-making process and inhibit free and frank discussion, which is necessary throughout the appointment of the Movement Consultant. The inhibition of relevant individuals in expressing their views and opinions and the undermining of the decision-making process as a whole would not be in the public interest.
20. The DfC also considers that material that relates to public safety could put at risk infrastructure and agencies engaged in ensuring that the public are kept safe.
21. In giving full consideration to the risk/harm that disclosure of that information could cause, the department sought the expertise (third party consultation) of the PSNI and emergency services. The views of these bodies are outlined in a Confidential Annex to this Notice as they may reveal detail of the withheld information.

Balance of the public interest factors

22. Whilst the Commissioner is aware of the need for openness, accountability and transparency in the way in which government departments and other public authorities conduct their business, she is also mindful that the DfC is aware of this as well, and to achieve this as far as possible, the DfC has disclosed most of the information it holds which was requested by the complainant. The only information it withheld was information, disclosure of which it considers would adversely affect public safety.
23. On the balance of public interest arguments and upon reading the expert views and advice of the emergency services, which identified specific risks and harm that disclosure could cause, the Commissioner considers that the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Right of appeal

24. 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

25. 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.
26. 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

Deirdre Collins

Senior Case Officer

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Reference: FER0702975