

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

Date: 6 May 2022

Public Authority: Coventry City Council
Address: The Council House
Earl Street
Coventry
CV1 5RR

Decision (including any steps ordered)

1. The complainant has requested information about the Coventry North Package - part of Coventry's Strategic Transport Investment Programme. Coventry City Council ('the Council') withheld the information under regulation 12(4)(d) and regulation 12(4)(e) of the EIR, which concern material still in the course of completion and internal communications respectively. The Council has subsequently relied on regulation 12(4)(b) (manifestly unreasonable request) to withhold communications that are not covered by regulation 12(4)(e).
2. The Commissioner's decision is as follows:
 - At the time of the request, the requested information engaged regulation 12(4)(d) of the EIR because it could be categorised as information relating to material in the course of completion. The public interest favoured maintaining this exception.
3. The Commissioner does not require the Council to take any corrective steps.

Background

4. The Council has provided the following background. The Coventry North Package was first identified as part of the Connecting Coventry Strategic Transport Investment Programme in January 2017 when the Council's Cabinet considered that programme. The Council says it provided the complainant the requester a link to the relevant report¹.
5. £200,000 was secured from the West Midlands Combined Authority to prepare an Outline Business Case for the Coventry North package, the key components being:
 - A new link road supported by enhancements to the existing road network to provide an outer orbital linking A4114 with A444.
 - Capacity improvements to M6 Junction 3.
6. The Council commissioned Atkins to progress the Coventry North Package, but the work was not due to be completed until later in 2021. The Outline Business Case would then be published when completed, with the Council reviewing the options for what proposals should be taken forward.
7. The Council also provided [to the complainant] details of the Coventry Local Plan adopted in December 2017. This covers the period up to 2031 and identifies the Keresley Sustainable Urban Extension (SUE) as a major development in North-West Coventry. Specifically it identifies the need for a Keresley Link Road to be constructed as part of the SUE development in Policies H2 and DS4. The link to the Local Plan was provided [to the complainant].
8. The Council has noted that the complainant has submitted a number of requests over the course of the last couple of years, that concern all of the above elements.

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<https://edemocracy.coventry.gov.uk/documents/s32649/Connecting%20Coventry%20%20S strategic%20Tra>

Request and response

9. On 5 March 2021 the complainant requested information of the following description:

“Would you please send me all email [sic] correspondence, and documents relating to the Coventry North Package for Traffic and Transport for the last 2 years. I believe [Redacted] and [Redacted] will be relevant individuals, as well as others in the highways department. (possibly [Redacted], [Redacted], [Redacted] and [Redacted])

I wish to understand what options are being considered, what evidence has been considered, and what the constraints are.”

10. On 12 March 2021 the Council responded. It advised that it considered that regulation 12(4)(d) and regulation 12(4)(e) of the EIR were engaged “...in respect of the emails and documents, including internal communications, being requested.”
11. The Council provided an internal review on 29 March 2021. It addressed the arguments the complainant had raised in their request for a review but maintained its reliance on regulations 12(4)(d) and 12(4)(e) to withhold the requested information.

Scope of the case

12. The complainant contacted the Commissioner on 31 March 2021 to complain about the way their request for information had been handled.
13. The Council initially clarified to the Commissioner that it applied regulation 12(4)(d) to the Outline Business Case (OBC) and regulation 12(4)(e) to information that can be categorised as internal communications. However, it subsequently confirmed that regulation 12(4)(d) could be applied to all the withheld information. The Council also advised that it is now relying on regulation 12(4)(b) with regard to relevant correspondence that cannot be categorised as internal correspondence.

14. On 22 April 2022 the Council advised the Commissioner that the OBC had now been published².
15. The Commissioner's investigation has first focussed on whether, at the time of the request, the Council could rely on regulation 12(4)(d) to withhold information the complainant has requested, and the balance of the public interest. If necessary, he will consider the Council's application of regulation 12(4)(b) and/or 12(4)(e) to the information.

Reasons for decision

Regulation 12(4)(d) – material in the course of completion, unfinished documents

16. Under regulation 12(4)(d) of the EIR a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.
17. The explanatory memorandum to the EIR (COM/2000/0402) states that:

“...the Commissioner places great importance on public authorities being afforded safe space (thinking space) and drafting space when considering whether, and on what terms, a venture should be entered into.”
18. Regulation 12(4)(d) is class-based, which means that it is engaged if the information in question falls within its scope. If the information falls into one of the three categories, then the exception is engaged. It is not necessary to show that disclosure would have any particular adverse effect in order to engage the exception. However, regulation 12(4)(d) is a qualified exception so the public authority must consider whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
19. The Council originally withheld the OBC under regulation 12(4)(d) but has subsequently confirmed that it is relying on regulation 12(4)(d) in respect of all the information it is withholding.
20. In its submission the Council has said that, at the time of the request, the OBC was still a work in progress, and subject to review and

² <https://www.coventry.gov.uk/transport-strategy-2/coventry-north-transport-package>

amendment. The Council says it does not dispute that it needs to make information available in the public domain. However, it goes on to say, the Council has a duty to ensure that the information it releases is accurate, reliable, comprehensive and above all, is complete.

21. The Council has confirmed that the basis for withholding the OBC was that this was still work in progress at the time of the request ie it was an unfinished document.
22. The Council has described the correspondence as being associated with the developing OBC. It comprises emails concerning internal meetings/catch ups; project progress updates; arrangements for briefing updates and draft briefing notes; arrangements for getting input for model outputs and topic areas for discussion; weekly progress reports; links to internal documents for review/update/comment; comments on the Masterplan and draft reports for discussion.
23. In a telephone conversation with the Commissioner, and in its submission to him, the Council also advised that at the time of the request a consultation about the OBC was ongoing.
24. The Commissioner is satisfied that, at the point of the request, the OBC and correspondence associated with it could be categorised as information relating to an unfinished document (because the Council was still drafting the OBC itself) and to material in the course of completion (finalising the overall Coventry North Package policy including the consultation). As such, the Commissioner has decided that the Council was entitled to apply regulation 12(4)(d) of the EIR to the requested information. He has gone on to consider the associated public interest test.

Regulation 12(1)(b) - public interest test

Public interest arguments in favour of disclosure

25. In their request for an internal review, the complainant argued that the Council had not given weight to the right of the public to participate in environmental decision making at an early stage, before a decision is reached.
26. The complainant also said that they considered that there had been secrecy around the Coventry North Package and that there are concerns about associated traffic, air pollution, road safety, landscape and noise.

Public interest arguments in favour of maintaining the exception

27. In its submission to the Commissioner the Council has argued that releasing the requested information would not aid public debate.

Rather, it would hinder the debate, as members of the public would not have access to the full information necessary to make a well informed and balanced decision.

28. The Council has also noted that, at the time of the request, "the application" was subject to a live consultation process. Responses to that consultation would therefore have superseded the material that was held at the time. Disclosing that material would have been both unprofessional and unhelpful, in the Council's view, as the Council would not be disclosing information that was accurate.
29. Finally, the Council advised that the completed and published OBC would include details of the options considered, the evidence base and the factors that were taken into consideration during the process of assessing the schemes and alternatives.

Balance of the public interest

30. The Commissioner is aware that there is always a general public interest in disclosing environmental information, derived from the purpose of the EIR. He recognises that, as the public interest can cover a wide range of values and principles relating to what is the public good, or what is in the best interests of society, there are always arguments to be made on both sides.
31. In reaching a decision in this case, the Commissioner has considered the arguments put forward by the complainant and by the public authority. He has also consulted his guidance 'How exceptions and the public interest test work in the Environmental Information Regulations'.
32. In that guidance, he notes:

"The factors determining the weight of the arguments for and against disclosure can include: the likelihood and severity of any adverse effect; the age of the information; how far disclosing the information would serve the public interest; and what information is already in the public domain."
33. In the Commissioner's guidance, he also states:

"When dealing with a complaint that information has been wrongly withheld, the Commissioner will consider the situation at the time the authority dealt with the request or internal review."
34. In determining where the balance of the public interest lies in this case, the Commissioner has given due weight to the presumption under regulation 12(2) in favour of disclosure and the specific public interest in

transparency and accountability in relation to decisions that may have widespread effects on the community.

35. The Commissioner notes that the complainant considers that there has been "secrecy" around the Coventry North Package. And, rightly, he considers that the public should be given the opportunity to participate in decision making that effects the environment. It appears to the Commissioner, however, that the public interest in openness and people being able to influence decisions on options for the Package have been met by the Council's consultation on the Package. The OBC, now published, refers to the importance of early and effective engagement with local residents and stakeholders. The Council has also explained that the OBC discusses the options considered, the evidence base and the factors that were taken into consideration as the schemes and alternatives were assessed. And finally, the Council has achieved a degree of transparency through its responses to previous EIR requests from the complainant about this Package.
36. Infrastructure projects of the scale of the Coventry North Package will always concern people – for the reasons the complainant has given such as the impact on traffic, air pollution and the landscape. The complainant has not, however, raised concerns that are unusual or of special significance.
37. In the absence of any extraordinary concerns about the Coventry North project, it appears to the Commissioner that the timing of the request is key here. Given that the Council was still drafting the OBC, and the consultation was ongoing, the Commissioner considers there was greater public interest in the Council having the 'safe space' it needed to formulate its Coventry North Package and reach decisions away from public scrutiny. Disclosing the information would frustrate the process of developing the associated options and inhibit the Council's ability to conduct this work. This is the very activity which the exception is designed to protect.
38. While he recognises the complainant's concerns, the Commissioner therefore finds the need for a 'safe space' in which to develop the Coventry North Package outweighs the public interest in complete transparency in this case.
39. The Commissioner has found that the Council applied regulation 12(4)(d) appropriately and that the public interest in maintaining the exception outweighed the public interest in disclosure. As such, it has not been necessary to consider the Council's application of regulation 12(4)(b) or 12(4)(e) to the information.

Right of appeal

40. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

41. 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.
42. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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SK9 5AF