

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 14 February 2023

Public Authority: Trowbridge Town Council
Address: St Stephen's Place
Trowbridge
Wiltshire
BA14 8AH

Decision

1. The complainant requested information from Trowbridge Town Council ("the Council") relating to the costs associated with a redevelopment project.
2. The Commissioner's decision is that withheld information engages regulation 12 (4)(d) (material in the course of completion) but the balance of the public interest favours disclosure.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld information.
4. The Council must take this step 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

5. The complainant made the following information request to the Council on 29 September 2022:

"1. Please publish the video of the meeting recording from Tuesdays Full Council meeting of 27th Sep 2022 before it is recorded.

Also, it is alleged at that meeting that the council does hold this information but will not release current 'recorded' estimates of income and expenses for Doric Park, because the document containing this names certain clubs and end users. And that the public will only be allowed to receive this recorded information once borrowing approval is received. Which is a flawed argument. Therefore such information is not necessarily confidential as is being claimed. As you know any information that is sensitive can be easily redacted;

2. Therefore I must insist that the council publishes the current estimate for total income and total running costs for the Doric Park project; Which on Tuesday 27th Sep 2022 the council fully admitted that it does have recorded down in a written document. I do not require the whole document, only the page or pages which shows the estimate for income and estimate for expenses with names of end users removed by redactions.

any other commercially sensitive information, can also be redacted so I cannot accept any argument that this information cannot be disclosed due to names of clubs etc as this can easily be removed to allow a limited publication.

I also remind you that draft documents are capturable under FOIA & EIRs

I also remind me that EIRs does not allow any extension for public interest test to be taken."

6. The Council refused to provide the information requested in part 2 of the request citing regulation 12(4)(d) (material in the course of completion) of the EIR as its basis for doing so.

Reasons for decision

7. This reasoning covers whether the Council is entitled to rely on regulation 12(4)(d) of the EIR to refuse to provide the information requested in part 2 of the request.
8. Regulation 12(4)(d) of the EIR provides that 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.
9. In this case, the Council has withheld information relating to the estimated income and estimated running costs of the Doric Park project. In its submissions to the Commissioner, the Council explained that as the loan for the Doric Park project has not yet been approved, the estimated running costs and estimated income is subject to change as interest rates and expenses change. Furthermore, the Council explained that the withheld information is contained within a business plan. This business plan is a working document which is being edited regularly. The Council therefore considers the withheld information to constitute material in the course of completion.
10. The Commissioner considers the business plan which contains the withheld information to constitute material in the course of completion as the business plan is a working document which is regularly amended. As the withheld information is contained within that document, the Commissioner is satisfied that the information also constitutes material in the course of completion. Therefore, he finds that regulation 12(4)(d) is engaged. The Commissioner will now go on to consider the public interest test.
11. With regards to the public interest test, in its submissions to the Commissioner, the Council outlined the factors it had identified in favour of disclosing the withheld information. The Council acknowledged that there is a general public interest in the accountability and transparency of the Council, and the safeguarding of democratic purposes. The Council also explained that as the Council has requested a £3.9 million loan for the Doric Park project which will be paid back using public money, there is a public interest in ensuring that the Council is using public resources and funds correctly.
12. The Council also outlined its arguments in favour of maintaining its reliance on regulation 12(4)(d). The Council considers that disclosure of the withheld information would not assist public understanding as information the Doric Park project is already available on the Council's website within meeting minutes and reports.

13. Furthermore, the Council explained that as the business plan containing the withheld information has not yet been finalised and the loan for the Doric Park project has not yet been approved, the estimated running costs and estimated income of the project are subject to change as interest rates and expenses change. The Council therefore considers that disclosure of the withheld information would mislead the public. Whilst the Council acknowledged that it could explain to complainant that the estimated running costs and estimated income of the Doric Park project is likely to change, the Council considers that the complainant would not accept the Council's explanation.
14. The Council considers that disclosure of the withheld information would distract from substantive debate. The Council stated that focussing on estimated expenses would take away from actual debate and understanding of the Doric Park project. It stated that once the final business plan has been approved by the Council, information relating to the running costs and income of the project will be published on the Council's website. Therefore, the Council considered that on balance, the public interest in maintaining its reliance on regulation 12(4)(d) outweighed the public interest in disclosing the withheld information.
15. The Commissioner does not accept that disclosing the withheld information would mislead the public. Whilst he recognises that the estimated running costs and estimated income of the Doric Park project is subject to change as interest rates change, the Commissioner considers that the Council would be able to explain this to the complainant. Furthermore, the Commissioner does not accept that disclosing the withheld information would distract from public debate as the Council should be able to minimise the distraction by putting the information into context and explaining that the information is likely to change.
16. The Commissioner recognises that the Council needs a 'safe space' to develop the Doric Park project business plan away from public scrutiny. He also recognises that Council staff need to be able to have free and frank discussions about the business plan. However, as the complainant has only requested the estimated running costs and estimated income of the Doric Park project, rather than the business plan in its entirety, the Commissioner considers that disclosing the withheld information would not impact the Council's ability to have free or frank discussions when developing the business plan or impede on the Council's 'safe space'.
17. The Commissioner is mindful that under regulation 12(2) requests for information handled under the EIR carry a presumption in favour of disclosure, and is not satisfied that the arguments for withholding the information presented by the Council override this presumption.

Therefore, the Commissioner's decision is that the public interest in disclosure outweighs the public interest in maintaining the exception.

Right of appeal

18. 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@justice.gov.uk

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

19. 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.
20. 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

Daniel Perry
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
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