

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

### **Decision notice**

**Date:** 7 March 2023

**Public Authority:** Lancashire County Council  
**Address:** County Hall  
Fishergate  
Preston  
Lancashire PR1 8XJ

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

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1. The complainant requested information provided to Lancashire County Council (the "council") in relation to pre-application planning advice. The council refused the request, citing the exception for interests of the information provider (regulation 12(5)(f)).
2. The Commissioner's decision is that the council has failed to demonstrate that the exception in regulation 12(5)(f) is engaged.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
  - Disclose the withheld information to the complainant.
4. The council 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 23 July 2022, the complainant made the following request for information to Lancashire County Council (the "council"):

"Lancaster Road Preesall FY6 0HN

Under the FOI procedure I would appreciate sight of any pre-application correspondence and/ or telephone conversations/emails between Highways and Greenfield Enviro/Baxter Construction/Hi-Fly/Holden regarding a proposed access road from a proposed quarry onto Lancaster Road."

6. The council's final position is that the requested information is withheld under the exception for interests of the information provider (regulation 12(5)(f)) apply.

## **Reasons for decision**

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### **Regulation 12(5)(f)- interests of the information provider**

7. Information can be withheld under regulation 12(5)(f) if disclosure would adversely affect the interests of the person who provided the information, where that person was under no legal obligation to supply it, did not supply it in circumstances which would entitle the council to disclose it (apart from the EIR) and has not consented to disclosure.
8. For this exception to apply, the council needs to demonstrate the harm that would arise from disclosure to the person(s) that supplied the information.
9. The council has provided the following reasons for applying the exception:
- "(the information) was supplied to the authority on a voluntary basis. It was submitted to the relevant service with a view for it to not be further disclosed. The relevant service have advised that pre planning advice requests are not a formal planning applications and therefore it is not subject to formal scrutiny, unlike a planning application. Disclosure of this information into the public domain could provide potential objections to the developer when no formal planning application has been submitted, which is likely to prejudice the way in which the potential developer carries out their business and the way in which the authority conducts theirs."

10. The council has confirmed that it also considers that the conclusions reached in a previous decision notice issued by the Commissioner apply to the facts of this case<sup>1</sup>.
11. In relation to the council's submissions, the Commissioner acknowledges that pre-application planning is not part of the formal planning application process and that information associated with it is not routinely published. However, the Commissioner considers that this does not provide a blanket exception from the duty to disclose information in response to a request simply because information falls into this category. It is for the council to demonstrate why, in any given case, disclosure of the information would produce the specific adverse effects described in the exception.
12. In this case the Commissioner considers that the arguments provided by the council are generic, containing no reference to the specific information being withheld and no explanation of the causal relationship between disclosure and adverse effects to the information provider. The council has provided no evidence that it consulted with the information provider to seek its views as to the effects of disclosure or to obtain its consent.
13. In relation to the decision notice cited by the council<sup>2</sup> the Commissioner considers that the conclusions he reached were predicated on specific arguments provided by the council which were linked to a particular context. The Commissioner has not been provided with any evidence from the council which suggests that the same conditions apply in this case.
14. The Commissioner is left with the impression that the council has sought to withhold the information on a general basis and that it has failed to explain what specific harm to the interests of the information provider disclosure would cause. The Commissioner acknowledges that a case might be made for applying the exception but that the council has failed to make it and he does not consider it to be his role to supply the council's deficiencies or to make arguments on its behalf.

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<sup>1</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2013/907436/fer\\_0496223.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2013/907436/fer_0496223.pdf)

<sup>2</sup> Ibid.

15. Having considered the council's position and referred to the withheld information the Commissioner does not agree that the disclosure of the information in this case would cause harm or detriment. In reaching this conclusion the Commissioner has referred to a previous decision notice he has issued in a comparable case where he concluded that the submissions received were inadequate<sup>3</sup>. He considers that the conclusions reached in that decision notice are also transposable to this case.
16. For the reasons set out above the Commissioner has concluded that regulation 12(5)(f) of the EIR is not engaged. He has not, therefore, gone on to consider the public interest test.

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<sup>3</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4023273/ic-170087-f5t3.pdf>

## Right of appeal

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17. 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](mailto:grc@justice.gov.uk)

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

18. 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.
19. 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 .....**

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