

DRAFT - PROTECT

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 9 March 2023

Public Authority: Cheshire East Council
Address: C/O Municipal Buildings
Earle Street
Crewe
CW1 2BJ

Decision (including any steps ordered)

1. The complainant requested various information in respect of road inspections and repairs regarding a particular road. Cheshire East Council ('the Council') refused the request, citing regulation 12(5)(b) of the Environmental Information Regulations 2004 ('the EIR'). The Commissioner's decision is that the Council was entitled to refuse the request on the basis that regulation 12(5)(b) applies to the information. The Commissioner does not require further steps.

Request and response

2. On 20 January 2022 the complainant wrote to the Council and requested the following information:

"...all of the details of all the information on Whirley Lane & Whirley Road Macclesfield from Chelford road to Broken Cross junction to include all repairs, inspection details times & dates, all reports of road damage & complaints & any other information that is available."
3. The Council responded on 25 January 2022. It confirmed that it held relevant information, however refused the request on the basis of

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regulation 12(5)(b) (course of justice) of the EIR. The Council maintained this position at internal review dated 3 February 2022.

Reasons for decision

Regulation 12(5)(b) – the course of justice

4. Regulation 12(5)(b) of the EIR states that information is exempt if disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry or a criminal or disciplinary nature. Regulation 12(5)(b) is a broad exception with the course of justice including but not restricted to information attracting Legal Professional Privilege (LPP). The purpose of the exception is to ensure that there should be no disruption to the administration of justice.
5. The following analysis sets out why the Commissioner has concluded that the public authority was entitled to rely on regulation 12(5)(b) of the EIR in this particular case.
6. The Council argues that disclosure of the dates of safety inspections over a specified time span would allow individuals to identify road defects that the Council had knowledge of, but had not yet repaired. It added that this would highlight periods of time for which fraudulent claims for damage could be submitted to the Council.
7. The Commissioner accepts the arguments made by the Council. Furthermore, in Decision Notice IC-45186-B4K7¹ the Commissioner found that Birmingham City Council was entitled to withhold the dates of road safety inspections on a specific road under regulation 12(5)(b) of the EIR on the basis that it was more probable than not that disclosure of the information would undermine existing legal remedies and adversely affect the course of justice. The Commissioner finds that the exception under regulation 12(5)(b) is engaged with respect to the withheld information in this case for the same reasons as set out in Decision Notice IC-45186-B4K7.
8. Regarding the public interest test, in this case, the Council considered the explicit presumption in favour of disclosure under the EIR, the general principles of transparency and accountability, its responsibility to

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2021/2619209/ic-45186-b4k7.pdf>

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keep the roads free of defects, and therefore the frequency of inspections, as factors in favour of disclosure.

9. In favour of maintaining the exception, the Council referred to its legal responsibility to tackle fraud and protect the public purse from the likelihood of fraudulent claims arising as a result of disclosure. It explained that disclosure would allow individuals to circumvent one of the means in which it assesses a claim for legitimacy, which could result in fraudulent claims being successful.
10. It further argued that there is a more appropriate regime than the EIR for accessing information that is relevant to a claim, and informed the Commissioner that under part 36 of the Civil Procedure Rules it is required to release supporting evidence in response to a formally submitted court claim. This would normally include the last safety inspection prior to any alleged incident, along with reports of all complaints and repairs undertaken between the inspection and the date of the alleged incident and would represent sufficient information to allow claimants to take the matter to court.
11. The Council's position is that the public interest in maintaining the exception outweighs that in disclosure.
12. The Commissioner agrees with the Council, his decision is that the public interest in maintaining the exception outweighs that in disclosure in this case. Paragraphs 21 to 34 of Decision Notice IC-45186-B4K7, referred to above, includes detailed analysis of the public interest in disclosing/withholding this type of information.

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Right of appeal

13. 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

14. 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.

15. 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

Catherine Dickenson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF