

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 9 August 2023

Public Authority: London Borough of Redbridge
Address: Town Hall
High Road
Ilford
Essex
IG1 1DD

Decision (including any steps ordered)

1. The complainant requested information relating to a bid to the Department for Levelling Up, Housing and Communities (DLUHC) that London Borough of Redbridge (the Council) has submitted.
2. The Council refused the request citing regulation 12(5)(e) of the EIR, (commercial confidentiality).
3. The Commissioner's decision is that the Council was entitled to rely on regulation 12(5)(e) to withhold some of the requested information. But that it has failed to demonstrate that the exception is engaged for other parts of the information falling within the scope of the request.
4. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose the information for which the Council has failed to demonstrate that the exception is engaged, as listed in paragraph 16 of this notice, subject to any appropriate redactions for personal data.

5. 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

6. On 21 January 2023, the complainant wrote to the Council and requested information in the following terms:

“Copies of all documents submitted in relation to any levelling up fund bids submitted by the London Borough of Redbridge, in relation to both round one and round two.

Please also provide a list of any bids submitted in the last five years to the Community Renewal Fund. Please list the titles of those bids, their nature, when they were submitted and provide any documents included in those submissions.”
7. The Council responded on 17 February 2023. It refused the first part of the request under regulation 12(4)(d) of the EIR, but provided information relating to the second part of the request.
8. Following an internal review the Council wrote to the complainant on 17 March 2023, upholding its original decision.

Scope of the case

9. The complainant contacted the Commissioner on 22 March 2023, complaining that the application of regulation 12(4)(d) to the first part of the request was incorrect.
10. In its submission to the Commissioner the Council revised its response regarding the first part of the request; advising that it was now withholding the information under regulation 12(5)(e).
11. The following analysis covers the Council’s application of regulation 12(5)(e) to the information falling within the scope of the first part of the request.

Reasons for decision

Regulation 12(5)(e)- confidentiality of commercial information

12. Regulation 12(5)(e) applies to information where its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
13. In his assessment of whether regulation 12(5)(e) is engaged, the Commissioner will consider the following questions:
 - Is the information commercial or industrial in nature?
 - Is the information subject to confidentiality provided by law?
 - Is the confidentiality provided to protect a legitimate economic interest?
 - Would the confidentiality be adversely affected by disclosure?
14. The withheld information comprises documents submitted by the Council to DLUHC in the course of applying for levelling up funding. The Commissioner has examined the withheld information and is of the opinion that it falls into two distinct categories;
 - Information specifically relating to the 'bid detail', such as proposed works to be undertaken (listed in paragraph 15 using the Council's numbering); and
 - 'Supporting information', such as letters of support for the bid from various bodies or individuals (listed in paragraph 16 using the Council's numbering).
15. 'Bid detail'
 - Levelling up bid – document numbers
 - One
 - Three
 - Four
 - Five
 - Fifteen
 - Sixteen
16. 'Supporting information'
 - Levelling up bid – document numbers
 - Two
 - Six
 - Seven
 - Eight

- Nine
- Ten
- Eleven
- Twelve
- Fourteen
- Seventeen
- Eighteen
- Nineteen

17. The Commissioner has considered the four tests listed at paragraph 13 above in relation to each individual document submitted as part of the bid. As noted above, these fall into two distinct types of information.
- The 'bid detail' containing information containing specific details of the proposed works, costing estimates, monitoring or delivery details; and
 - 'supporting' information consisting of statements of support for the submission of the bid from individuals or local groups, or 'pro-forma' information required as part of the application.
18. It is his decision that the information within the documents falling under the heading of 'supporting' information is not commercial in nature. This is because, while the documents support the bid, the information contained within them does not contain commercial information such as planning details, procurement, customer or regulatory information.
19. This 'supporting information' does not therefore meet the first test. As such, the Commissioner has not gone on to consider the rest of the tests for this part of the information and his decision is that regulation 12(5)(e) is not engaged in relation to the 'supporting information'.
20. For the 'bid detail' listed in paragraph 15, the Commissioner considers that it is commercial in nature. This is because;
- the bid to the levelling up fund is a competitive commercial process; and
 - the information includes details of planning, finance, impact, outcomes, and monitoring for the proposed works.
21. The Council has explained that the application was at round two and was still under consideration by DLUHC at the time of the complainant's information request. It stated that while successful bids are published in a redacted form, there is no requirement to publish unsuccessful bids.

22. The Commissioner is therefore satisfied that, because there is no requirement to publish the bid at the time it is submitted, it has been created in circumstances which create an obligation of confidence, it is not trivial and the information is not in the public domain. He is therefore satisfied that the 'bid detail' also meets the second test as it is subject to confidentiality provided by law.
23. To satisfy the third element of the test, disclosure of the confidential information would have to adversely affect a legitimate economic interest.
24. The timing of the request, and whether the commercial information is still current are key factors in determining whether disclosure would cause harm to economic interests. In this case the Council stated that it remains the intention to submit a bid in round three; however the details for round three have yet to be released by DLUHC.
25. The Council has argued therefore that the round two bid remains a work-in-progress as the information was, and is, being used in a competitive bidding process. Revealing the contents of its submission would therefore weaken its competitive advantage and could damage its ability to work to improve the local area.
26. Given this, the Commissioner is satisfied that the third condition is met for the 'bid detail' information, as early disclosure of this information would adversely affect the Council's economic interests by undermining any future bid for levelling up funding.
27. Regarding the fourth condition set out in paragraph 13 the Commissioner accepts that disclosure of confidential information into the public domain would inevitably harm the confidential nature of that information, and so that test is met.
28. On this basis, the Commissioner finds that regulation 12(5)(e) is engaged in regard to the 'bid detail'. He has therefore gone onto consider the public interest in relation to that information for which the exception is engaged.

Public interest test

29. As with the other exceptions under the EIR, when regulation 12(5)(e) is engaged the public authority must carry out the public interest test in order to decide whether the information should be withheld.
30. The Council has acknowledged that there is a clear public interest in knowing how the Levelling Up fund would be utilised in the local community and what potential impact that would have.

31. There is also a public interest in disclosing information that public bodies are strategically investing for the benefit of the community and the environment.
32. In this case the investment would have a wide impact on the local community as the plans are intended to maximise the benefit from the Elizabeth Line into the area, improve connections into Ilford town centre generating economic benefit for existing and new businesses, and better accommodate growth.
33. However, as noted above, the application to DLUHC was live at the time of the request, and feedback from round two of the bid will determine the basis for another submission in round three. The Council stated that early publication of information relating to the bid could therefore cause prejudice to a future application and affect its ability to be competitive.
34. The Council also argued that local authorities are strongly encouraged to bid for monies for improvement to their local areas and the community at large. Revealing the contents of its submission would weaken its competitive advantage and could damage its ability to work to improve the local area.
35. The Commissioner has considered these arguments and agrees that they are a significant factor in favour of maintaining the exception because there is a clear link between disclosure and the potential to prejudice future bids which, given the plans are to improve the local area, would not be in the public interest
36. Having considered the public interest arguments laid out above, it is the Commissioner's opinion that the argument against disclosure is the stronger. His conclusion, therefore, is that the public interest in the maintenance of the exception outweighs the public interest in disclosure of the information. This means that the Council was not obliged to disclose this information.

Right of appeal

37. 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

38. 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.

39. 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

Ben Tomes
Group Manager
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