

Environmental Information Regulations (2004)

Decision notice

Date: 2 August 2023

Public Authority: Cotswold District Council
Address: Trinity Road, Cirencester
GL7 1PX

Decision (including any steps ordered)

1. The complainant has requested all unpublished information associated with a particular planning application. Cotswold District Council ("the Council") withheld information under regulations 12(4)(e) (internal communications), 12(4)(d) (material still in the course of completion), and 13 (personal data).
2. The Commissioner's decision is that the Council is entitled to withhold information under regulation 13, but has failed to demonstrate that the public interest test favours withholding information under regulation 12(4)(d) and regulation 12(4)(e).
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose that information withheld under regulation 12(4)(d) and regulation 12(4)(e), ensuring that any personal data is redacted where necessary.
4. The public authority 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

5. On 31 January 2023, the complainant made the following request for information under the EIR:

“Please take this email as a formal request under the freedom of information act to provide me with ALL information associated with the planning application 19/04749/OUT that is not currently published.”
6. Cotswold District Council responded on 30 March 2023. It stated all of the requested information was available via its Public Access Planning Portal and provided a link.
7. At internal review, Cotswold District Council maintained its position that it had provided all the information it held.
8. During the course of the investigation, the Council revised its position, stating that it held further information in scope of the request, but was withholding it under regulations 12(4)(e), 12(4)(d), and 13.

Reasons for decision

Regulation 12(4)(e) – Internal communications

9. Regulation 12(4)(e) of the EIR states that information is exempt if it represents internal communications.
10. Regulation 12(4)(e) is a class-based exception. This means that there is no requirement to consider the sensitivity of the information in order to engage the exception. The exception is subject to a public interest test under regulation 12(1)(b), and the exception can only be maintained should the public interest test support this.
11. The Council has applied regulation 12(4)(e) to email correspondence, which it considers would fall within scope of the request. The Commissioner has reviewed a sample of the information and is satisfied that it represents internal communications. As such, the Commissioner is satisfied that regulation 12(4)(e) is engaged.
12. In considering the public interest test, the Commissioner has reviewed the Council's arguments, as stated in both its response and internal review outcomes (to the complainant), and confirmed in its submissions to the Commissioner.
13. Having done so, the Commissioner does not consider that the Council has demonstrated that the public interest favours the exception. The

Commissioner notes that the Council's arguments are largely generic and absent of any specific details about the content or circumstances of the information.

14. For example, whilst it is understood by the Commissioner that the information relates to a planning application, there is no clear explanation of why, at the time of the request, it was important to maintain a 'safe space' – and what the specific damage would be to the Council in the alternative, or when the need for the safe space would elapse due to other factors.
15. Having considered the above, the Commissioner can find no clear arguments that support the exception being maintained.
16. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions. In this case, the absence of any clear arguments for the exception being maintained means that the Commissioner must conclude that the public interest favours disclosure.

Regulation 12(4)(d) – Material still in the course of completion, etc.

17. Regulation 12(4)(d) of the EIR states that information is exempt if it represents material still in the course of completion, unfinished documents, or incomplete data.
18. Regulation 12(4)(d) is a class-based exception. This means that there is no requirement to consider the sensitivity of the information in order to engage the exception. However, the exception is subject to the public interest test under regulation 12(1)(b), and the exception can only be maintained should the public interest test support this.
19. The Council considers regulation 12(4)(d) applies to all the withheld information. The Council has stated that it considers this information to fall within the 'material still in the course of completion' limb of the exception, given that the emails in question were written when the planning application was still incomplete.
20. The Council has provided a sample of the information it considers to fall under this exception, and stated local authorities require a safe space to think in private.
21. Having examined the information, the Commissioner is satisfied that as it relates to a planning application that was still in progress at the time of the request, the exception is engaged.
22. However, as with Regulation 12(4)(e), the Council's arguments for use of this exception are generic and do not specifically relate to the

content or circumstances of the information. The Council has not demonstrated why it requires a safe space, or what harm could be derived from disclosure.

23. Having considered the above, the Commissioner can find no clear arguments that support the exception being maintained.
24. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions. In this case, the absence of any clear arguments for the exception being maintained means that the Commissioner must conclude that the public interest favours disclosure.

Regulation 13 – Personal data

25. Regulation 13 provides an exception for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
26. Section 3(2) of the Data Protection Act 2018 defines personal data as:
“any information relating to an identified or identifiable living individual.”
27. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
28. In this case, the Council has withheld the names and email addresses of Council staff members within the requested information. The Commissioner considers that this information clearly relates to individuals, and therefore represents personal information.
29. However, determining that the information is personal data does not provide an automatic bar on disclosure. The next step is to determine whether disclosure would contravene any of the data protection principles.
30. The most relevant DP principle in this case is principle (a), which states that: “Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.
31. In the case of an EIR request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
32. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”.

33. The Council does not consider there to be any legitimate interest in the disclosure of this information. It stated the individuals concerned would not expect their information to be disclosed and they had not given their consent.
34. In this case, the Commissioner is satisfied that it would not be within the reasonable expectations of the individuals concerned for their personal data to be disclosed to the world at large in response to an EIR request, nor has he seen any evidence of any wider public interest in disclosure of the individuals' names.
35. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subject's fundamental rights and freedoms. The Commissioner therefore considers that disclosing the information in question would contravene data protection principle (a) as it would not be lawful. Therefore, he has decided that the data is exempt from disclosure under regulation 13(1) by virtue of 13(2A)(a).

Right of appeal

36. 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

37. 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.
38. 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

Joanna Marshall
Group Manager
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SK9 5AF