

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 17 June 2024

Public Authority: East Riding of Yorkshire Council
Address: County Hall
Cross Street
Beverley
East Yorkshire
HU17 9BA

Decision (including any steps ordered)

1. The complainant requested information about odour complaints related to a recycling facility. East Riding of Yorkshire Council (the Council) applied regulation 12(4)(e) (Internal Communications) to refuse the request.
2. The Commissioner's decision is that the Council was entitled to withhold some information falling within the scope of the request under regulation 12(4)(e). However this does not extend to the entirety of the withheld information.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - To disclose the information not listed in the attached schedule.
4. The Council must take these steps within 30 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 16 August 2023, the complainant wrote to the Council and requested information in the following terms:

“Please provide all internal emails relating to the Wastewise facility in Willerby sent between 01/01/2022 and 01/01/2023 and handled by the Service Manager. This does not need to include any correspondence in relation to public surveys or associated odour reports.”
6. The Council initially refused the request citing regulation 12(4)(b) (manifestly unreasonable). This decision was upheld at internal review.
7. Following a complaint from the requester, the Commissioner issued a decision notice ([IC-256723-P2Z3](#)) which ordered the Council to issue a fresh response which did not rely on regulation 12(4)(b).
8. On 19 December 2023, the Council issued a fresh response to the request citing regulation 12(4)(e), internal communications, to refuse the request.
9. The requester contacted the Commissioner on 19 December 2023, to complain about the application of regulation 12(4)(e) to the fresh response to their request.

Reasons for decision

Regulation 12(4)(e) – Internal communications

10. Regulation 12(4)(e) provides an exception for information which constitutes an ‘internal communication’. In order for the exception to be engaged it needs to be shown that the information in question constitutes a communication within one public authority, specifically, the authority to which the request is made.
11. Regulation 12(4)(e) is a class-based exception. There is no need to consider the sensitivity of the information to engage the exception. However, the exception is subject to the public interest test.
12. The Commissioner has reviewed the withheld information and is satisfied that it consists of communications between officers at the council, as such it clearly comprises internal communications. The Commissioner therefore considers that the exception at regulation 12(4)(e) is engaged and has gone on to consider the public interest test.

Public interest test

Arguments in favour of disclosure

13. The complainant has stated that the matter is of significant importance within the local community relating, as it does, to ongoing disputes about odours from a waste processing plant.
14. Brief online research supports this reasoning from the complainant. It is evident from media coverage that this has been an issue of significant concern over several years to many people in communities close to the facility to which the request relates.
15. The Council acknowledged that it is in the public interest for it to be open and transparent in its dealings in this matter, although it suggested that it had already satisfied this public interest through other disclosures.
16. The view of the Commissioner is that, as argued by the complainant and supported by the media coverage, there is a valid public interest in information that records the actions of the Council in relation to the facility referred to in the request. On this basis the view of the Commissioner is that the public interest in favour of disclosure of the withheld information is of significant weight.
17. However, having viewed the content of the withheld information, the view of the Commissioner is that the majority of the information is anodyne and would add little to public understanding of the actions of the Council in relation to the facility. In relation to this content, this reduces the weight of the public interest in favour of disclosure, however under the EIR there is a presumption in favour of disclosure.

Argument in favour of maintaining the exception

18. While acknowledging the need for openness and transparency, the Council have stated that, in this case, the need for a safe space in which its officers can have free and frank discussions outweigh the arguments for disclosure.
19. It accepts that issues relating to the waste facility are of importance to the local community and has confirmed that some information relating to this topic is already in the public domain. However, it is of the view that, were it to publish all internal communications on this matter, this could impact on the free and frank discussion needed by the Environmental Control (EC) team in order to continue to investigate odour complaints.

20. The Commissioner acknowledges that restricting the EC team's ability to conduct the free and frank discussions necessary to carry out its role effectively would be counter to the public interest. Having reviewed the content of the withheld information the Commissioner has considered whether it is likely that disclosure would inhibit participants in future processes.
21. The Commissioner is of the opinion that the withheld information consists of a mix of information, the disclosure of some of which would inhibit participation in future processes and some which would not.
22. In relation to the content the disclosure of which would not, in the Commissioner's view, be likely to lead to any future inhibition, the Commissioner does not accord this reasoning from the Council any weight as a factor in favour of maintenance of the exception.
23. However, in relation to that content which does contain some free and frank content, the Commissioner accepts some likelihood of inhibition in future as a result of disclosure. His view is that there is a strong public interest in avoiding that outcome and this weighs significantly in favour of maintenance of the exception.

Balance of the public interest test

24. The Commissioner has considered the various arguments and accepts that there is a valid and weighty public interest in understanding the actions of the council in relation to the waste facility.
25. However, it is clear that there are strong opinions outside of the Council over the issue of that facility and how it was, and continues to be handled by the Council.
26. The Commissioner is of the opinion that this gives weight to the Council's argument for maintaining the exception. This is because the Council needs be able to discuss and consider the issues without undue outside influence or pressure.
27. There is therefore a strong public interest in allowing such discussions to take place without fear of subsequent disclosure in order that fully informed and unbiased decisions can be made by the Council.
28. However, having reviewed the withheld information, the Commissioner is of the opinion that the disclosure of much of it could not be said to lead to any likelihood of inhibition to those participating in similar processes in future.

29. The Commissioner's conclusion is that the public interest in the maintenance of the exception outweighs the public interest in disclosure for some of the withheld information. However, for the remainder of the withheld information the finding of the Commissioner is that the public interest in the maintenance of the exception does not outweigh the public interest in favour of disclosure.
30. Therefore the Commissioner's decision is that the Council was entitled to withhold some of the withheld information – that listed in the schedule supplied with this notice to the Council - but that the remainder of the withheld information should have been disclosed.
31. A schedule has been supplied to the Council with this notice which lists the information correctly withheld. As at paragraph 3 above the Council is now required to disclose the withheld information not listed in the schedule.

Right of appeal

32. 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

33. 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.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Ben Tomes
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