

**Freedom of Information Act 2000 (FOIA)**  
**Environmental Information Regulations 2004 (EIR)**  
**Decision notice**

**Date:** 22 May 2024

**Public Authority:** North Northamptonshire Council  
**Address:** Bowling Green Road  
Kettering  
Northants  
NN15 7QX

**Decision (including any steps ordered)**

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1. The complainant requested pre-application advice relating to a specific planning application. North Northamptonshire Council (the "Council") refused the request citing the exceptions for confidentiality of proceedings (regulation 12(5)(d)) and interests of the information provider (regulation 12(5)(f)).
2. The Commissioner's decision is that the Council correctly withheld the requested information under regulation 12(5)(d).
3. The Commissioner does not require further steps.

## **Request and response**

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4. On 6 October 2023, the complainant wrote to North Northamptonshire Council (the "Council") and requested the following information:  
  
"I refer to the reference made at the bottom of the page 2 of design and access statement document "22-152-DAS" included in planning application NE/23/00998/FUL. At the bottom of page 2 from the applicant it lists various planning application and then references the pre-application NE/22/00037/QRV and that "not all comments of the LA response." I am interested in seeing the pre-application and LA response."
5. The Council responded on 3 November 2023 and confirmed that it was withholding the information under the exception for interests of the information provided – regulation 12(5)(f).
6. Following an internal review the Council wrote to the complainant on 11 December 2023. It confirmed that it was maintaining its position and additionally relying on the exception for the confidentiality of proceedings (regulation 12(5)(d)) to withhold the information.

## **Scope of the case**

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7. On 14 January 2024 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner has considered whether the Council was entitled to withhold the requested information.

## **Reasons for decision**

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### **Would the requested information be environmental?**

9. Regulation 2(1) of the EIR defines environmental information as being information on:
  - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
  - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;
  - (d) reports on the implementation of environmental legislation;
  - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
  - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
10. Although he has not seen the requested information but, as it is information relating to prospective planning application, the Commissioner believes that the requested information is likely to be on a measure as defined by regulation 2(1)(c). This reflects an approach taken by the Commissioner in numerous decision notices relating to information about the pre-application planning process. For procedural reasons, the Commissioner has, therefore, assessed this case under the EIR.

### **Regulation 12(5)(d) – confidentiality of proceedings**

- 11. Regulation 12(5)(d) of EIR says that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law.
- 12. The engagement of the exception rests on three conditions being met.
- 13. First, the confidentiality referred to by a public authority must specifically relate to the confidentiality of proceedings. In his guidance 'Confidentiality of proceedings (regulation 12(5)(d))', the Commissioner interprets 'proceedings' as possessing a certain level of formality. They will include but are not limited to formal meetings to consider matters that are within the authority's jurisdiction; situations where an authority

is exercising its statutory decision-making powers; and legal proceedings<sup>1</sup>.

14. The information withheld under this exception relates to a pre-application advice process offered by the Council. The Commissioner has previously acknowledged in a range of decisions that such a process represents a 'proceeding' for the purposes of the exception<sup>2</sup>.
15. The Commissioner is, therefore, satisfied that regulation 12(5)(d) of EIR is engaged because the information relates to the Council's pre-application advice process.
16. Second, this confidentiality must be provided by law. The Council has explained that pre-application advice is a voluntary process rather than a statutory function, which is designed to allow developers to identify any potential issues early on during the planning process and to consider any factors ahead of submitting a planning application for formal consideration.
17. The Council has stated that it is the contents of the planning application and supporting documents which determine a planning application and are for public consumption and consultation. The Council has confirmed that pre-application advice does not form part of the planning application process or outcome – a planning applicant may choose to take the advice or not. The Council has explained that, within pre-planning advice responses, it is specifically stated "The advice, whilst given in good faith, cannot prejudice the decision of the Local Planning Authority in determining any formal application which may be received".
18. The Council has further confirmed that there are no circumstances, statutory or otherwise in which it is required to publish pre-application advice given to applicants other than under EIR.
19. Having considered the context in which the information has come to be held, the Commissioner is satisfied that this information is subject to the common law of confidentiality.

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1626/eir\\_confidentiality\\_of\\_proceedings.pdf](https://ico.org.uk/media/for-organisations/documents/1626/eir_confidentiality_of_proceedings.pdf)

<sup>2</sup> See, for example: <https://ico.org.uk/media/action-weve-taken/decision-notices/2024/4028767/ic-264856-g0v2.pdf>; <https://ico.org.uk/media/action-weve-taken/decision-notices/2024/4028093/ic-261144-d2h6.pdf>; <https://ico.org.uk/media/action-weve-taken/decision-notices/2024/4029396/ic-286268-z8g5.pdf>

20. Third, it must be demonstrated that disclosure would have an adverse effect on the confidentiality of the proceedings
21. The Commissioner understands that, if applicants enter into a process they understand to be confidential, and the Council publishes that information to the world at large, there will be significant damage to the relationship that applicant has with the Council, as well as future relationships that Council may have with that applicant or others.
22. The Commissioner accepts that, if applicants do not feel they can trust the Council, this would significantly undermine the process of providing a confidential pre-application opinion, and would undermine the ability to have a full and frank discussion regarding the planning application at hand. It explained that applicants are aware that once a planning application is submitted, details of this are published and the public are entitled to comment / object and otherwise engage with the process.
23. The Commissioner understands that part of the purpose of the pre-application process is to potentially avert time and resources being spent considering inappropriate planning applications. Whilst the pre-application process provides no guarantee that a subsequent application will be approved, it assists applicants and the Council by potentially improving the quality of applications.
24. In this case, the Commissioner considers that disclosure would have an adverse effect on the confidentiality of the pre-application process as it would damage the general principle of confidentiality itself and result in harm to the interest the exception is designed to protect.
25. In the Commissioner's view disclosing the specific information requested in this case would discourage full engagement with the pre-application process, both from the specific applicant in this case and others, for fear of the public dissemination of such information.
26. On this basis, the Commissioner has decided that disclosure would have an adverse effect on the confidentiality of proceedings. Regulation 12(5)(d) has therefore been found to be engaged.
27. The Commissioner must next consider the balance of the public interest. In doing so, he has taken into account the express presumption in favour of disclosure provided by regulation 12(2) and the general public interest in transparency and accountability.

### **Public interest in disclosure**

28. The complainant has argued that, in their subsequent formal planning application, the applicant made reference to the pre-application process and confirmed that some of the advice provided via this process is relevant to the application. The complainant has argued that they have no way of knowing what the "relevant" information consists of and this restricts their ability to respond to the planning application.
29. The complainant has also suggested that there is a 'known conflict of interest' as a Councillor is connected to the planning application. Disclosure would, in their view, provide transparency and ensure that public concerns about perceived conflicts of interest are addressed.
30. The Council has acknowledged that there is a general public interest in transparency around decisions made in respect of planning applications.

### **Public interest in maintaining the exception**

31. The Council has argued that it must provide a robust pre-application advice service in order to streamline the planning process and ensure it is efficient. It confirmed that the process helps to ensure submitted planning applications are more likely to be approved, thus saving on resources.
32. The Council maintains that those considering submitting a planning application are unlikely to engage with (and pay for) this service if their data is made available for public scrutiny, particularly ahead of any planning decision or where an application is "live". It considers that those seeking pre-application advice must be given the opportunity for free, frank and confidential discussions. The public interest in third party involvement, scrutiny and contribution towards a planning matters is met by the statutory planning application process.

### **Balance of the public interest**

33. The Commissioner accepts that there will always be a general public interest in protecting confidential information. Breaching an obligation of confidence undermines the relationship of trust between confider and confidant. For this reason, the grounds on which confidences can be breached are normally limited. Therefore, where the exception is engaged, the Commissioner accepts that there will always be some inherent public interest in maintaining it.
34. The Commissioner understands that the confidential pre-application process is a service that saves public money by enabling the Council advise on how to eliminate any planning problems before the formal application stage commences. If pre-application advice was to be

routinely published, the Commissioner recognises that applicants would be deterred from seeking advice and would be more likely to submit inappropriate formal applications which would need resubmission, increasing the time, effort and expenditure required to deal with planning applications to the detriment of both applicants, the Council and the wider public.

35. The Commissioner recognises that the complainant has a specific personal interest in the information and he acknowledges that there is a broad public interest in disclosing information that provides transparency around decisions made in respect of planning matters.
36. In relation to the complainant's citing of a reference to pre-application advice in the applicant's formal planning application, the Commissioner has viewed this. He does not consider that this provides any specific public interest weighting in favour of disclosure as, regardless of what elements of the pre-application advice the planning applicant considers relevant to their formal application, planning decisions are supposed to be predicated on information publicly available via the formal application process. Speculation about what may or may not be included in the pre-application advice will not add anything to a consideration of the details of the formal application, which might take a completely different form to that presented at the pre-application stage.
37. The Commissioner appreciates that part of the purpose of requesting the information may be to establish whether the complainant's concerns are correct. However, the EIR is not always the appropriate tool for speculative evidence gathering or for seeking a "smoking gun", particularly where it might be that allegations are unwarranted and needlessly produce the adverse effects the exception is designed to prevent.
38. In relation to the complainant's suggestion that there may be a conflict of interest involving a Councillor associated with the planning application, the Commissioner has no evidence that this is the case. In any event he considers that it is merely speculative to assert that disclosure of the information will provide evidence to support this allegation. The Commissioner considers that there are other remedies for addressing concerns about perceived Council misconduct which do not involve the disclosure of confidential pre-application advice.
39. The Commissioner accepts that, were it the case that the information related to a large development with the potential to affect a significant proportion of the wider community, there might be a broader public interest in making the information available. Whilst he understands why the complainant has legitimate concerns about the proposed

development (which relates to 5 dwellings), the information is likely to be of interest only to those in neighbouring properties.

40. Although the Commissioner recognises why the complainant would wish to view the information, the public interest under the EIR relates to the broader public interest which can include the interest in allowing authorities to provide robust pre-application advice and to preserve the integrity of subsequent formal planning applications.
41. The Commissioner has also accepted that the public interest in disclosing pre-application advice is marginal (as any advice is superseded by any subsequent formal planning process). He also notes that no decision had been made regarding the planning application at the time of the request. Disclosure at this time, therefore, would increase the likelihood of disruption to the formal planning process via enquiries regarding non relevant pre-application matters.
42. In view of the above, the Commissioner has concluded that the balance in favour of withholding the information in this case is greater than the public interest in disclosure.
43. As noted above, 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.
44. Whilst the Commissioner has been informed by the presumption in favour of disclosure, he is satisfied that, for the reasons given above, the exception has been applied correctly.
45. As he has concluded that regulation 12(5)(d) applies to the withheld information the Commissioner has not gone on to consider the Council's application of regulation 12(5)(f).



## Right of appeal

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46. 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)

47. 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.
48. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Christopher Williams**  
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**Information Commissioner's Office**  
**Wycliffe House**  
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