

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 18 February 2015

Public Authority: Oxfordshire County Council
Address: County Hall
New Road
Oxford
OX1 1ND

Decision (including any steps ordered)

1. The complainant has requested the agenda and minutes of the Council's Minerals and Waste Advisory Group meetings. The Council released the agenda and redacted versions of the minutes, citing the non-disclosure exception at regulation 12(4)(e) of the EIR.
2. The Commissioner's decision is that Oxfordshire County Council was entitled to rely on 12(4)(e) to redact the information.

Background

3. At the time of the request, Oxfordshire County Council ("the Council") was in the process of developing a new Minerals and Waste Core Strategy for Oxfordshire. This included proposals to open new gravel extraction plants in the county. The proposals met with local opposition, and a number of campaign groups formed to represent concerns about the possible impact on the environment and the community. The complainant is a member of such a group.

Request and response

4. On 16 July 2014, the complainant wrote to the Council and made the following request for information:

"I have been looking for details of the agenda and minutes for the Minerals and Waste advisory committee on OCC's website.

Although I can find the past/expected meeting dates, the minutes and agendas for these meetings are not on the website.

Please could these documents be sent to me for the last 12 months, or could you direct me to where I might find them on OCC's site?"

5. The Council responded on 12 August 2014. It provided the agenda, but withheld the minutes, stating that they were excepted from disclosure under regulation 12(4)(e) of the EIR, and that the public interest favoured maintaining the exception.
6. The complainant requested an internal review on 3 September 2014. The Council sent her the outcome of its internal review on 26 September 2014. It maintained that regulation 12(4)(e) was engaged by the requested information. However, it conceded that the public interest favoured disclosure of some of the information and it sent her redacted copies of the meeting minutes.

Scope of the case

7. The complainant contacted the Commissioner on 9 October 2014 to complain about the way her request for information had been handled. She argued that the Council's proposed gravel extraction strategy was a matter of considerable local sensitivity and that the public interest favoured the disclosure of all the requested information.
8. The Commissioner notes that the agenda and parts of the meeting minutes were supplied to the complainant at the internal review. The Commissioner therefore considers the scope of the case to be whether the Council was entitled to apply regulation 12(4)(e) to the withheld portions of the meeting minutes.

Reasons for decision

9. Regulation 5(1) of the EIR provides that "*a public authority that holds environmental information shall make it available on request*". A public authority may only refuse to disclose information where an exception applies.
10. If an exception applies, the information is still to be disclosed unless "*in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information*" (regulation 12(2)). This is assessed by having regard to the overriding presumption in favour of disclosure. The threshold for justifying non-disclosure is therefore a high one.

Regulation 12(4)(e)

11. Regulation 12(4)(e) of the EIR states:

"For the purposes of paragraph 1(a), a public authority may refuse to disclose information to the extent that...

(e) the request involves the disclosure of internal communications."

12. Regulation 12(4)(e) is a class based exception so it is not necessary to demonstrate prejudice or harm to any particular interest in order for its engagement.
13. The Council's Minerals and Waste Cabinet Advisory Group ("MWCAG") meetings are closed meetings attended by officers and elected members. They are not formal Council meetings and are not open to the public.
14. The Council identified that MWCAG had six meetings within the period specified by the complainant. Its position was that the meeting minutes were internal communications, but that the public interest only favoured withholding certain parts of them.
15. The withheld minutes record deliberations and discussions between Councillors and Council officials about the proposed Minerals and Waste Core Strategy. Having had sight of unredacted copies of the minutes the Commissioner is satisfied that they constitute internal communications for the purposes of the EIR and that regulation 12(4)(e) is therefore engaged.

Public interest test

16. Regulation 12(4)(e) is subject to the public interest test. Regulation 12(2) of the EIR sets a presumption in favour of disclosure and the Commissioner has borne this requirement in mind in carrying out his assessment of the public interest test.

Public interest arguments in favour of disclosing the requested information

17. When submitting her complaint to the Commissioner, the complainant argued that the matter was of considerable local sensitivity and that disclosure would assist local people to understand how decisions which affect them have been made.
18. She has explained that she is particularly concerned to understand the thinking behind the Council's current minerals and waste strategy. She said that at the time of the request the draft strategy had been published, and so there was no public interest in withholding information about individual Councillors' thinking.
19. The Council acknowledged the explicit presumption in favour of disclosure in regulation 12(2). It also accepted that disclosure of the minutes into the public domain would enable the public to understand how and why decisions have been taken. It would inform the public of the matters taken into account by decision makers. Finally, it commented that releasing information about the deliberative process might lead to its improvement.
20. For his part, the Commissioner considers that there is an inherent public interest in the openness and transparency of public authorities and their decision making processes.

Public interest arguments in favour of maintaining the exception

21. The main arguments presented by the Council relate to the potential chilling effect on future deliberations and the maintenance of a safe space in which to formulate policy and debate "live" issues, away from external scrutiny. The Council has argued that if the chilling effect occurred or the safe space was eroded, this would not be in the public interest as it would affect future decision-making processes and result in less frank discussions and decisions being made without full consideration of all the options.
22. With regard to the impact that disclosure would have on the safe space in which Councillors can formulate policy and debate "live" issues away from external scrutiny, the Council stated that at the time of the request the matters being discussed by MWCAG were "live" and essential to the development of the Council's minerals and waste strategy. The Council considers that there is a clear public interest in maintaining a safe space so as to foster the efficient development of well thought out, considered

public policy without the hindrance of ongoing external comment and interference.

23. The Council also outlined the chilling effect that disclosure of the withheld information would have on current and future discussions of MWCAG and other Council task groups.
24. It cited the risk to the candour and boldness with which views are expressed, when faced with the threat of future disclosure. It was the Council's view that detailed disclosure of deliberations would inevitably result in Councillors and officers who participate in the deliberative process expressing themselves more cautiously, to the extent that the effectiveness and quality of future deliberations would be damaged.
25. The Council also argued that there is a public interest in maintaining the collective responsibility of Councillors for decision making and developing local policies. Free and frank debate, unhindered by the prospect of future disclosures, facilitates Councillors arriving at collective decisions, and this improves the quality of the resultant public policy. In assessing the public interest, the Council noted that factors such as whether the information deals with issues that are still "live", the extent to which Councillors are identified, and specific views attributed to them, should be carefully considered.
26. The Council stated that the views of individual Councillors, and their identities, would be patently obvious were the information to be disclosed. Given the strength of local feeling about the matters under consideration this could place them under significant personal pressure. It might also dissuade local people from standing for Council positions in future. The Council considered such arguments strongly favoured upholding the exception.

Balance of the public interest

27. The Commissioner acknowledges that there is a general public interest in public authorities being accountable and transparent regarding their decision-making processes. He appreciates that in this case the issue of gravel extraction is the subject of considerable local interest and some controversy, and that the proposed gravel extraction plan will have a real impact on day to day life in the affected communities. The Commissioner therefore accepts that there is some public interest in transparency regarding the decision-making process behind the new Minerals and Waste Core Strategy Plan. He notes that the revised Plan was circulated for consultation and that a great deal of information

about it has been published on the Council's website¹. However, he acknowledges that this does not go so far as to reveal the detail of individual deliberations.

28. As a counterpoint, it can be argued that the general public interest in disclosure for transparency is a very high level, broad-brushed argument which fails to take account of the specific need to maintain a safe space for robust decision-making based on frank advice. The Commissioner recognises that inherent in the exception provided by regulation 12(4)(e) is the argument that a public authority should be afforded private space in which issues can be considered and debated, advice from colleagues be sought and freely given and ideas tested and explored to protect the integrity of the internal deliberation and decision making process.
29. The Council has explained to the Commissioner that releasing the withheld information would constrict its ability to have a safe space to consider complex and controversial matters and to avoid interference with the decision-making process by premature disclosure of information. It explained the pressures it might face if such information were to be prematurely released and the negative effect this might have on local democratic processes.
30. The Commissioner is particularly swayed by the Council's submission regarding the benefits of providing a safe space for MWCAG. That is, it allowed the full consideration of wide ranging matters not impeded by a fear of premature public dissemination of those considerations. Any constraints on what may comfortably be considered would harm and limit the functions of such groups and this would be detrimental to the public interest.
31. The Commissioner considers that the need for a safe space will be strongest when an issue is still "live". The Commissioner notes that at the time of the request the development of the core strategy was still very much ongoing, (the strategy was not finalised until November 2014) so there was a strong argument for maintaining the exception so as not to interrupt that process.
32. With regard to the chilling effects arguments, in general terms the Commissioner takes the view that officials who are responsible for making significant decisions about public resources should be robust enough to expect their decisions to be open to public scrutiny. However,

¹ <https://www.oxfordshire.gov.uk/cms/content/minerals-and-waste-core-strategy#consultationondraftminerals>

set against this he recognises that there is a public interest in ensuring that locally elected representatives are properly supported, to enable them to make important, impartial and sometimes unpopular decisions. He considers that the pressure which might be put upon individual Council members if meeting minutes setting out their views were disclosed would not be conducive to the future development of good public policy. He also considers that the prospect of such disclosures might deter people from seeking election to their local council. Neither of these outcomes would be in the public interest.

33. Notwithstanding that there is a presumption in favour of releasing environmental information, the Commissioner accepts that, at the time of the request, MWCAG required a confidential space where complex and controversial matters could be thoroughly and frankly considered. He considers that this positively contributed to the democratic processes of the Council (although he acknowledges that the resulting policy remains highly controversial with local residents). The Commissioner has been persuaded that the public interest favoured maintaining the confidentiality of MWCAG's discussions.
34. The Commissioner therefore finds that the Council was entitled to rely on regulation 12(4)(e) to withhold portions of the minutes of the MWCAG meetings and that the public interest test favours maintaining the exception.

Right of appeal

35. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. 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.
37. 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

Jon Manners
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