

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 21 April 2015

Public Authority: Leeds City Council
Address: Civic Hall
Calverley Street
Leeds
LS1 1UR

Decision (including any steps ordered)

1. The complainant has requested information relating to population and household growth as it relates to long term school place planning. Leeds City Council disclosed some information and withheld other information under the exception for material in the course of completion (regulation 12(4)(d) of the EIR).
2. The Commissioner's decision is that Leeds City Council has correctly applied regulation 12(4)(d) to withhold the requested information.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 24 October 2014 the complainant wrote to Leeds City Council (the "council") and requested the following information:

"All correspondence sent by Leeds City Council and responses received from Edge Analytics inter alios Dr Peter Boden and or Martyna Jasinka between the dates of October 2013 and October 2014."
5. The council responded on 10 December 2014. It disclosed some information and withheld other information under the exception for material still in the course of completion, unfinished documents or incomplete data (regulation 12(4)(d)).

6. Following an internal review the council wrote to the complainant on 11 February 2015. It stated that it was maintaining its position.

Scope of the case

7. On 17 February 2015 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner confirmed with the complainant that his investigation would consider whether the council had correctly withheld information under regulation 12(4)(d).

Reasons for decision

Regulation 12(4)(d) – incomplete material

9. The council has withheld the following 5 documents under this exception:
 - “1) Demographic Support for School Place Planning – Phase 1 – A review of pupil forecasting methodology (Draft)
 - 2) Leeds Population and Household forecasts – Assumptions, Methodology and Scenario Results (Draft)
 - 3) Leeds Population and Household forecasts – Assumptions, Methodology and Scenario Results (Further Draft)
 - 4) Leeds Population and Pupil Forecasts – Phase 2 – Aligning the evidence (Draft)
 - 5) Leeds Population and Pupil Forecasts – Phase 2 – Aligning the evidence (Further Draft)”
10. Regulation 12(4)(d) provides an exception to the duty to make environmental information available when the request relates to material which is still in the course of completion, unfinished documents or incomplete data. By nature of being an unfinished document (by definition), draft documents will similarly engage the exception. A draft version of a document will still be considered an unfinished document even if the final version of the document has been published.
11. If the information in question falls into one of the categories above then the exception is engaged. It is not necessary to show that disclosure would have any particular adverse effect in order to engage the

exception, however, any adverse effects of disclosure may be relevant to the public interest.

12. The council has stated that the withheld information relates to projections on population and household growth across the city of Leeds and how they might affect pupil forecasting. The council confirmed that, once finalised, the documents will be used to inform its commitment to long term school place planning and the ongoing monitoring of the Development Plan evidence base.
13. The council has stated that the documents are not finalised and that further work is still needed to triangulate the initial analysis which has been undertaken with the latest Communities and Local Government (CLG) household projections which (at the time of the council's submissions to the Commissioner) had only just been released. The council has explained that, in addition, the CLG projections themselves are incomplete and further details are pending. The council maintains that this further work will require an analysis by the authors of the withheld documents, Edge Analytics, which will be conducted in co-operation with the council.
14. The council has explained that it has not yet approved the analysis contained within the withheld documents and the methodology and implications of the work undertaken still requires consideration by senior officers and approval by Executive Members.
15. The council has confirmed that there will be an objective point in time when the withheld documents will be finished and the data complete, specifically when the CLG projections are released in full and analysis can be contextualised as part of the wider Development Plan evidence base. The council has stated that, in view of these factors and the fact that the documents were explicitly labelled "Draft" when provided to the council by Edge Analytics, it is reasonable to conclude that regulation 12(4)(d) applies.
16. The complainant has stated that they believe the withheld information was used to inform the examination in public leading to the adoption of the council's Local Development Framework in November 2014 and that, as it was used as the basis for a final decision, it cannot be considered incomplete.
17. The Commissioner put the complainant's allegation to the council and the council has explicitly confirmed that the withheld information did not inform the Core Strategy Examination in question. The council suggested that the complainant might have confused the school place planning work with work commissioned from Edge Analytics in

September 2013 called "Demographic Evidence: An Update" which did inform the Core Strategy and was released at the time.

18. Having no evidence to dispute the council's position and having viewed the withheld documents and considered the assurances provided by the council, the Commissioner has concluded that the information is incomplete and in draft form and that the exception is engaged.
19. The council may continue to withhold the information where, in all circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing it. Consequently the Commissioner has gone on to consider the public interest test.

Public interest in disclosure

20. In considering the public interest in this case, the Commissioner is mindful that regulation 12(2) of the EIR instructs authorities to apply a presumption in favour of disclosure.
21. The council has acknowledged that there is a firm public interest in information concerning population projections and household growth for Leeds being available in the public domain. It has stated that there should be informed debate about policies proposed on the basis of forecasting and the public should be able to scrutinise and participate in this decision-making process.
22. The complainant has similarly argued that disclosure would facilitate informed debate about significant decisions and allow scrutiny of the council's practices in this regard.
23. The complainant has also stated that disclosure would: Provide reassurance that that the council is not deceiving the public; expose any perceived misconduct and, dispel any unfounded concerns about the council.

Public interest in maintaining the exception

24. In support of maintaining the exception, the council has drawn a distinction between the public interest in the public being able to review and comment on finalised projections and being provided with unfinished information which is in the process of being produced, debated and approved. The council has argued that releasing the draft documents in their present form would present a misleading picture to the public which, in turn, would misinform and distract debate. The council has stated that this would create further confusion and would fuel controversy over an aspect of its planning policy that is already complex and controversial.

25. The council has also argued that it is important, in general, that authorities are able to operate within a "safe space" when preparing information of this nature.
26. The council has highlighted that the withheld information is highly technical and is, essentially, concerned with providing accurate information through which further wider analysis and ultimately (if required) a change to policy can be formulated. The council has emphasised that the documents in question still need to be triangulated with other evidence before they can be finalised. The council has argued that it is important that its officers have the opportunity (the "safe space") to conduct this ongoing work free from concern about the need to justify and explain their work before it is complete and free from concern that their work might be undermined or distracted by debating evolving methodologies and data in public.

Balance of the public interest

27. In relation to the council's arguments around maintaining a safe space, the Commissioner acknowledges that, in this case, these carry some weight. It is clear that the decision-making process in relation to these matters was incomplete at the time of the request (and remains incomplete at this time). In previous decisions, the Commissioner has acknowledged that there is a strong likelihood that the integrity of and effectiveness of the decision-making process would be harmed by the disclosure of inchoate information¹.
28. The Commissioner notes that, in cases where an authority has concerns that disclosing information might create public confusion or might misinform debate, it might sometimes be appropriate for the authority to preface such disclosures with a corrective or explanatory narrative. However, he considers that this is not always appropriate since an authority will not always hold final, completed versions of documents which allow for discrepancies to be resolved.
29. In this instance the council has argued that, as it is still waiting for further CLG projections and further analysis by Edge Analytics it would be difficult to place the withheld documents in context or counteract any resulting confusion as, by virtue of their draft status, the final versions

¹ See, for example: https://ico.org.uk/media/action-weve-taken/decision-notices/2011/635462/fer_0322910.pdf

of the documents do not yet exist. So, without a completed version of the information to reference, the public would be left with a provisional, misleading picture of the grounds for the decision-making process. The Commissioner accepts that this would not contribute to the public interest in participation in decision-making in this case.

30. In relation to the complainant's concerns around transparency and the use of public funds in this matter, the council has argued that the 110 pages of information which it originally disclosed in response to the request has address these elements of the public interest in disclosure. The Commissioner accepts that the disclosure of this information goes some way to addressing the public interest in transparency and he accords this appropriate weight in this balancing exercise.
31. In relation to the complainant's suggestion that disclosure would provide reassurance that the council has not deceived the public or otherwise engaged in malpractice, the council has stated that it does not consider that this is relevant to the public interest in disclosing draft documents.
32. The Commissioner accepts that there is a general public interest in transparency around decision making and in scrutiny of the procedures and practices followed by public authorities in this regard. Where there is evidence of malpractice, a strong case could be made for disclosure regardless of the grounds under which information is being withheld. However, in this case, the Commissioner has not been provided with any evidence of malpractice or evidence that the council is in any way mishandling this matter.
33. Having viewed the withheld information the Commissioner also does not consider that its disclosure would in any way instruct the public's opinion about this or provide reassurance that the council has not committed malpractice. He does not, therefore, think that these concerns provide grounds for overturning the strong public interest in maintaining the exception in this case.
34. In this case, the Commissioner is mindful that there is a general presumption in favour of disclosing environmental information and that there is an inbuilt public interest in enabling public participation in decision making in planning matters. However, public interest considerations should always be relevant to the exception being relied upon, to the specific nature of withheld information and to the context at the time of the request. In this case, he considers that the council has demonstrated that the information is incomplete, that it does not exist in a finalised form and that its disclosure would, by misinforming public debate, impede the decision making process that it supports.

35. For the reasons above the Commissioner has concluded that, in this case, the public interest favours maintaining the exception and that the council has correctly withheld the information.

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF