

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

Decision notice

Date: 3 November 2016

Public Authority: South Bucks District Council
Address: Capswood
Oxford Road
Denham
UB9 4LH

Decision (including any steps ordered)

1. The complainant has requested information relating to three planning matters. South Bucks District Council (the "Council") explained what information was available online but argued that it was excepted from its duty to provide the requested information under regulation 12(4)(e) (internal communications exception) of the EIR. It upheld this at internal review.
2. The Commissioner's decision is that the Council is entitled to rely on regulation 12(4)(e) as its basis for withholding the requested information.
3. No steps are required.

Request and response

4. On 27 February 2016 the complainant requested information of the following description:

"In accordance with the Freedom of Information Request, please supply all emails and all electronic documents relating to the following planning applications and Appeals. Of particular concern are any emails and documents to and from [named official] to [named official] and [named official] as well as the Head of Legal and Democratic Services (Joanna

Swift). I am happy to receive this information electronically to [complainant's email address].

Planning Application	Appeal	Applicant
PP15/01371/FUL	15/3136897	[applicant name]
PP15/00632/FUL	15/3130462	[applicant name]
PP15/01497/FUL	15/3136901	[applicant name]."

- On 14 March 2016, the Council responded. It explained that a considerable amount of information about the planning process, such as Planning Committee minutes, were available to the public online or by inspection. Referring to the specific communication exchanges mentioned in the request, it explained that it was excepted from its duty to provide this information under regulation 12(4)(e) (internal communications exception).
- The complainant requested an internal review on 15 March 2016. The Council sent him the outcome of its internal review on 26 April 2016. It upheld its original position.

Scope of the case

- The complainant contacted the Commissioner on 28 April 2016 to complain about the way his request for information had been handled. He disagreed with the Council's use of the EIR exception that it relied upon in this case.
- The Commissioner has considered whether the Council is entitled to rely on regulation 12(4)(e) in respect of emails and documents to and from the named individuals regarding the three planning matters listed in the request.

Reasons for decision

- The Commissioner's previous decisions relating to planning matters concluded that the information in question was environmental and that, as such, the information access provisions of the EIR apply. Bearing this in mind, having regard to her own published guidance and having read

the withheld information, the Commissioner is satisfied that it is environmental information.¹

10. Regulation 12(4)(e) of the EIR states that a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications. The purpose of this exception is to allow a public authority to discuss the merits of proposals and the implications of decisions internally without outside interference.
11. The Commissioner acknowledges that the concept of 'internal communications' is broad and covers all internal communications not just those actually reflecting internal thinking, and will include any information intended to be communicated to others or to be placed in file where others may consult it. However, the Commissioner considers that the underlying rationale behind the exception is that public authorities should have the necessary space to think in private.
12. Regulation 12(4)(e) is a class based exception so it is not necessary to consider the sensitivity of the information in order for it to be engaged. A wide range of internal documents will therefore be caught. However, this exception is also subject to the public interest test outlined in regulation 12(1)(b) of the EIR.

Does the withheld information constitute 'internal communications'?

13. The EIR do not provide a definition of what constitutes an internal communication. However, the Commissioner accepts that, in general, communications within one public authority will constitute 'internal communications' while a communication sent by or to another public authority, a contractor or an external adviser will not generally constitute an internal communication.
14. During the course of her investigation, the Council provided the Commissioner with a copy of the withheld information within the scope of the request. That information comprises of emails exchanged between named individuals that fall within the description set out in the request.
15. The Commissioner has consulted her published guidance on this exception² which addresses the issue of internal communications. That guidance considers various scenarios including:

¹ https://ico.org.uk/media/for-organisations/documents/1146/eir_what_is_environmental_information.pdf

- communications sent both internally and externally;
- forwarded communications and attachments; and
- emails and email chains.

16. Having considered the withheld information and having consulted her guidance, the Commissioner is satisfied that the withheld information falls within the class of information described in regulation 12(4)(e). She is satisfied that the named individuals are officers of the Council. She is therefore satisfied that regulation 12(4)(e) is engaged.

Public interest test

17. As she is satisfied that regulation 12(4)(e) is engaged in respect of the withheld information, the Commissioner has gone on to consider the public interest test attached to the application of this exception, as required by regulation 12(1)(b) of the EIR. The test is whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
18. When carrying out the test the Commissioner must take into account a presumption in favour of disclosure of the information which is required by regulation 12(2).

Public interest arguments in favour of disclosing the requested information

19. The Council asserted:

"Generally, disclosure of information would promote transparency and accountability of the Council. There is a legitimate expectation of the public in being satisfied that these dealings are conducted in a proper and professional way."

Public interest arguments in favour of maintaining the exception

20. The Council made the following points in favour of maintaining the exception:

- The complainant's private interest in access to the information is not the same as the public interest in disclosure and does not add weight to that public interest.
- There is a public interest in protecting the "safe space" that the Council needs to "to develop ideas, consider matters and reach decisions away from external interference and distraction".
- The requested information is relating to planning matters that are the subject of appeal and therefore still ongoing. Disclosure would undermine the fairness of this process.
- The information also relates to legal advice "which attracts a strong presumption against disclosure in order to preserve legal professional privilege, especially whilst proceedings are on-going".
- Where a safe space for decision making is undermined, that has a chilling effect on the quality of advice giving and record keeping in the future.

Balance of the public interest arguments

21. When balancing the opposing public interests in a case, the Commissioner is deciding whether it serves the public interest better to disclose the requested information or to withhold it because of the interests served by maintaining the relevant exception. If the public interest in the maintenance of the exception does not outweigh the public interest in disclosure, the information in question must be disclosed.
22. The Commissioner accepts that there is an inherent public interest in the overall transparency and accountability of public authorities. Where the public has greater access to information, this can enable everyone to understand more clearly why and how a public authority took particular decisions. This helps members of the public to challenge such decisions from a more informed position should they wish to do so.
23. There is always a general public interest in disclosing environmental information. This is derived from the purpose behind the EIR. In addition, there may be an argument for informing public debate on the particular environmental issue that the information relates to. Certainly where planning matters are concerned there is often a degree of contentiousness about planning projects due to the effect on the environment and on surrounding communities.

24. The Commissioner also accepts that there is an inherent public interest in the openness and transparency of public authorities and their decision making process.
25. In balancing the public interest arguments in this case the Commissioner has given due weight to the position that a public authority needs a safe space to develop ideas, debate live issues and reach a decision away from external interference and distraction. However, it is open to the Commissioner to consider the severity and extensiveness of any harm that disclosure might cause to such a safe space, or, in relation to the extent of any 'chilling effect' which the possibility of future disclosure might have on the willingness of the Council's staff to contribute uninhibited and robust advice.
26. A factor in assessing the weight of public interest arguments is the extent to which the information itself would inform public debate on the issue concerned. The Commissioner is mindful that information may be within the scope of a request but, in her opinion, it would shed little light on the issue itself. In that case the weight of the argument for disclosure may be less than it otherwise would be.
27. The Commissioner is also mindful that a requester's private interests are not in themselves the same as the public interest, and what may serve those private interests does not necessarily serve a wider public interest.
28. In this case, the Commissioner has recognised a public interest in preserving a private space in order to carry out the planning process. Taking all the above factors into consideration, the Commissioner finds that the public interest favours maintaining the exception at regulation 12(4)(e) and, as a consequence, the Council is entitled to withhold it.
29. In reaching this view, the Commissioner has given particular weight to the public interest in protecting the safe space in which the Council reaches its decision, particularly where the matter is live at the time of the request.

Right of appeal

30. 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

31. 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.
32. 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
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SK9 5AF