

Environmental Information Regulations 2004 (EIR) Decision notice

Date: 2 November 2022

Public Authority: London Borough of Ealing
Address: Perceval House
14/16 Uxbridge Road
Ealing
W5 2HL

Decision (including any steps ordered)

1. The complainant has requested information relating to the licensing of a house of multiple occupation (HMO) licence.
2. The Commissioner's decision is that the London Borough of Ealing (the Council) has correctly cited regulation 12(5)(b) in response to the request.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 17 March 2022, the complainant wrote to the Council and requested information in the following terms:

"...could I please have a copy of the review of the HMO Licence review conducted by..."
5. The Council responded on 5 April 2022 and refused to provide the requested information citing regulation 12(5)(b) as its basis for doing so.
6. It maintained its position following an internal review.

Reasons for decision

Regulation 12(5)(b) – the course of justice

7. Regulation 12(5)(b) of EIR provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –
 - the course of justice, ability of a person to receive a fair trial or
 - the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.
8. The Council explained that following a review of the HMO Mandatory licence granted for the stated property, it was determined that there were no grounds under section 70 of the Housing Act 2004 to revoke the licence at that time.
9. However, the licence remained under constant review. In the event that matters arise that give grounds for the licence to be revoked and an appeal submitted, the requested information would be part of the Council's case that would in due course be presented to the Property Tribunal or Courts.
10. The Council therefore considered that releasing the information outside of any such proceedings would be premature and claimed regulation 12(5)(b) of EIR applied.

Public interest test

11. The Council acknowledged there is a public interest in seeing the information requested, promoting transparency and accountability in relation to the activities of the public authority.
12. However, it concluded that the public interest in maintaining the exception outweighs the public interest in favour of disclosing the information requested.
13. The Commissioner acknowledges the complainant's valid concerns about how the property is being used.
14. In this case it is clear to the Commissioner that the balance of the public interests lies in maintaining the exception, rather than being equally balanced. Where an investigation is on-going and, where that investigation could lead to criminal charges, it cannot be in the public interest to disclose information that is relevant to that investigation. A

copy of the review is highly likely to be relevant to any future investigation and/or proceedings.

15. The public interest inherent in this exception will always be strong due to the fundamental importance of the general principle of upholding the administration of justice, and in particular, the importance of not prejudicing inquiries.
16. Therefore he has concluded that the Council is entitled to rely on regulation 12(5)(b) of the EIR to withhold the requested information. The Commissioner also finds that the public interest in maintaining the exception outweighs the public interest in disclosure of the withheld information

Right of appeal

17. 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@justice.gov.uk

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

18. 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.
19. 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF