

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 18 July 2023

**Public Authority:** Pembrokeshire County Council  
**Address:** County Hall  
Haverfordwest  
Pembrokeshire  
SA61 1TP

#### **Decision (including any steps ordered)**

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1. The complainant requested, from Pembrokeshire County Council (“the Council”), a copy of an audit report produced in relation to processes relating to a redevelopment project at South Quay. The Council refused to provide a copy of the report, citing regulation 12(4)(e) (internal communications) and regulation 12(5)(f) (interests of the information provider) as its bases for doing so.
2. The Commissioner’s decision is that the Council is entitled to rely on regulation 12(4)(e) to withhold all of the withheld information, he therefore has not gone on to consider the Council’s application of regulation 12(5)(f).
3. The Commissioner does not require the Council to take any steps.

#### **Request and response**

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4. On 16 December 2022, the complainant wrote to the Council and requested information in the following terms:  

“Request for information regarding – South Quay Development Disclosure of the review of the South Quay Development.”

5. The Council originally considered the request under FOIA rather than the EIR. On 25 May 2023 the Commissioner issued a decision notice requiring the Council to reconsider the request under the provisions of the EIR and issue a fresh response to the complainant.
6. On 22 June 2023 the Council issued a fresh response under the EIR. It withheld the requested information citing regulation 12(4)(e) (internal communications) and regulation 12(5)(f) (interests of the information provider) as its bases for doing so. It had applied both exceptions to the entire report.

## Reasons for decision

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### Regulation 12(4)(e) - internal communications

7. Regulation 12(4)(e) of the EIR states that information is exempt from the duty to disclose if it involves 'the disclosure of internal communications'. It is a class-based exception, meaning there is no need to consider the sensitivity of the information in order to engage the exception. Rather, as long as the requested information constitutes an internal communication then the exception will be engaged.
8. The withheld information in this case is a report produced for the Council by the Council's internal audit team. The Commissioner is satisfied that the withheld information falls within the definition of internal communications and therefore, he finds that the exception is engaged. The Commissioner will now go on to consider the public interest test.

### Public interest test

9. With regards to the public interest test, the Council outlined its arguments in favour of disclosing the withheld information:

"It is accepted that there are public interest arguments in favour of disclosing certain information, to enable the public to remain informed about the development the subject of the Report, and therefore summarised information relating to this report has been published on the Council's website. This does not stretch to disclosure of the contents of the Report itself."
10. The Council also outlined arguments in favour of maintaining its reliance on regulation 12(4)(e):
  - If the report were disclosed, "it would inhibit the discussion or debate necessary for effective policy making. The exception is applied based on the judgement that if Officers believed that

certain discussions during audit investigations would be publicly disclosed, they might not speak freely on similar issues in future. To ensure effective conduct of Local Authority business, it is important that Officers are able to exchange views and provide advice frankly.”

11. The Commissioner recognises that there is a significant public interest in disclosure of the report. The internal audit took place in response to a number of concerns that were raised about the management of the redevelopment project by the Council. The information within the report relates to how public funds are being used and the processes the Council has in place to manage the project.
12. However, having reviewed the content of the report, and noting the extent to which it examines how the project has been managed in a lot of detail, the Commissioner accepts the Council’s argument that to disclose the report would discourage Council employees from speaking so freely and frankly as part of any future internal audits, or similar exercises designed to evaluate and improve Council processes. To discourage this would not be in the public interest.
13. Despite the significant public interest in disclosure of the report, the Commissioner’s decision is that the public interest in encouraging free and frank internal discussion in relation to any future internal audits or similar exercises outweighs that in disclosure.
14. The Commissioner’s decision is therefore that the public interest in maintaining the exception outweighs that in disclosure and the Council is therefore entitled to withhold the report under regulation 12(4)(e).
15. 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. As stated in the Upper Tribunal decision *Vesco v Information Commissioner* (SGIA/44/2019):

“If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure...” and “the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations” (paragraph 19).

16. In this case, the Commissioner’s view is that the balance of the public interest favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner’s decision, whilst

informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(e) was applied correctly.

17. As the Commissioner has decided that the Council is entitled to withhold all of the withheld information under regulation 12(4)(e) he has not gone on to consider the Council's application of regulation 12(5)(f).

## Right of appeal

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18. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

19. 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.
20. 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 .....**

**Victoria James**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**