

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 9 February 2024

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

Decision (including any steps ordered)

1. The complainant requested information from Oxfordshire County Council ("the Council") regarding the location and depth of utilities infrastructure at a planned road junction. The Council refused to provide the requested information, citing regulation 12(5)(a) of the EIR as its basis for doing so, specifically on the grounds that to disclose the withheld information would adversely affect public safety.
2. The Commissioner's decision is that the Council has failed to demonstrate that the exception at regulation 12(5)(a) of the EIR is engaged.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld information.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 5 October 2023, the complainant wrote to the Council and requested information in the following terms:

“Would you please disclose all surveys of utilities locations and routes, including the relevant utilities depths, undertaken and in existence regarding the planned Banbury Road junction in Bicester?”

6. The Council responded on 2 November 2023. It stated that it does not hold the information requested.
7. The complainant requested an internal review, stating that they believed the Council did hold the information requested as it had been cited by the Council as the reason for a decision regarding walking and cycling provision at the junction.
8. Following an internal review the Council wrote to the complainant on 6 December 2023. It revised its position, stating that the Council does, in fact, hold the requested information for the purposes of FOIA. The information is held by contractors on the Council's behalf. The Council refused to provide the requested information, citing regulation 12(5)(a) of the EIR as its basis for doing so, specifically on the grounds that disclosing the withheld information would adversely affect public safety.

Reasons for decision

Regulation 12(5)(a) - adversely affect public safety

9. Regulation 12(5)(a) of the EIR states that information is exempt if its disclosure would adversely affect public safety.
10. To engage regulation 12(5)(a), a public authority must demonstrate that disclosing the requested information would have an adverse effect on public safety. This sets a high threshold; it has to be more probable than not that public safety would be affected if the information was released.
11. The Council argues that disclosure of the withheld information would, “provide exact location and depths of utilities apparatus such as electrical cables, water mains and gas mains. If someone with ill intent were to ascertain exactly where these are located, they can be used to cause harm to the public such as damage to these services.”.
12. In its submissions to the Commissioner, the council also said that disclosure of the withheld information, “would render those utilities at

risk of harm from those who may wish to cause damage/undermine the security of certain operations or infrastructure.” It argued that, “as disclosure under EIR is to the public at large, the Council must be mindful of the possibility of this sensitive information being used by hostile actors who could cause widespread damage to the utilities and put public safety at risk.”

13. The Council also argued that it would not be safe to disclose the withheld information as it may be out of date. It did not however provide any specific arguments relating to the information being out of date or explain why this would cause an adverse effect on public safety.
14. In their complaint to the Commissioner, the complainant highlighted the fact that a significant amount of information regarding the location of utilities infrastructure is in the public domain. For example, it is often displayed on utility marker posts or on manhole covers. They consider that this undermines the Council’s argument that to disclose the withheld information would adversely affect public safety. The Council also referenced information within the public domain at internal review. It said that, “the Council accepts that there is some public interest in the disclosure of information relating to line locations, however this is already in the public domain”.
15. In the course of his investigation the Commissioner asked the Council to provide a copy of the withheld information and to explain how the withheld information differs from the type of information in the public domain. He also asked the Council to specifically address the link between disclosure of the information that has been withheld and the adverse effect it has described.
16. In this case the withheld information comprises three documents, a landscaping plan with utility overlay, a trial hole location plan and a trial hole results plan.
17. Regarding the difference between the withheld information and that in the public domain, the Council stated that the requested information is to some extent in the public domain via utility markers, and further details can also be requested by the public via an online public portal, LinesearchbeforeUdig¹. However, it stated, “the additional information gathered by our contractors through surveys and trial hole investigation would provide exact location and depths of utilities apparatus such as electrical cables, water mains and gas mains. If someone with ill intent

¹ <https://lsbud.co.uk/linesearchbeforeudig-aboutus/>

were to ascertain exactly where these are located, they can be used to cause harm to the public such as damage to these services”.

18. The Council also stated that the information available to the public from LinesearchbeforeUdig is the “horizontal alignment of utilities apparatus”. The Commissioner therefore understands the key difference between information available to the public and the withheld information to be the fact that the withheld information includes the exact depths of the utility apparatus.
19. The Commissioner has therefore considered whether the Council has demonstrated that, on a more probable than not basis, a disclosure of the exact depths of the utilities apparatus at the site would adversely affect public safety.
20. The Council’s arguments to the Commissioner do not make any direct link between the disclosure of the depths specifically and the adverse effects it has described. It has not, for example, explained why it considers that disclosure of the depth information would make it more likely that hostile actors would target the utilities infrastructure.
21. Although the Commissioner accepts the withheld information contains more detailed information about the location of the utilities infrastructure than is otherwise available to the public, the Council has not provided any arguments to suggest that the disclosure of this additional information would materially affect a hostile actor’s ability to target that infrastructure.
22. The Council has not provided any specific information in its submissions to the Commissioner about how it has assessed the likelihood of the adverse effects it has described occurring as a result of disclosure.
23. To reiterate, in order for regulation 12(5)(a) to be engaged the Council must demonstrate a link between disclosure of the withheld information and public safety, explaining how one thing would cause the other, and show that the harm is more likely than not to happen. In this case, the Council has failed to do so.
24. The Commissioner’s decision is therefore that the exemption is not engaged and the withheld information must be disclosed.

Right of appeal

25. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

26. 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.
27. 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