

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

Date: 7 September 2018

Public Authority: Woking Borough Council
Address: Gloucester Square
Woking
GU21 6YL

Decision (including any steps ordered)

1. The complainant requested information from Woking Borough Council ("the Council") relating to meetings of the Local Development Framework Working Group. The Council withheld the information under regulation 12(4)(e) of the EIR – internal communications.
2. The Commissioner's decision is that the exception at regulation 12(4)(e) is engaged in this case. However, the balance of the public interest favours disclosure of the information.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation.
 - Subject to paragraph 45 of this notice, disclose the information to the complainant.
4. The Council must take this step 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 27 December 2017, the complainant wrote to the Council and requested information in the following terms:

"Please can Woking Borough Council supply me with any meeting documentation from the Woking Local Development Framework (LDF) meetings since October 2016. This includes information supplied to them and documentation created by them (including (but not limited to) reports, minutes, agendas, emails etc)."

6. The Council responded on 19 January 2018. It explained that it held relevant information. It considered that the information was environmental in nature, and so had considered the request under the Environmental Information Regulations 2004 (EIR). The Council had determined that it should withhold the information under regulation 12(4)(e) of the EIR (internal communications).
7. Following an internal review, the Council wrote to the complainant on 6 March 2018. It upheld its position.

Scope of the case

8. The complainant contacted the Commissioner on 20 March 2018 to complain about the way his request for information had been handled.
9. The following analysis considers whether the Council correctly withheld the information under regulation 12(4)(e) of the EIR.

Reasons for decision

Is the information environmental?

10. Regulation 2(1) of the EIR provides the following definition of environmental information:

"...any information in written, visual, aural, electronic or any other material form on-

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c);

and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);"

11. It is important to ensure that requests for information are handled under the correct access regime, since the reasons why information can be withheld under FOIA (the exemptions) are different from the reasons why information can be withheld under the EIR (the exceptions). In addition, there are some procedural differences affecting how requests should be handled.
12. The Commissioner has considered the withheld information in this case, which comprises an agenda for a meeting on 30 January 2017, unredacted minutes from that meeting, two draft documents which were discussed at that meeting, and a further agenda for a meeting dated 9 November 2017 which was subsequently cancelled.
13. The Commissioner notes that the Woking Local Development Framework ("LDF") Working Group is described on the Council's website as a "*cross-party panel appointed by Woking Borough Council to consider and make recommendations on the local plan making process.*" The plan making process in question is known by the Council as "Woking 2027" and concerns the development of the area's Local Plan.
14. The matters under discussion at the meeting of 30 January 2017, and therefore the subject matter of the withheld information, relate to aspects relevant to the Local Plan and future development in Woking.

15. The Commissioner is satisfied that the information is environmental within the definition at regulation 2(1)(c), since it is information on activities which would affect or be likely to affect the elements and factors referred to in regulation 2(1)(a) and/or 2(1)(b).
16. She is therefore satisfied that the Council considered the request under the correct access regime, and has considered whether it applied the exception correctly.

Regulation 12(4)(e) – internal communications

17. There is a presumption of disclosure at regulation 12(2) of the EIR; however, regulation 12(4)(e) states that a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications. The exception is subject to the public interest test.
18. As the Commissioner notes in her guidance on the application of regulation 12(4)(e)¹, the term "*internal communications*" is not defined in the EIR and is normally interpreted in a broad sense. She has considered the meaning of "*internal*" and "*communications*" separately.
19. With regard to the term "*internal*", the Commissioner notes in her guidance that "*an 'internal' communication is a communication within one public authority*". She is satisfied in this case that the withheld information has been shared between officers of the same public authority; that is, the Council.
20. With regard to "*communications*", the guidance notes that "*the concept of a communication is broad and will encompass any information someone intends to communicate to others, or even places on file... It will therefore include not only letters, memos, and emails, but also notes of meetings or any other documents if these are circulated or filed so that they are available to others*". She is therefore satisfied that agendas, minutes and documents that are prepared for discussion at a meeting are captured by this.
21. The Commissioner is satisfied in this case that the withheld information falls within the definition of "*internal communications*" and that the exception is engaged. She has therefore gone on to consider the balance of the public interest in the disclosure of the information.

¹ https://ico.org.uk/media/for-organisations/documents/1634/eir_internal_communications.pdf

The public interest test

22. As is stated in regulation 12(1) of the EIR, the exceptions at the sub-sections of regulation 12(4) are subject to the public interest test. That is, a public authority may only refuse to disclose information under a 12(4) exception if *"in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information"*.
23. Therefore, as the Commissioner notes in her guidance, although the term *"internal communications"* is normally interpreted in a broad sense, in practice, the application of the exception may be limited by the public interest test.

Arguments in favour of disclosing the information

24. As the Council has acknowledged, there is always some public interest in the promotion of transparency and accountability of public authorities, greater public awareness and understanding of environmental matters, a free exchange of views, and more effective public participation in environmental decision-making.
25. The Council also acknowledged that greater transparency can remove any suspicion of *"spin"*.
26. The complainant has argued that he considers that there is a need for greater public understanding of a specific aspect of the Woking 2027 process. It concerns the Council's proposal to reserve only one greenbelt site for housing after 2027, instead of six sites which had previously been selected.
27. The complainant has explained that, although the normal public consultation process had already begun, in October 2016 the Council published at short notice its intention to adopt the different site at a forthcoming meeting. Following some concern from residents and councillors, the Council then put the new site forward for a separate consultation. There was initially some confusion, since it appeared, at that stage, that the other six sites were still being considered. The consultation ran for six weeks in early 2017.
28. The complainant has argued that the public should be allowed *"to review the [LDF Working Group]'s progress"*. He notes that although the comments from the consultation were published, there was no accompanying comment from the Council and he considers that disclosure of the withheld information would help to shed light on the Council's decision-making process about a matter which is of interest to large numbers of Surrey residents.

Arguments in favour of maintaining the exception

29. The Council has argued that there is a strong public interest in the need for a safe space to develop ideas, debate live issues and reach decisions away from external interference and distraction. It points out that the LDF Working Group continues to sit, and that the issues are still live.
30. The Council also considers that there is a public interest in the Council being shown to take collective responsibility for decisions, and maintaining a united front, rather than individual councillor's views, which may have been expressed in discussions, being published.

The balance of the public interest

31. As noted in the Commissioner's guidance, public interest arguments relating to this exception should always relate to the content and sensitivity of the particular information in question, and the circumstances of the request. The Commissioner has reviewed the withheld information in this case in order to determine the public interest in its disclosure.
32. She notes from the withheld minutes that, at the meeting dated 30 January 2017, which the Council has explained is the only meeting which took place within the relevant time-frame, the LDF Working Group discussed various matters relating to the withheld draft documents as well as to other matters.
33. The Commissioner has considered the Council's arguments relating to the need for a safe space for discussion.
34. It is evident that the members of the LDF Working Group considered revisions to the draft documents at the meeting. The Commissioner notes that these documents had not yet been published in final form at the date of the request, presumably because they were not yet finalised, although they were then published subsequent to the request on the Council's *Development Plan for Woking* webpage in early 2018.
35. Although the documents are not obviously particularly sensitive in themselves, the Commissioner agrees that there is a need for a safe space for a public authority to be able to discuss revisions to items which will ultimately be published as Council policy. Moreover, since the final form of the documents was still being considered at the date of the request, this issue can be said still to have been live at that date. This lends some weight to the factors in favour of withholding the information.
36. The Council's arguments relating to collective responsibility have also been considered by the Commissioner. She agrees that the concept of

collective responsibility is potentially relevant to the exception being applied: it may lend weight to the public interest in internal communications being withheld if disclosing them would undermine the principle of collective responsibility, going forward, by revealing diverging views.

37. However, in this case, the Commissioner considers that there is little, if anything, in the withheld information which reveals one councillor's view over another's. She notes that, where individuals are named, it is usually that they are relaying information or concerns back to the committee, rather than expressing any strong views either in favour of, or against, any proposed course of action.
38. In the Commissioner's view, owing to the general nature of the individuals' comments that are expressed, disclosing the withheld information in this specific case would not create a significant risk to the principle of collective responsibility within the LDF Working Group, nor therefore the Council, going forward.
39. In this case, bearing in mind the weight that attaches both to the presumption of disclosure enshrined in the EIR and to the need for public authorities to behave in a transparent manner, and in light of the information itself, she is not persuaded that, in all the circumstances of the case, the Council's arguments for maintaining the exception outweigh the public interest in disclosing the information.
40. She also notes that some sections of the withheld minutes², which reveal the discussion that took place over one of the withheld draft documents, and a subsequent draft of that withheld document³, are already in the public domain. In her view, it would lend consistency to the Council's approach to disclose the information in this case.
41. The Commissioner's decision is that, in this case, the balance of the public interest lies in disclosing the information.

² https://cl-assets.public-i.tv/woking/document/11b_Parking_Standards_Supplementary_Planning_Document_SPD_Appendix_2.pdf

³ [https://cl-assets.public-i.tv/woking/document/11_Parking_Standards_Supplementary_Planning_Document_SPD .pdf](https://cl-assets.public-i.tv/woking/document/11_Parking_Standards_Supplementary_Planning_Document_SPD.pdf)

42. Therefore, she has determined at paragraph 3 that the information in this case was withheld incorrectly and, subject to paragraph 45 below, should be disclosed to the complainant.
43. The Commissioner has considered whether the withheld information contains the personal data of any individuals, and if so, whether it would be fair to disclose that data, in line with her approach to regulation 13 of the EIR and the relevant data protection legislation.
44. She notes that all councillors' and planning officers' names and contact details which appear on the withheld information are already published, either explicitly on the Council's main website, or on other documents which are searchable on www.moderngov.woking.gov.uk.
45. However, the name and contact details of a democratic services officer appears at the bottom of each of the two withheld agendas (a different officer in each case). The Commissioner does not consider that it would be fair to disclose the personal data of these two individuals since they are not directly involved in the decision-making process, and the Council should therefore redact that information prior to disclosure.

Right of appeal

46. 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

47. 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.
48. 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
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