

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 9 August 2023

Public Authority: Swansea Council
Address: Civic Centre
Oystermouth Road
Swansea
SA1 3SN

Decision (including any steps ordered)

1. The complainant requested information relating to a specific planning application including internal communications at Swansea Council ("the Council"). The Council provided links to its website for some of the information; however, it withheld information for part two of the request under regulation 12(4)(e) of the EIR.
2. The Commissioner's decision is that the Council was entitled to rely on regulation 12(4)(e) to withhold the information for part two of the request. However, it breached regulation 5 of the EIR as it failed to respond within 20 working days to the original request.
3. The Commissioner does not require any steps to be taken as a result of this decision.

Request and response

4. On 23 May 2022, the complainant wrote to the Council and requested information in the following terms:

“I am submitting a request to view a hard copy of planning application 2020/0401 (Gregg's drive throu).

Further under FOI Act to include in the above ALL electronic communications between ALL parties in relation to the above PA.

FOi - LDP 2A70-2025. Page 4l. PSZ Placernaking and Place Nzlana gernent: XI I I Avoid unaccepta ble juxtaposition and/or conflict between residential and non residential uses. Within this context please illustrate /example the definition of 'conflict'?”

5. After seeking clarification of the request, on 10 October 2022, the Council advised they did not hold hard copies but the information within scope of the request for part one was available on its website and advised the information sought for part three did not fall within scope of the EIR and gave further guidance and a link to information on its website. However, it withheld information for part two under regulation 12(4)(e) of the EIR.
6. The Council maintained its reliance on the exception at internal review on 25 November 2022 and apologised for its delayed response to the initial request.

Reasons for decision

7. The following analysis sets out why the Commissioner has concluded that the Council was entitled to rely on regulation 12(4)(e) of the EIR in this particular case.
8. Regulation 12(4)(e) is a class-based exception. There is no need to consider the sensitivity of the information to engage the exception. However, the exception is subject to the public interest test.
9. The withheld information in this case comprises emails between council staff and between council departments. The Commissioner is satisfied that the withheld information falls within the definition of internal communications, therefore the exception is engaged.

Public interest test

10. The Council has stated the following:

"We have balanced the following factors in favour of disclosure: the request has been made solely by the applicant (an interested party) on a planning application on which a detailed report was taken to Planning Committee and would add little to the public debate, with the following factors against disclosure:

The Local Planning Authority considers it reasonable to ensure internal communication and discussions on an application that has changed during the course of the application remain confidential. Planning applications can often be finely balanced, and Officers need to be able to openly discuss the weight to be attributed to individual factors before a decision is made on an application, considered as a whole, and may need to be defended at any subsequent appeal. The Authority received over 3,000 live planning applications in 2021 and the release of such information could damage the quality of advice on other applications that can be finely balanced when all issues are weighed up as well as resulting in similar requests that take considerable time to resolve or resulting in a poorer service. The Authority has concluded that in this case the public interest lies in withholding the information."

11. After considering the above factors, and having applied the presumption in favour of disclosure, the Council determined that the public interest favoured maintaining the exception.
12. The Commissioner acknowledges the public interest in transparency regarding decision making about the planning processes, however, his view is that the 'safe space' and 'chilling affect' arguments made by the Council are weighty factors in favour of maintaining the exception in this case. He is satisfied that disclosure would be likely to prevent council officers corresponding internally with frankness and candour, which could damage the quality of advice and may lead to poorer decision-making with regard to the future planning processes. This would not be in the public interest.
13. Having considered the Council's submissions, the Commissioner's decision is that the public interest in maintaining the exception outweighs that in disclosure, therefore the Council was entitled to rely on regulation 12(4)(e) to withhold the requested information.

Right of appeal

14. 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

15. 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.

16. 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