

Environmental Information Regulations 2004 (EIR) Decision notice

Date: 22 August 2023

Public Authority: Carmarthenshire County Council
Address: County Hall
Carmarthen
SA31 1JP

Decision (including any steps ordered)

1. The complainant asked for planning consultation reports relating to specific plot addresses as well as minutes from an executive board meeting from Carmarthenshire County Council (the Council). The Council gave links to information within scope of the request; however, it withheld the information for the first part under regulation 12(5)(e) of the EIR.
2. The Commissioner's decision is that the Council was entitled to rely on regulation 12(5)(e) to withhold the requested information. The Commissioner finds a breach of regulation 5(2) regarding the delay in responding to the request.
3. The Commissioner does not require any steps to be taken as a result of this decision.

Request and response

4. On 23 February 2023, the complainant wrote to the Council and requested information in the following terms:

“Details with regard to the internal approval to sell council land plot 1 and plot 4 Parc Trostre. Both parcels of land have now either being sold or have a formal legal contract in place with ourselves meaning the release of this information would not prejudice any interest and its release would be in public interest. With regard to both paper can I request copies of the below:

- Details of the planning Consultant Reports used to support paper submitted to Executive Board as per attached correspondence I received at the time which can be forwarded as necessary.
- Copy of Paper and Approval Minutes from Executive Board.”

5. On 27 June 2023, the Council apologised for the delay in its response and provided links to some of the information within scope of the request. However, it withheld information under regulation 12(5)(e) of the EIR. The Council maintained its reliance on the exception under regulation 12(5)(e) at internal review on 25 July 2023.

Reasons for decision

Regulation 12(5)(e) - confidentiality of commercial or industrial information

6. Regulation 12(5)(e) of the EIR states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
7. For the Commissioner to agree that the withheld information is exempt from disclosure by virtue of regulation 12(5)(e) of the EIR, the authority must demonstrate that:
- the information is commercial or industrial in nature;
 - the information is subject to confidentiality provided by law;
 - the confidentiality provided is required to protect a legitimate economic interest; and
 - that the confidentiality would be adversely affected by disclosure.

8. The Council advised within its response that its view is the sale of its land is commercially sensitive and remains confidential.
9. The Council explained that with regard to the four-point test at paragraph 7, the information is commercial in nature given it is for the sale and development of its land. The information consists of details of bids received by the Council for the plots and the prices offered, it also reveals the negotiating position of the Council and its approach to the sale of parcels of land. It added that Schedule 12A Local Government Act allows the Council to exempt the report from publication, this therefore provided a basis in law for the information to be considered confidential.
10. Finally, the Council argued that such disclosure may provide undue leverage for competitors when negotiating the future sale of land in the same area.
11. The Commissioner understands the points raised by the Council and considers they carry significant weight with regard to reputation and future negotiations which may be damaged, as well as potential legal action against the Council if disclosure were to take place.
12. The complainant provided their view which centres around the Council's obligations for transparency and accountability, as well as obtaining best value with regard to the public purse.

Public interest test

13. The Council has considered the following arguments with regard to the public interest test:
 - There is a general public interest in transparency, accountability, and openness of the Council's budgeting and decision-making processes. However, it states that
 - The impact of disclosure on the ability of the Council to secure the best possible outcome in future negotiations is a powerful public interest argument in favour of withholding the information.
 - At a time of significant budget constraints revenue from such disposals is extremely important to public finances as are the terms and conditions attached to such disposals.
14. In conclusion it was satisfied that the balance of the public interest lies in favour of withholding the information, although it accepts that the argument is finely balanced.

15. Although the Commissioner acknowledges the public interest in transparency regarding public income and expenditure, there is no evidence of any wrong doing. His view is that the 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 prejudice future land sales in the area, which may lead to either difficulty in obtaining value from the sale of land and/or reduced revenue to the public purse. Clearly, this would not be in the public interest.
16. Having considered all the arguments presented, 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(5)(e) to withhold the requested information.

Procedural matters

17. The public authority breached regulation 5(2) of the EIR as it failed to issue its response within 20 working days of receiving the request.

Right of appeal

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

Website: 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

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