

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 17 August 2023

Public Authority: London Borough of Islington

Address: Islington Town Hall
Upper Street
London
N1 2UD

Decision (including any steps ordered)

1. The complainant asked a series of questions about the cost of reports and consultations commissioned by the London Borough of Islington (the Council) and the associated processes in place. The Council disclosed some information within scope of the request; however, it withheld some information 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 26 March 2023, the complainant wrote to the Council and requested information in the following terms:
- “1. What is the total budget for the personnel employed in the Environment section of the Council?
 2. How much did the council pay STEER for its involvement and writing of reports on.
 - a. People Friendly Streets Journey Times and analysis
 - b. St Peters People Friendly Streets Trial Publication Documnet
 - c. Highbury West People Friendly Streets Trial
 - d. Clerkenwell Green Public Consultation
 - e. Highbury Fields People Friendly Streets
 - f. Canonbury East People Friendly Strrets
 - g. Highbury West pre consultation
 3. How does Islington Council ensure non bias and objectivity of those employed by STEER?
 4. Do Directors of STEER sign any form of declaration around impartiality?
 5. STEER is currently involved in the consultation process for Barnsbuy and Laycock and Mildmay. How much is the Council paying for this.
 6. What was Project CEntre employed for by Islington Council and how much did this cost?
 7. What was Systra employed for by Islington Council and how much did this cost?
 8. Has Islington Council employed any other outside companies (other than STEER. Systras, Project Centre) for projects. If so what were these companies and how were they employed.”
5. On 2 May 2023, the Council disclosed some information within scope of the request. However, it withheld information under regulation 12(5)(e) of EIR. The Council maintained its reliance on the exception under regulation 12(5)(e) of EIR at internal review on 2 June 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 the Commissioner within its response to his investigation that its view is costs are commercially sensitive and remain confidential.
9. The Council explained that with regard to the four-point test at paragraph 7, the information is commercial in nature and costs for the works outlined in the request were discussed and agreed privately between the respective contractors and the Council. This information is not readily available in the public realm. It went on to explain disclosure of the contractor's fees and charges may offer competitors an unfair advantage. Furthermore, such disclosure may provide undue leverage for competitors when negotiating fees for future services solicited to the Council.
10. Finally, the Council pointed out that no agreement has been made between the consultants and the Council to publicly disclose fees. Financial disclosures may harm the Council's relationship with the suppliers in question, in addition to causing reputational harm for the Council amongst the broader industry.
11. The Commissioner understands the points raised by the Council and considers they carry significant weight with regard to reputation and future consultations/contract or tender 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 with regard to the public purse, as well as being open to the scrutiny of value for money, especially with budget constraints being in place.

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 they owe a duty of care to third parties providing sensitive commercial information and preventing reputational damage with current and potential providers in any future negotiations as well as cementing relationships with those providers.
14. In conclusion they stated: "It is considered that the greater public interest therefore lies in not providing the information at this time. In coming to that conclusion, the public interest in providing the information has been carefully weighed against any prejudice to the public interest that might arise from withholding the information; in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."
15. 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.
16. The Commissioner acknowledges the public interest in transparency regarding public expenditure, however, 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 relationships, which could damage the quality of service and may lead to either difficulty in obtaining external contracts or increased costs due to reputational risks. This would not be in the public interest.
17. 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(5)(e) to withhold the requested information.

Procedural matters

18. 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

19. 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

20. 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.
21. 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