

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 27 November 2023

Public Authority: Cornwall Council
Address: New County Hall
Truro
Cornwall
TR1 3AY

Decision (including any steps ordered)

1. The complainant has requested pre-planning advice relating to a proposed development at Cornwall airport. Cornwall Council (the Council) refused the request under regulation 12(5)(e) of the EIR – commercial confidentiality.
2. The Commissioner's decision is that the Council has correctly relied on regulation 12(5)(e) of the EIR to withhold the requested information.
3. The Commissioner does not require further steps.

Request and response

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

"I required full details of the name of the applicant and details of the application as submitted to the Authority regarding a possible development in the LCO area of Cornwall Airport, the application I refer to is one dealt with by your Officer [name redacted] relating to a hanger development at the Treloy site and which, was confirmed to the

applicant by the Officer [name redacted] to be within in the height allowance.

I further required copies of all corresponds sent by letter or email by [name redacted] relating to the applications, also copies of all letters and emails as received by [name redacted] regarding the same application.”

5. The Council responded on 17 March 2023, applying regulation 12(5)(e) – commercial confidentiality, and regulation 13 – personal data, to withhold the information requested.
6. Following an internal review, the Council wrote to the complainant on 25 May 2023, upholding its original response and citing two further regulations, 12(5)(a) – public safety, and 12(5)(f) – interests of the person supplying the information, to refuse the request.

Reasons for decision

Regulation 12(5)(e) – Commercial confidentiality

7. Regulation 12(5)(e) states 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.
8. In his assessment of whether regulation 12(5)(e) is engaged, the Commissioner will consider the following questions:
 - Is the information commercial or industrial in nature?
 - Is the information subject to confidentiality provided by law?
 - Is the confidentiality provided to protect a legitimate economic interest?
 - Would the confidentiality be adversely affected by disclosure?
9. The withheld information comprises documents submitted to the Council via their pre-planning application advice service, and/or correspondence relating to this pre-planning application.

Is the information commercial or industrial in nature?

10. The Commissioner has considered the four tests listed at paragraph 8. It is his decision that the withheld information is commercial in nature.
11. This is because it relates to the development of the airport area under the Space Industry Act 2013. This can be considered commercial in nature as achieving the development will provide funding and revenue from space operations carried out at the airport.

Is the information subject to confidentiality provided by law?

12. In relation to the second test above, the Council has explained that the information was provided to it in support of the application for pre-planning advice, and that the information it supplied to the applicant was part of that service.
13. The Council stated that the information is about development proposals not in the public domain, and that the applicant submitting the proposal had an expectation that all information would remain confidential.
14. Within the planning process, there is no requirement to publish a submission at the pre-application stage. Should the proposal develop to the point of a formal planning application it would be published at that stage.
15. The Commissioner is therefore satisfied that; because there is no requirement to publish a proposed planning application, it has been created in circumstances which create an obligation of confidence, it is not trivial and the information is not in the public domain, the pre-application advice also meets the second test as it is subject to confidentiality provided by law.

Is the confidentiality provided to protect a legitimate economic interest?

16. To satisfy the third element of the test, disclosure of the confidential information would have to adversely affect a legitimate economic interest.
17. The Council has argued that disclosure of this information into the public domain would provide other individuals with a strategic advantage. It stated that other individuals or organisations could obtain strategic intelligence whilst maintaining their own confidentiality around any proposals they may have to develop the area. Consequently, the planning applicant's economic interests would be adversely affected.

18. It also stated that releasing the information to potential competitors would have an adverse economic impact on the planning applicant, because competitors would gain insights into the potential proposal before any final planning application was published.
19. The Commissioner is satisfied that the third condition is met for the withheld information, as early disclosure of proposed plans for development of the airport would adversely affect the pre-planning application process and undermine the planning applicant's economic interests by providing other individuals with a strategic advantage.

Would confidentiality be adversely affected by disclosure?

20. Regarding the fourth condition set out at paragraph 8, the Commissioner accepts that disclosure of confidential information into the public domain in advance of a final planning application being made, would inevitably harm the confidential nature of the pre-application process, and so that test is met.
21. On this basis, the Commissioner finds that regulation 12(5)(e) is engaged. He has therefore gone on to consider the public interest test.

Public interest test

22. As with the other exceptions under the EIR, when regulation 12(5)(e) is engaged, the public authority must carry out a public interest test in order to decide whether the information should be withheld.

Arguments for disclosure

23. The Council has acknowledged that there is public interest in it being open and transparent about matters surrounding the development of the airport.
24. It stated that disclosure of the information would give the public a greater understanding of decisions made, or matters being considered by the Council.

Arguments against disclosure

25. The Council has re-iterated that a pre-planning application is not the same as a planning application. If any development was to proceed to the planning application stage, it would be subject to disclosure and public scrutiny at that point. Therefore the Council has argued that this partly negates the public interest in disclosure relating to transparency at this stage.

26. The Council is of the view that disclosure of information provided in confidence as part of the pre-application process would not be in the public interest, since this would inevitably harm the Council's ability to carry out the process effectively.
27. It stated that, "Disclosure of the withheld information would likely result in this or future developers no longer wanting to discuss their proposal with the Council at an early stage, for fear that the information they discuss will be disclosed publicly and they would be reluctant to provide information."

The Commissioner's view

28. The Commissioner has considered the Council's arguments, and agrees that there is significant weight to the argument that, disclosing information at pre-application stage would prejudice the confidential nature of the process.
29. This is because the Council needs to be able to carry out the pre-application process effectively. Publication of information which has been submitted via a process understood to be confidential, would damage the process itself and potentially, the Council's ability to carry out this process in the future. This would not be in the public interest.
30. The Commissioner has considered what the subject matter and content of the withheld information suggests about the balance of the public interest.
31. Any proposal which entailed an expansion of the existing area of the airport would likely attract significant public interest within the local area. However, the information in this case relates to a proposed development within the current confines of the airport.
32. It is the opinion of the Commissioner that because of this, any public interest in a proposed development is lessened, since developments within the existing area of the airport are unlikely to have significant impact on the local area.
33. The Commissioner is also mindful that, should the proposal continue to a formal planning application it will, at that stage, be put into the public domain and be subject to public scrutiny at that point.
34. The opinion of the Commissioner is that the arguments for disclosure do not outweigh the arguments for withholding the information because the Council's ability to carry out the confidential pre-application process efficiently, and the limited impact on the local area outweighs the public interest in a potential development within the current confines of the airport.

35. The Commissioner has therefore decided that, in all the circumstances, the public interest in maintaining the application of regulation 12(5)(e) outweighs the public interest in disclosure. The Council was not, therefore, obliged to disclose this information.
36. As the Commissioner's decision is that regulation 12(5)(e) applies to all the withheld information, he has not gone onto consider the other exceptions applied.

Right of appeal

37. 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

38. 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.
39. 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

Ben Tomes
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF