

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 26 March 2024

Public Authority: Chorley Borough Council
Address: Civic Offices
Union Street
Chorley
Lancashire
PR7 1AL

Decision (including any steps ordered)

1. The complainant requested information from Chorley Borough Council ("the Council") relating to the Strawberry Fields Digital Hub. The Council has disclosed some information within the scope of the request, but withheld other information under regulation 12(5)(e) (confidentiality of commercial information) and regulation 13 (personal data) of the EIR. In addition, the complainant is not satisfied that the Council has identified all of the information it holds within the scope of the request.
2. The Commissioner's decision is that:
 - on the balance of probabilities, the Council has now identified all of the information it holds within the scope of the request;
 - the Council breached regulation 5(2) by failing to comply with the request in full within 20 working days;
 - the Council breached regulation 11(4) by failing to provide an internal review within 40 working days;
 - the Council is entitled to withhold the information it has withheld under regulation 12(5)(e) (confidentiality of commercial information) on this basis;

- the Council is entitled to withhold the information it has redacted from the information disclosed on the grounds that it is personal data under regulation 13 of the EIR.
3. The Commissioner does not require further steps.

Request and response

4. On 26 May 2023, the complainant wrote to the Council and requested information in the following terms:
- “Re: Glass office - A documents relating directly or indirectly to the glass offices development/project led by [name redacted] for Chorley Council
- The aim of the freedom of information request is to obtain copies of emails, contracts, and any other information recorded in any electronic format or written word in connection with Glass office and the development of the glass offices project - A Strawberry Fields Digital Hub and in particular I am looking for all documents/communications/quotes submitted regarding building control, fire control and outside contractors or council officers in relation to this issue.”
5. The Council responded on 23 June 2023. It provided some information within the scope of the request, specifically a Building Regulation Application Timeline, a Conditional Plans Approval notice and a Fire Engineer Compartmentation Comments document.
6. The complainant requested an internal review on 28 June 2023 on the grounds that they believe the Council holds further information within the scope of the request, beyond that which it had disclosed. The Council acknowledged receipt of the request for internal review on the same date. However, when the Commissioner accepted this case for investigation on 29 September 2023 the Council had not carried out an internal review.

Scope of the case

7. During the course of the Commissioner's investigation the Council carried out an internal review. On 26 January 2024 the Council disclosed a large amount of further information it held within the scope of the request, it acknowledged that this information should have been disclosed initially. It redacted some information from the information it

disclosed on the grounds that it is personal data. It also withheld some other information that it identified as being within the scope of the request on the grounds of the confidentiality of commercial information.

8. In its internal review the Council cited regulation 12(5)(f) of the EIR, which is the interests of the information provider exception, however its arguments related to the confidentiality of commercial information (regulation 12(5)(e)). The Council has confirmed to the Commissioner that it cited regulation 12(5)(f) in error and that its basis for withholding this information is that it considers it is exempt from disclosure under regulation 12(5)(e).
9. The Council also disclosed some further information to the complainant during the course of the Commissioner's investigation on 18 March 2024.
10. This notice will cover:
 - whether, on the balance of probabilities, the Council has now identified all of the information it holds within the scope of the request;
 - the delay in the providing an internal review and the delay in disclosure of the information not disclosed until 26 January 2024 and 18 March 2024;
 - whether the Council is entitled to withhold the information it has withheld under regulation 12(5)(e) (confidentiality of commercial information) on this basis;
 - whether the Council is entitled to withhold the information it has redacted from the information disclosed on the grounds that it is personal data under regulation 13 of the EIR.

Reasons for decision

Regulation 5(1) – duty to make environmental information available on request

11. Under regulation 5(1) of the EIR, a public authority must make environmental information available on request if it holds the information and it is not subject to an exception.
12. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead

of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any further information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information is held.

13. The question for the Commissioner to consider in this case is, therefore, whether, on the balance of probabilities, the Council has now identified all of the information it holds within the scope of the request.
14. In the course of his investigation the Commissioner asked the Council to provide details of the searches it has carried out to ensure that all information within the scope of the request has now been identified.
15. The Council stated that it has carried out searches within email accounts, electronic project files, and personal drives of the officers identified to have been involved in the matter. In addition its IT department have also carried out searches of email accounts of staff that have left the authority but were involved in the project. The search terms used were "Glass Office", "Glass Office Project", "Building Regulations", "Conditional Plan Approval", "Fire Strategy", "Strawberry Fields" and "Reconfiguration Works Strawberry Fields".
16. The Commissioner's view is that the searches described by the Council are appropriate to identify the information it holds within the scope of the request.
17. The complainant hasn't provided any specific basis for believing that the Council may hold further information within the scope of the request. Although, the Commissioner acknowledges that the Council's poor handling of this request is likely to have undermined their confidence in the Council's ability to ensure all of the relevant information has been identified.
18. The Commissioner is, nevertheless, satisfied that, on the balance of probabilities, the Council has now identified all of the information it holds within the scope of the request. The Commissioner does not, therefore, require the Council to carry out further searches.

Regulation 5(2) - Time for compliance with request

19. Regulation 5(1) of the EIR states that:

"a public authority that holds environmental information shall make it available on request."
20. Regulation 5(2) of the EIR states that:

“Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.”

21. From the evidence provided to the Commissioner in this case, it is clear that the Council did not deal with the request for information in accordance with the EIR.
22. The request was made on 26 May 2023. Although the Council disclosed a small amount of information within the scope of the request on 23 June 2023, it did not disclose the majority of the information within scope of the request until it issued an internal review on 26 January 2024. It has acknowledged that the information disclosed at this stage should have been disclosed as part of its initial response. It also identified further information within the scope of the request at a very late stage of the Commissioner’s investigation, this information was not disclosed to the complainant until 18 March 2024.
23. The Commissioner’s decision is that the Council breached regulation 5(2) by failing to comply with the request in full within 20 working days.

Regulation 11 - Representations and reconsideration

24. Regulation 11(4) of the EIR requires a public authority to complete a reconsideration (internal review) of its response within 40 working days of being asked to do so.
25. The complainant asked for an internal review on 28 June 2023. An internal review was provided on 26 January 2024. This was well outside of 40 working days.
26. Almost six months had elapsed since the complainant requested the internal review and it would appear it was provided only due to the Commissioner’s intervention. The Commissioner understands that the complainant had contacted the Council on multiple occasions, but the internal review was only provided after the Council was contacted by the Commissioner.
27. The Commissioner’s decision is that the Council breached regulation 11(4) of the EIR as it failed to inform the complainant of the outcome of its internal review within 40 working days.

Regulation 12(5)(e) - Commercial confidentiality

28. Information can be withheld under regulation 12(5)(e) of the EIR if disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

29. In this case the withheld information comprises information relating to the Council's annual income as the landlord for each of fifteen offices at Strawberry Fields and information regarding fee proposals for the purchase of goods or services from private contractors.
30. The Council argues that the information is commercial in nature as the information relates to its own commercial activity as a landlord and to the provision of goods and services by private contractors.
31. The Council argues that the information relating to its income as a landlord is subject to the common law of confidence and that the information regarding fee proposals for the purchase of goods or services from private contractors was provided in confidence and also invokes a contractual obligation of confidentiality.
32. The Commissioner has considered four tests. First, he is satisfied that the requested information is commercial in nature. Second, he is satisfied that the information is subject to confidentiality by law because it is not trivial and is not otherwise accessible and so has the necessary quality of confidence.
33. Third, the Commissioner has considered whether the confidentiality is provided to protect a legitimate economic interest.
34. With respect to the information relating to its income as a landlord, the Council argues that disclosure of this information would prejudice its own economic interests. It argues that releasing the information would jeopardise its position as there are still some vacant units which are being negotiated on. If details of the rental value for each office were released it would give prospective tenants a starting point upon which to base negotiations with the Council. It would also allow rival commercial property providers to amend their offers in competition with the Council and undermine the legitimate economic interests of the Council.
35. With respect to the information regarding fee proposals for the purchase of goods or services from private contractors, the Council argues that disclosure of this information would prejudice the economic interests of the contractors. It argues that if the information were released it would reveal the pricing structure and rates to competitors and in turn cause harm to contractors.
36. The Commissioner is satisfied that, the confidentiality is provided to protect the legitimate interests of the Council and the contractors for the reasons stated by the Council.
37. With respect to the fourth test, the Commissioner is satisfied that, the confidentiality would inevitably be affected if the Council disclosed the withheld information.

38. Since the four tests have been satisfied the Commissioner finds that regulation 12(5)(e) of the EIR is engaged as disclosing the withheld information would adversely affect the Council's and the contractors' economic interests. He has gone on to consider the public interest test.
39. The Council acknowledges that there is a strong public interest to demonstrate openness, transparency and accountability in the management of public funds and assets. However, it considers that the public interest in disclosing the withheld information is outweighed by the public interest in maintaining the exception.
40. The Council argues that it meets the public interest in openness, transparency and accountability in the management of public funds and assets, as the Council's accounts are audited and referred to the Governance Committee and these are items which are open to the public. Furthermore, any issues which the external auditors identify are referred to the Governance Committee and to Full Council meetings which are open meetings for the public to attend.
41. The Council further argues that there is strong public interest in allowing public authorities to operate commercially in the best interests of the community and therefore in ensuring that the Council can conduct a fair and competitive processes during commercial negotiations. It further argues that it is not in the public interest to undermine relationships with contractors, by disclosing information provided in confidence, as this would impact future projects which serve to generate income to the Council, to provide public services to the residents of the borough.
42. The Commissioner acknowledges the public interest in openness, transparency and accountability in the management of public funds and assets, however, he agrees with the Council's assessment that, in this case, this is outweighed by the public interest in maintaining the exception. He considers it would not be in the public interest to prejudice the Council's future commercial negotiations either in terms of the rent it charges for the office space or the fees it pays to private contractors as in each case this would prevent the Council from achieving the best value for money in relation to public funds.
43. The Commissioner's decision is therefore that the public interest favours maintaining the regulation 12(5)(e) exception.

Regulation 13 - personal data

44. Regulation 13(1) provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.

45. In this case the relevant condition is contained in regulation 13(2A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
46. The Council has withheld the names and contact details of junior staff working for the Council and external partners.
47. The Commissioner is satisfied that the requested information is the personal data of those employees.
48. The Commissioner acknowledges that the complainant considers that they have a legitimate interest in disclosure of the withheld information.
49. However, the Commissioner must balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms.
50. In this case, the Commissioner is satisfied that the individuals concerned would have the reasonable expectation that their personal data would not be disclosed to the wider world in response to an EIR request.
51. The Commissioner does not consider there to be any wider public interest in disclosure of the withheld information.
52. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that disclosing the information in question would contravene a data protection principle as it would not be lawful. Therefore, he has decided that the data is exempt under regulation 13(1) by virtue of 13(2A)(a).
53. It follows that the Council is entitled to withhold this information.

Other matters

54. Although the Commissioner is satisfied that, on the balance of probabilities, the Council has now disclosed or issued a valid refusal for all of the information it holds within the scope of the request in this
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¹ As amended by Schedule 19 Paragraph 307(3) DPA 2018.

case, it is of concern that the Council's initial searches did not identify all of the information within the scope of this request. In this case this led to the complainant receiving the information they had requested in three batches. The Council should ensure when dealing with future requests that it carries out appropriate searches designed to identify all information within the scope of the request when initially dealing with the request, ensuring that the information is disclosed, or a refusal notice issued, within the statutory period.

Right of appeal

55. 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

56. 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.
57. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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