

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 22 August 2024

Public Authority: North Yorkshire Council
Address: County Hall
Northallerton
North Yorkshire
DL7 8AD

Decision (including any steps ordered)

1. The complainant requested information about vehicle movements at Leeds East Airfield. North Yorkshire Council (the "Council") withheld the information under the exception for the course of justice (regulation 12(5)(b)).
2. The Commissioner's decision is that the Council is entitled to withhold the information under regulation 12(5)(b) and that its internal review complied with regulation 11(4). However, he also finds that the Council breached regulation 5(2) because its initial response was outside 20 working days.
3. The Commissioner does not require further steps.

Request and response

4. On 10 January 2024 the complainant asked North Yorkshire Council (the "Council") for the following information:

"I would be grateful if you could please provide me with the data provided to NYC by the airfield operator on HGV movements and aircraft movements"

5. The Council responded on 14 February 2024 and confirmed that it was withholding the information under the exception for the course of justice (regulation 12(5)(b)).
6. On 15 February 2024 the complainant asked the Council to carry out an internal review. The Council provided its review response on 27 March 2024. This confirmed that it was maintaining its position.

Scope of the case

7. On 28 March 2024 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner has considered whether the Council handled the request in accordance with the EIR.

Reasons for decision

Is the requested information environmental?

9. Regulation 2(1) of the EIR defines environmental information as being information on:
- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
10. In this case the requested information relates to decisions associated with planning enforcement. The Commissioner, therefore, considers that the information relates to a measure as defined in regulation 2(1)(c). For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 12(5)(b) – course of justice

11. Regulation 12(5)(b) provides an exception where disclosure of information would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.
12. 'Adversely affect' means there must be an identifiable harm to or negative impact on the interests identified in the exception. Furthermore, the threshold for establishing adverse effect is a high one, since it is necessary to establish that disclosure would have an adverse effect. Reference: 'Would' means that it is more probable than not, ie a more than 50% chance that the adverse effect would occur if the information were disclosed. If there is a less than 50% chance of the adverse effect occurring, then the exception is not engaged.

The complainant's position

13. The Commissioner understands that the complainant has an interest in the information because of the environmental impact of traffic at Leeds East Airport (LEA). The complainant has specifically argued that the Council's grounds for refusing the request do not meet the threshold required by the exception in regulation 12(5)(b).

The Council's position

14. The Council has confirmed that the limb of regulation 12(5)(b) it is relying on to withhold the information, is the course of justice. It explained that this is because disclosure of the requested information would adversely affect an inquiry, the nature of which is an ongoing planning enforcement investigation. The Council has confirmed that the consideration of planning enforcement matters is a process where it exercises its legal decision-making powers under the Town and Country Planning Act 1990.
15. The Council has explained that, as the requested information relates to an ongoing investigation, disclosure would hinder the collection of future evidence and therefore prejudice the investigation. The Council has confirmed that the site operator provided the information with an explicit understanding that it would be treated in confidence and that it would be used for the purposes of the Council's enforcement obligations. The Council considers that disclosure of the information under the EIR and thus to the "world at large" would discourage the site operator from co-operating with its investigation and providing any further evidence, as well as damaging the relationship between the two parties.

The Commissioner's position

16. With regard to the issue of timing, it is important to note that the Commissioner's role in considering complaints is limited, in accordance with case law, to considering the circumstances as they existed at the time of the request. In any event, in view of the Council's submissions above, the Commissioner accepts that at the time of the request enforcement proceedings were live, and that this was also the case at the internal review stage.
17. In terms of the risks of the withheld information being disclosed, the Commissioner notes that the information in question is limited to communications from the site operator to the Council. In the Commissioner's view disclosure of such information would not therefore reveal details of the Council's planning enforcement case. This is in contrast, for example, to a hypothetical request that sought internal Council communications about how to manage an enforcement case.
18. However, the Commissioner accepts that in order for the Council to be able to effectively consider alleged planning breaches, and in order for the interests of fairness and justice for those against such breaches have been made to be maintained, the Council requires a confidential space in which to consider such matters and liaise with the party in question. In the circumstances of this case the Commissioner accepts that disclosure of the information sought by this request would

undermine that confidential space and represents a genuine and real risk of harming its ability to conduct an inquiry, namely a planning enforcement investigation.

19. The Commissioner also accepts that disclosure of such information, during the course of an ongoing inquiry, could also dissuade further involvement or reporting by complainants or cooperation by parties, in future cases unrelated cases if the parties in question thought that their correspondence with the Council could potentially be disclosed under the EIR during the course of an ongoing investigation.
20. On the basis of the above factors, and having considered the conclusions reached in decision notices relating to comparable scenarios¹, the Commissioner accepts that the withheld information is exempt from disclosure on the basis of regulation 12(5)(b). He has gone on to consider the public interest test.
21. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions.

Public interest in disclosure

22. The Commissioner recognises that there are valid, specific public interest grounds for disclosure of the information. In addition to the environmental impact of LEA on the local community, the Commissioner considers that disclosure of the information would provide reassurance that the Council is meeting its enforcement obligations.
23. The Commissioner directed the Commissioner to a live planning application associated with LEA and highlighted that there were a substantial number of comments from the public, demonstrating that there is a large public interest in the site and its activities. It also confirmed that it had considered a substantial number of enforcement issues regarding the site since 2017.
24. In relation to the specific information being withheld, the Council has acknowledged that HGV and aircraft movements at the site have an impact on traffic, noise levels and road surfaces, which affects residents and the surrounding villages.

¹ See, for example: <https://ico.org.uk/media/action-weve-taken/decision-notices/2024/4029977/ic-274409-c6y2.pdf> and <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4025985/ic-241440-d2z4.pdf>

Public interest in maintaining the exception

25. The Council considers that maintaining the integrity of its investigations serves the public interest more so than disclosing the requested information. Allowing Council officers to effectively communicate with site operators and proceed with an investigation will encourage planning conditions and any enforcement actions to be adhered to, having a positive impact on residents and surrounding areas.
26. The Council has argued that it attempts to promote transparency in relation to planning processes. It confirmed that the current planning application includes a Transport Statement available for the public to view which contains a Vehicular Trip Impact forecast, reflecting current activities occurring at the site².
27. The Council has confirmed that it has also kept the complainant updated outside of the EIR process, through email correspondence, providing details about its enforcement investigation, what evidence is being sought from site operators and timescales. The Council considers that it has demonstrated a balance in being as transparent as possible with keeping the actual evidence provided by the landowner private.

Balance of the public interest

28. The Commissioner appreciates that the complainant has a particular interest in this planning matter. As a result the Commissioner accepts that they have a genuine interest in understanding all aspects of the Council's decision making in respect of this issue, including its interactions with the party alleged to have committed planning breaches.
29. Disclosure of the withheld information would directly address the complainant's interest in this regard. More broadly, and more relevant to the wider public interest, the Commissioner accepts that disclosure of the withheld information would allow the public to understand the actions the Council has taken in a particular planning case and contribute, as the Council itself has indicated, to ensuring that it is transparent and accountable for its decision making.
30. However, the Commissioner accepts that there is a legitimate, and strong, public interest in a local authority being able to consider and

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https://publicaccess1.selby.gov.uk/PublicAccess_Live/Document/ViewDocument?id=3D49A0B6ADC64046A8C1FD853B4A19A6

investigate alleged breaches of planning legislation within a confidential space; this is particularly the case when the matter in question remains live and ongoing, as it is here.

31. In the specific circumstances of this case, the Commissioner accepts that the public interest in favour of disclosure attracts particular weight. However, as this interest is in seeing that enforcement action is, where applicable, taken, the Commissioner considers that disclosing the information is likely to restrict the Council's ability to carry out this task in relation to a specific investigation. In other words, disclosure would undermine the very action which the complainant is interested in seeing carried out.
32. In addition, the Commissioner considers that the public interest in maintaining the exception attracts further weight given the potential risk that disclosing correspondence from a live enforcement case has on the Council's ability to effectively investigate other, unrelated, enforcement cases in the future.
33. Whilst the Commissioner has been informed by the presumption in favour of disclosure, he is therefore satisfied that, for the reasons given above, the exception has been applied correctly

Procedural matters

Regulation 5 – duty to provide environmental information

34. Regulation 5(1) of the EIR requires authorities to provide environmental information on request.
35. Regulation 5(2) requires authorities to provide environmental information no later than 20 working days after the date a request has been received.
36. In this case the complainant submitted their request on 10 January 2024 and the Council provided a response on 14 February 2024.
37. The Commissioner finds, therefore, that the Council breached regulation 5(2) in this case.

Regulation 11 – internal review

38. Regulation 11 of the EIR sets out public authorities' responsibilities in relation to the carrying of internal reviews of the handling of request.
39. In this case the complainant has raised concerns that the Council did not provide its internal review in time.

40. Regulation 11(4) of the EIR confirms that authorities should provide an internal review response no later than 40 working days after the date of receipt of a review request.
41. The complainant wrote to the Council to request a review on 15 February 2024. The Council provided its review response on 27 March 2024.
42. As the Council's review response was issued within the 40 working day timeframe the Commissioner has concluded that it complied with regulation 11(4) in this case.

Right of appeal

43. 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

44. 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.
45. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Christopher Williams
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