

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

Date: 10 September 2024

Public Authority: Ribble Valley Borough Council
Address: Council Offices
Church Walk
Clitheroe
Lancashire
BB7 2RS

Decision (including any steps ordered)

1. The complainant requested various information about a legal easement at a specific location. Ribble Valley Borough Council (the Council) confirmed that some information was available on its planning portal and stated that the remaining information held relevant to the request was exempt under section 40(2) (personal data), section 41 (information provided in confidence) and section 42 (legal professional privilege). During the course of the Commissioner's investigation, the Council accepted that the request should have been considered under the EIR as opposed to the FOIA. It reconsidered the request under the EIR and stated that it was now relying on regulation 13 (personal data), regulation 12(5)(f) (interests of the provider) and regulation 12(5)(b) (course of justice).
2. The Commissioner's decision is that the Council correctly applied regulation 12(5)(f) to the request. He does not require any steps to be taken.

Request and response

3. On 17 September 2023 the complainant wrote to the Council and requested information in the following terms:
 - “1. The evidence that states there is a legal easement over [street name redacted] to [house name redacted].
 2. Any document that pertains to the easement being legitimate.
 3. Any report/photographs/assessment that has been completed to suggest that [street name redacted] is suitable to use as the access for [house name redacted] under the CMP”.
4. On 26 September 2023 the complainant submitted a further request for the following information:
 - “1. Any decision by the council to approve [street name redacted] as access point for Construction Management Plan) of planning permission [planning application number redacted].
 2. Any documentation (email/letter/Land Registry/ etc) that has been used to reach a decision about using [street name redacted] as access to [house name redacted] that relates to any easement, access point or use of [street name redacted].
 3. Any documentation that stipulates why [street name redacted] is a preferred choice and that the CMP should use [street name redacted] as the point of access.
 4. Any documentation presented to the council about any easement over [street name redacted].
 5. Any documentation that relates to [street name redacted] in any matter relating to [house name redacted] demolition and reconstruction.
 6. A SARS request for [complainant name redacted] for dates from Jan 2023 until present day.
 7. The evidence that states there is a legal easement over [street name redacted] to [house name redacted].
 8. Any document that pertains to the easement being legitimate.
 9. Any report/photographs/assessment that has been completed to suggest that [street name redacted] is suitable to use as the access for [house name redacted] under the CMP”.

5. The Council responded on 18 October 2023 and stated that the information requested was exempt under sections 40(2), 41 and 42 of the FOIA. It also provided a link to information on the planning portal about the planning application relevant to the request.
6. On 24 October 2023 the complainant requested an internal review of the Council's response, specifically, in relation to the information that it withheld under sections 40(2), 41 and 42 of the FOIA.
7. The Council provided the outcome of its internal review on 24 January 2024. It upheld its position that the information requested was exempt by virtue of the exemptions cited in its refusal notice. The Council also confirmed that it would process a subject access request in relation to item 6 of the request dated 26 September 2023.

Scope of the case

8. The complainant contacted the Commissioner on 15 March 2024 to complain about the way their request for information had been handled.
9. During the course of the Commissioner's investigation, the Council acknowledged that the request should have been considered under the EIR as opposed to the FOIA. It reconsidered the request under the EIR and confirmed it was now relying on regulations 13, 12(5)(f) and 12(5)(b) to withhold the remaining information held relevant to the request.
10. In light of the above, the scope of the Commissioner's investigation into this complaint is to determine whether the Council should disclose the remaining information held relevant to the request.

Reasons for decision

Is the requested information environmental?

11. 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);
12. The Commissioner interprets the definition of environmental information widely, and considers information concerning, about or relating to measures, activities and factors likely to affect the environment to be environmental information.
13. The Commissioner has viewed the withheld information and notes that it was submitted in relation to a planning application. The withheld information and the subject of this request relates to the use of land for access to a particular property.
14. The Commissioner considers that the usage of land in a particular way is a "measure", as defined in regulation 2(1)(c) of the EIR which affects or is likely to affect the element of the environments outlined in regulation 2(1)(a) of the EIR. Therefore, the Commissioner considers that the request was for environmental information as defined by regulation 2(1) of the EIR.

Regulation 12(5)(f) – interest of the information provider

15. Regulation 12(5)(f) of the EIR states that:

"a public authority may refuse to disclose information to the extent that its disclosure would adversely affect -

f) the interests of the person who provided the information where that person -

(i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;

(ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and

(iii) has not consented to its disclosure;"

16. As with all the regulation 12(5) exceptions, the Commissioner considers that, in order to demonstrate that disclosure "would adversely affect" a confider's interests, a public authority must demonstrate that the adverse effect is more likely than not to occur.
17. The withheld information comprises information which the planning application's agent submitted to the Council in relation to a discharge of a planning condition regarding a construction management plan (CMP). It relates to rights of access in respect of a particular road.
18. The Council confirmed that the individual was not under, or could not have been put under any legal obligation to supply the information. The withheld information was not required to process the planning application. The Council explained that the planning application did not involve a decision in respect of rights of access, and confirmed that it does not have any jurisdiction or authority to make such a decision.
19. The Council pointed out that the response from the Highway Authority (Lancashire County Council) referred to a dispute in respect of the right to access the road for the development. The Council's decision on the application also refers to ongoing legal issues around the right of access and confirms that the planning consent does not "give the applicant the automatic rights to implement the proposed development without the relevant rights of access". The Council argues that disclosure of the withheld information would adversely affect the interests of the person who supplied it in that it would reveal the basis of their legal case and the steps which they have taken to establish their position in respect of the dispute over access.
20. In addition, as a number of local residents have raised concerns regarding the right of access in question which conflict with the provider's views, the Council contends that disclosure would have an adverse effect on the provider's relationship with neighbours and other local residents. This in turn could lead to reprisals for the individual concerned. In addition, should the issue of right of access become a legal case, disclosure of the withheld information would adversely affect the individual's legal case as it would reveal their position.

21. The Commissioner is satisfied that the individual in question was not under, and could not have been put under any legal obligation to supply the withheld information to the Council. He is also satisfied that the Council was not entitled to disclose the information, apart from under the EIR and notes that the individual has refused consent for disclosure of the information provided.
22. Having viewed the withheld information and taken into account the representations provided by the Council, the Commissioner's view is that disclosure of the withheld information would be more likely than not to adversely affect the interests of the provider. In reaching a view, the Commissioner has taken into account the fact that the information was provided to the Council in confidence, and the subject matter associated with the request is contentious as there is an ongoing dispute concerning rights of access over the road in question.
23. Having found that each of the tests for regulation 12(5)(f) to be engaged are met, the Commissioner's conclusion is that the exception provided by regulation 12(5)(f) is engaged. He has therefore gone on to consider the public interest test.

The public interest test

24. The Council did not submit any specific arguments in favour of disclosure of the withheld information.
25. The complainant is a local resident and pointed out that they provided the Council with evidence which confirms there was no legal access over the road in question to the particular property. They believe that the evidence may "hinge on a historical easement, which should have been invalidated when section 62 of the Law of the Property Act was expressly revoked, Consequently any easement conveyed through this historical process should no longer hold validity".
26. In favour of maintaining the exception, the Council argues that there is an inherent public interest in preventing the adverse effects on the individual who provided the information and the principle of confidentiality.
27. The Council also considers that there is a public interest in maintaining the voluntary supply of information from third parties about planning matters. It pointed out that the information was provided to it voluntarily to assist in understanding the position in relation to an ongoing dispute between neighbours, which was separate to the planning application under consideration.

28. The Council stated that the withheld information was provided to it in confidence and it considers disclosure would cause significant harm to the interests of the provider. It also argues that disclosure of the information would harm its relationship with the provider.
29. The Council considers that there is a clear public interest in preserving the public's trust that if information is provided to it in confidence, it is able to keep such information confidential. As such, the Council considers that disclosure has the potential to undermine its ability to carry out its functions in the future.
30. Finally, the Council argues that it is in the public interest that one party is not disadvantaged in legal proceedings as a result of the other party being able to access information about its evidence and legal advice it has received in advance.

Balance of the public interest

31. The Commissioner accepts that there is an inherent public interest in transparency and accountability. The Commissioner also acknowledges that local residents have submitted objections to the use of the road in question and as such the subject matter is somewhat contentious.
32. The Commissioner is satisfied that disclosure of the withheld information, which was provided to the Council in confidence, would have an adverse effect on the individual who provided it. It may also prevent other parties from confiding in the Council regarding similar matters in the future. The Commissioner considers that there is a strong public interest in maintaining the voluntary supply of information from individuals and developers to the Council and in maintaining the relationship between the parties.
33. Whilst the Commissioner recognises that the individual would have a reasonable expectation that information they provided to the Council about the planning application could be the subject of an information request, he accepts that the individual would equally have a reasonable expectation of confidentiality in respect of certain sensitive information provided voluntarily, and in confidence. Disclosure of such information could deter planning applicants from engaging in free and frank discussions with the Council in the future, and this could have a negative impact on planning and development generally.
34. Having considered the relevant facts and the submissions provided, the Commissioner has concluded that in this case the balance of the public interest favours maintaining the exception.
35. 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. As stated in the Upper Tribunal decision *Vesco v Information Commissioner* (SGIA/44/2019): "If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure..." and "the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations" (paragraph 19).

36. As covered above, in this case the Commissioner's view is that the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(5)(f) was applied correctly.
37. As the Commissioner has determined that all of the withheld information is exempt under regulation 12(5)(f) of the EIR he has not gone on to consider the Council's application of regulation 12(5)(b) and regulation 13(1) to the information.

Right of appeal

38. 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

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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