

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

**Date:** 29 October 2024

**Public Authority:** Peak District National Park Authority  
**Address:** Aldern House  
Baslow Road  
Bakewell  
Derbyshire  
DE45 1AE

**Decision (including any steps ordered)**

---

1. The complainant requested information relating to an enforcement case from the Peak District National Park Authority ("the authority"). The authority disclosed some information however it withheld other information under Regulation 12(4)(e) (internal communications) and Regulation 12(5)(b) (course of justice).
2. The Commissioner's decision is that the authority was correct to apply Regulation 12(4)(e), and Regulation 12(5)(b) to withhold the information from disclosure.
3. The Commissioner does not require the authority to take any steps.

## Request and response

---

4. On 22 December 2023 the complainant wrote to the authority and requested information in relation to specified enforcement and appeal proceedings in the following terms:

"I would like to see all emails, any other written correspondence, and all meeting notes/file notes associated with these cases including where they relate to internal meetings or informal discussions. I do not need to be provided with any information that is already published on the Authority's public access system. I understand that there may be some exempt information and, if this is the case, I request that explanations are given for redacting or withholding such information."

5. The authority responded on 2 February 2024. It disclosed some information, however it withheld other information under Regulations 12(4)(e) and 12(5)(b).
6. Following an internal review the authority wrote to the complainant on 10 April 2024 maintaining its position.
7. A further review, dated 12 July 2024, also maintained the authority's initial decision to withhold the information under the exceptions cited.

## Scope of the case

---

8. The complainant contacted the Commissioner on 28 March 2024 to complain about the way their request for information had been handled. The complainant argues that the authority should have disclosed the requested information. The complainant argues that one of the enforcement documents has been signed by a person without the delegated authority to do so.
9. The following decision notice therefore considers whether the authority was correct to withhold the information under the exceptions it has cited.

## Reasons for decision

---

### Is the requested information environmental?

10. 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);
11. The requested information relates to a planning enforcement case. The Commissioner is therefore satisfied that the requested information falls within the scope of Regulation 2(c). It is a measure or activity designed to protect the elements listed in (a) above.

**Regulation 12(4)(e) internal communications**

12. Regulation 12(4)(e) provides that information is exempt if it involves 'the disclosure of internal communications'. It is a class-based exception, meaning there is no need to consider the sensitivity of the information in order to engage the exception. Rather, as long as the requested information constitutes an internal communication, then it will be exempt from disclosure.
13. The Commissioner has reviewed the withheld information and is satisfied that it consists of communications between officers at the authority. The information clearly comprises internal communications.

14. The Commissioner therefore considers that the exception at Regulation 12(4)(e) is engaged.

Public interest test

15. As with the other exceptions under the EIR, when Regulation 12(4)(e) is engaged, the public authority must still carry out the public interest test in order to decide whether the information should be withheld.
16. Under Regulation 12(1)(b), the public authority can only withhold the information if, in all the circumstances of the case, the public interest in the exception being maintained outweighs the public interest in the information being disclosed.
17. Furthermore, Regulation 12(2) provides a presumption in favour of the information being disclosed.

The public interest in the information being disclosed

18. In this case the enforcement relates to a development which did not have planning permission at the time of the request. However, a retrospective planning appeal to the Planning Inspectorate was in process. The enforcement proceedings are temporarily on hold pending the outcome of that planning appeal.
19. There is always a general public interest in public authorities being transparent about the actions they take in relation to the environment. Enforcement action generally relates to the protection of the environment in line with planning policies and procedures, and there is a public interest in an authority being clear and transparent about the actions it takes to protect the environment.
20. The authority recognised that there is a general public interest in the public being able to understand how it addresses planning contraventions. It felt that a disclosure of the information would educate the public as to how it goes about its actions. It considered that it would also highlight to the public acceptable standards of development and the requirement to submit planning applications for developments of this nature in the future.
21. The complainant argues that the enforcement notice was improperly issued and that a disclosure would provide evidence as to whether that is the case or not.

The public interest in the exception being maintained

22. The complainant has a personal private interest in the information being disclosed to him, but the Commissioner also recognises that there is a wider public interest in the information being disclosed. The authority argues, however, that there is a stronger public interest in it having a safe space to discuss and deliberate its actions as regards the potential for it renewing its enforcement action should the planning appeal be refused.
23. The authority argues that the public interest rests in allowing its officers to develop ideas, debate issues and reach decisions away from external interference and distraction. The planning appeal will inform any future decision the authority needs to take as regards whether to continue its enforcement case. A successful appeal would negate the need for it to continue. However, if the appeal is unsuccessful, it argues that it may need to take further enforcement action to ensure that planning requirements are met. It therefore argues that the issue is still a live issue, albeit one that is on hold at present.
24. The authority argues that a disclosure of its internal communications in relation to the enforcement, at a time when the enforcement is still live, would disrupt its ability to successfully enforce planning requirements if that proves to be necessary. It argues that it is not in the public interest for this to occur.

The balance of the public interest

25. The Commissioner has noted the complainant's arguments as to whether the enforcement notice was incorrectly issued. The authority has denied that that is the case. The Commissioner has no powers to make a judgement as to whether that is the case or not. If enforcement proceedings are continued an appeal can be lodged by the land owner which can consider whether the notice was issued correctly or not. Nevertheless, there is a public interest in regulatory action being taken appropriately, and the Commissioner can take into account that a disclosure of the requested information might potentially shed light on this issue.
26. The Commissioner considers that the underlying rationale for the exception at Regulation 12(4)(e) is to protect a public authority's need for a private thinking space. He considers that the extent to which disclosure would have a detrimental impact on internal processes will be influenced by the particular information in question and the specific circumstances of the request.

27. Arguments about protecting internal deliberation and decision-making often relate to preserving a safe space in which to debate issues away from external scrutiny and preventing a 'chilling effect' on the exchange of free and frank views in the future. Their weight will vary from case to case, depending on the timing of the request and the content and context of the particular information in question.
28. The need for a safe space is strongest when the issue is still live. Once a decision has been made the argument may carry little weight. The timing of the request is therefore an important factor.
29. Under the circumstances of this case, the Commissioner considers that a disclosure of the withheld information at a time when the potential for enforcement is still live would cause disruption to the authority's ability to take forward its case should it find it necessary to do so. Should the information be disclosed prior to the enforcement case being closed, information which is sensitive to the enforcement proceedings would be disclosed to the public, including to the landowner. This may weaken the authority's case, and potentially undermine the legal process. It is not in the public interest for this to occur.
30. The Commissioner has therefore decided that the public interest rests in the information being withheld in this case.
31. As noted, 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).
32. 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)(b) was applied correctly.

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

33. This reasoning covers whether the authority is entitled to rely on Regulation 12(5)(b) to refuse to disclose some of the requested information.

34. Regulation 12(5)(b) allows a public authority to refuse to disclose information to the extent that its disclosure 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.
35. The exception is wider than simply applying to information which is subject to legal professional privilege ('LPP'). Even if the information is not subject to LPP it may still fall within the scope of the exception if its disclosure would have an adverse effect upon the course of justice or the other issues highlighted.
36. As noted, the enforcement and appeal proceedings are ongoing, and so the issue was still live at the time that the authority received the request.
37. The authority argued that the disclosure of the withheld information would adversely affect the course of justice. It said that it would hinder its ability to continue to investigate the planning enforcement matter, and that a disclosure of the withheld information has the potential to prejudice the statutory appeals process that is currently with the Planning Inspectorate.
38. Furthermore, it argues that in order for the authority to be able to investigate alleged planning breaches, seek advice, and in order to ensure those individuals who are subject to potential enforcement action are dealt with fairly and justly, it requires a confidential space in which to consider its evidence and discuss proposed actions.
39. The Commissioner is therefore satisfied that the exception in Regulation 12(5)(b) is engaged. He has therefore gone on to carry out the public interest test required by Regulation 12(1)(b) of the EIR (as noted above).
40. As noted, 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.

The public interest in the information being disclosed.

41. The public interest in disclosure in respect of the application of Regulation 12(5)(b) include the same factors as outlined in the test for Regulation 12(4)(e), above.
42. Primarily it relates to creating greater transparency about how the authority oversees, regulates and enforces planning regulations and policies.

The public interest in the exception being maintained

43. The Commissioner considers that many of the factors in his analysis of the public interest as regards the application of Regulation 12(4)(e) are again relevant to this consideration of Regulation 12(5)(b).
44. The public interest in the information being withheld relates to ensuring that the authority's enforcement investigations and proceedings are not prejudiced or adversely affected through a disclosure of its advice and internal communications. Its preparation to continue its enforcement action would be undermined as its planning for such an occurrence would become open to the public and to the landowner concerned.
45. There is a strong public interest in protecting the authority's ability to be able to seek advice and to discuss the merits of its different options as regards the enforcement away from the public eye. A disclosure of the information risks its legal case being undermined by its deliberations being disclosed to the other party prior to the enforcement taking place.
46. A weakening of the confidence that parties have that the advice and deliberations will remain confidential whilst the enforcement is ongoing would undermine the ability of officers to seek advice and conduct litigation appropriately in the future. A disclosure of sensitive discussions during the course of the enforcement process would potentially undermine its position, and risks a chilling effect on future such cases.
47. Having regard to all the facts of the case, and having viewed the withheld information, the Commissioner is not aware of any public interest arguments that are sufficient to outweigh or override the public interest in the exception being maintained. The Commissioner has therefore decided that the balance of public interest lies in withholding the information and protecting the authority's ability to prepare to take forward its enforcement case, should it need to, without fear that a premature disclosure of its arguments would undermine or disrupt this.
48. Again, as noted, 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.
49. The Commissioner's view is that the balance of the public interests favours the exception being maintained, rather than being equally balanced.
50. 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)(b) was applied correctly.



## **Right of appeal**

---

51. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

52. 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.
53. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Ian Walley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**