

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 13 December 2024

**Public Authority:** Stockton-on-Tees Borough Council  
**Address:** Municipal Buildings  
Church Road  
Stockton-on-Tees  
TS18 1LD

#### **Decision (including any steps ordered)**

---

1. The complainant asked for information in relation to Wynyard Village Extension Development. Stockton-on-Tees Borough Council (the Council) provided a link and documents in response to the request; however, the complainant questioned the amount of information disclosed. In response a refusal notice citing regulation 12(5)(d) – confidentiality of proceedings of the EIR was provided.
2. The Commissioner's decision is that the Council is entitled to rely on regulation 12(5)(d) in the circumstances of this case and he considers that the balance of the public interest favours maintaining the exception.
3. The Commissioner does not require any steps as a result of this decision.

## Request and response

---

4. The complainant wrote to the Council on 21 April 2024 and requested information in the following terms:

"I would be grateful if you could supply the material requested below under the provisions of The Environmental Information Regulations 2004 and The Freedom of Information Act 2000, connected to the Wynyard Village Extension Development (13/0342/EIS):

1. Planning Application 17/2777/REM. Formal and informal material, including, but not limited to, minutes of meetings, emails in and out from accounts under control of relevant officers, notes of telephone conversations, notes, memos, letters and pre-application advice relating to discussions held between any officer of the Council and the Applicants or their agents and all other parties, relating to this application.
  2. Planning Application 20/2408/OUT. Formal and informal material, including, but not limited to, minutes of meetings, emails in and out from accounts under control of relevant officers, notes of telephone conversations, notes, memos, letters and pre-application advice relating to discussions held between any officer of the Council and the Applicants or their agents and all other parties, relating to this application.
  3. Planning Application 22/2579/FUL. Formal and informal material, including, but not limited to, minutes of meetings, emails in and out from accounts under control of relevant officers, notes of telephone conversations, notes, memos, letters and pre-application advice relating to discussions held between any officer of the Council and the Applicants or their agents and all other parties, relating to this application."
5. The Council responded on 15 May 2024 and provided a link and documents in scope of the request.
6. The complainant challenged the Council's response believing it had not disclosed all relevant documents in scope of their request.
7. The Council responded on 30 May 2024 stating that regulation 12(5)(d) was engaged to withhold further information in scope of the request.

## Scope of the case

---

8. The complainant contacted the Commissioner on 28 June 2024 to complain about the way their request for information had been handled. In their complaint they reiterated the point raised at paragraph 6 above.
9. During the Commissioner's investigation, the Council explained its position stating that the information being withheld under the exception relates to a pre-application advice process offered by the Council and that the ICO has previously acknowledged in a range of decisions (e.g. IC-115533-Y4T6, IC-206377-X4X4, IC-261144-D2H6) that such a process represents a 'proceeding' for the purposes of the exception.
10. Based on the Council's submissions, the Commissioner's investigation will therefore focus on the Council's reliance on regulation 12(5)(d) of the EIR.

## Reasons for decision

---

### Regulation 12(5)(d)

11. Regulation 12(5)(d) of EIR says that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law.
12. The engagement of the exception rests on three conditions being met.
13. First, the confidentiality referred to by a public authority must specifically relate to the confidentiality of proceedings. In his guidance 'Confidentiality of proceedings (regulation 12(5)(d))<sup>1</sup>', the Commissioner interprets 'proceedings' as possessing a certain level of formality. They will include but are not limited to formal meetings to consider matters that are within the authority's jurisdiction; situations where an authority is exercising its statutory decision-making powers; and legal proceedings.
14. The information withheld under this exception relates to a pre-application advice process offered by the Council. The Commissioner has

---

<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1626/eir\\_confidentiality\\_of\\_proceedings.pdf](https://ico.org.uk/media/for-organisations/documents/1626/eir_confidentiality_of_proceedings.pdf)

previously acknowledged in a range of decisions (e.g., FER0696769<sup>2</sup>, FER0900414<sup>3</sup>, IC-115533-Y4T6<sup>4</sup>, IC-206377-X4X4<sup>5</sup>) that such a process represents a 'proceeding' for the purposes of the exception.

15. Second, this confidentiality must be provided by law. The Council has explained that it considers the information to meet the threshold for the common law of confidentiality. This is because the information is not trivial and was submitted to it voluntarily as part of the pre-application advice process. All applications would have the expectation that any information would be subject to confidentiality.
16. It explained that pre-application advice is a service available to customers in order to provide advice and achieve a successful planning application. Information regarding pre-applications can be found on its website under <https://www.stockton.gov.uk/planning-advice>, where it states: "Our advice is free, confidential and provides guidance on what you may need to do to have the best opportunity to get your application approved."
17. Having considered the context in which the information has come to be held, the Commissioner is satisfied that this information is subject to the common law of confidentiality.
18. Third, it must be demonstrated that disclosure would have an adverse effect on the confidentiality of the proceedings.
19. The Council has explained there is an expectation that the pre-application advice process is confidential, and that the publication of the information would therefore undermine this expectation.
20. Given that the customer specifically marked the documents as 'strictly confidential' and sensitive confidential information was contained within

---

<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2173203/fer0696769.pdf>

<sup>3</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618026/fer0900414.pdf>

<sup>4</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022697/ic-115533-y4t6.pdf>

<sup>5</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024160/ic-206377-x4x4.pdf>

those documents and discussed at the pre-application meeting, the Council consider there was a statutory basis for regarding the proceedings as confidential.

21. The Council argued there is an expectation of confidence, and the information provided at pre-application stage remains confidential. If that were not the case individuals would be less willing to provide information for fear of disclosure.
22. Having considered the Council's arguments, the Commissioner has determined that disclosure would have an adverse effect on the confidentiality of proceedings.
23. The Commissioner is therefore satisfied that regulation 12(5)(d) of EIR is engaged because the information relates to the Council's pre-application advice process.
24. The Commissioner must next consider the balance of the public interest. In doing so, he has taken into account the EIR's express presumption in favour of disclosure and the public interest in transparency and accountability.
25. The Commissioner recognises in this case that there is a public interest that public authorities are appropriately open and transparent about their decision-making processes. This is particularly so in respect of concerns about planning matters.
26. The complainant has argued that: "It is my view, particularly given the unlawful conduct and the strength of feeling amongst residents, that there is an argument to be had for the disclosure of the pre-application material sought in my request to the Council. In all cases, the pre-application advice led to the submission of formal applications."
27. And further argued: "lack of an appropriate response reflects in my mind, a Council, resistant to compliance with the disclosure regime and one that does not espouse the necessity of openness and transparency. A policy to delete emails after 6 months and to delete email accounts of those that have left employment is hardly reassuring to residents that integrity and accountability is top of the workplace agenda."
28. However, and as noted in the above cited decisions, the Commissioner recognises that there is a strong public interest in ensuring that the Council is able to provide a robust pre-application advice process to prospective planning applicants, the purpose of which is to improve the efficiency and effectiveness of the planning application system, and reduce wasted resources by helping to prevent planning applications being made that are unlikely to be approved. In the Commissioner's view disclosing information from the pre-application process may

discourage open and frank engagement with the pre-application process, or similar processes.

29. 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).
30. The Council has argued that: "The public interest of gaining such information was considered irrelevant as the pre-planning application and actual planning application differed greatly. The release of the requested information would not increase any public knowledge of those issues, there was no additional information within the information which the public are not already aware of. There is therefore nothing of any significance to be added to the general factors in favour of disclosure mentioned above and expanded upon in the Decision Notice."
31. It concluded therefore, that there would be no gain to the public interest by releasing the information in scope of the request.
32. The Council went on to explain that the planning application was agreed by councillors at the public planning committee in June 2023 where the objectors were present, and the complainant gave representations. The decision was issued on 8 June 2023. Although the decision has been issued and the application is now determined, for the reasons outlined above the Council feel it is still necessary to withhold the information by virtue of the applicant's request for confidentiality and the irrelevance of the pre-application information to the wider public interest.
33. The Commissioner has concluded that, in the circumstances of this particular case, rather than being equally balanced, the public interest in maintaining the exception at regulation 12(5)(d) outweighs the public interest in disclosure.
34. 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)(d) is engaged in this case.

## Right of appeal

---

35. 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)

36. 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.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Joanna Marshall**  
**Group Manger**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**