

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 20 December 2024

Public Authority: London Councils
Address: 59½ Southwark Street
London
SE1 0AL

Decision (including any steps ordered)

1. The complainant has requested, from London Councils (LC), information regarding a proposed new secure children's home in London. LC provided some explanatory comments and a link to published information, but refused to disclose other information, citing regulation 12(4)(d) of the EIR (material still in the course of completion, unfinished documents or incomplete data) as its basis for doing so. During the Commissioner's investigation, LC relied on two additional exceptions – namely regulation 12(5)(d) (confidentiality of proceedings) and 12(4)(b) (manifestly unreasonable).
2. The Commissioner's decision is that regulation 12(4)(d) is engaged, and that the public interest favours maintaining the exception.
3. The Commissioner doesn't require any steps.

Request and response

4. On 5 March 2024, the complainant wrote to LC and requested information in the following terms:

- “1. Please supply information regarding how 'affordable', in terms of the criteria for the project proposed at the Thames Water Depot in Lea Bridge Road, has been assessed. Please provide any report prepared for the project showing how it is considered to be affordable.
2. Given that the land at the Thames Water Depot, where the project is planned to be sited, was purchased by the Education Funding Agency (EFA) please state how that purchase is taken into account in the understanding of 'affordable' in terms of the criteria for the project.
3. Given that approximately half of the land purchased by the EFA will not be used by the project how does that affect the understanding of the project being 'affordable'?”
5. LC responded on 4 April 2024. Regarding the first sentence in part 1 of the request, it explained:
- “During the site selection process for the proposed secure children’s home, ‘affordable’ meant that the site value was affordable. If a site met other criteria, the site selection process considered the extent to which that site could be purchased or leased at a cost that would represent the best value for money”.
6. For the second sentence in part 1, it refused to disclose information, on the basis of regulation 12(4)(d).
7. For parts 2 and 3 of the request, it repeated the explanation quoted in paragraph 5 above; LC also directed the complainant to a website¹.
8. Following an internal review, LC wrote to the complainant on 3 June 2024. It highlighted that “the term ‘affordable’ ... means that the site value is affordable ... there are no statements published by the project team as to the overall project’s affordability”. LC maintained its original position in respect of all three parts of the request, including its reliance on regulation 12(4)(d).

¹ <https://londonschbuild.co.uk/alternative-use-of-site-land-ownership/>

Scope of the case

9. The complainant contacted the Commissioner on 28 June 2024 to complain about the way their request for information had been handled.
10. They disagreed with LC's refusal to disclose information.
11. They explained that "a public consultation ... claimed the project was affordable. I wished to clarify what this meant"; they also explained there was a claim that the proposed site for the new secure children's home is the only suitable location, and that they're seeking "information about how this decision was reached".
12. The Commissioner wrote to the complainant, proposing informal resolution, given his previous decision notice² agreeing with LC's reliance on regulation 12(4)(d) in response to a previous request from the complainant relating to the proposed new secure children's home.
13. However, the complainant declined informal resolution.
14. In their correspondence with the Commissioner, the complainant emphasised that their request was about the affordability of the site.
15. They argued that there are "multiple issues around the future use of this site, which are of concern for any [planning] application ...".
16. They doubt that the site is affordable.
17. The Commissioner contacted LC for its submissions, and a copy of the withheld information. In its final response to the Commissioner, LC relied on two additional exceptions – regulations 12(5)(d) and 12(4)(b).
18. The Commissioner considers that the scope of this case is to decide whether any of the exceptions cited by LC apply. Given the similarities between this case and IC-303234-W7G5 (see the decision notice referenced in paragraph 12 above), eg in terms of the topic of the request, the information being withheld (it's the same in both cases),

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2024/4031506/ic-303234-w7g5.pdf>

the exceptions cited by LC and the arguments of both parties, the below analysis focuses on regulation 12(4)(d) first.

19. The Commissioner is satisfied that the request falls under the EIR, as the request in IC-303234-W7G5 did. Both the complainant and LC also consider that the complainant's request of 5 March 2024 falls under the EIR.

Reasons for decision

Regulation 12(4)(d)

20. Regulation 12(4)(d) provides that a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.
21. The exception can therefore be split into three possible limbs.
22. In its submissions to the Commissioner, LC confirmed that it's applying all three limbs.
23. The Commissioner's website³ provides detailed guidance on the exception, the three possible limbs and relevant considerations for each.
24. The Commissioner is satisfied that in this case, as in IC-303234-W7G5, the exception is engaged and the public interest favours maintaining the exception.
25. He directs readers to his decision notice in IC-303234-W7G5 and the comments and analysis about regulation 12(4)(d) in the 'reasons for decision' section there, rather than repeat his reasoning at length here.
26. He considers it's appropriate to do so, given that the withheld information is the same in both cases and the circumstances of the two requests are so similar.

³ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-124d-eir/>

27. The Commissioner finds, therefore, that LC was correct to rely on regulation 12(4)(d) in this case, to withhold the information.
28. Given this finding, the Commissioner hasn't gone on to consider whether the other exceptions cited by LC apply.

Right of appeal

29. 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

30. 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.
31. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Daniel Kennedy
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Water Lane
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