

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

### **Decision notice**

**Date:** 24 December 2024

**Public Authority:** London Borough of Waltham Forest

**Address:** Waltham Forest Town Hall  
Forest Road  
Walthamstow  
E17 4JF

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

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1. The complainant requested, from the London Borough of Waltham Forest (the council), information about a proposal to build a secure children's home. The council has refused the request on the basis of regulation 12(4)(c) of the EIR (request for information is formulated in too general a manner). However, it has also confirmed holding relevant information, and refused to disclose it, on the basis of regulations 12(4)(d) (material still in the course of completion, unfinished documents or incomplete data), 12(5)(d) (confidentiality of proceedings) and 12(5)(f) (interests of the person who provided the information).
2. The Commissioner's decision is that the council wasn't entitled to cite regulation 12(4)(c); however regulation 12(5)(d) is engaged, and the public interest favours maintaining that exception. The Commissioner finds breaches of regulations 7(3) (extension of time) and 14(2) (refusal to disclose information).
3. The Commissioner doesn't require any steps.

## **Request and response**

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4. On 12 February 2024, the complainant wrote to the council and requested information in the following terms:

“Please provide information held by [the council] regarding the proposal to build a Secure Children's Home at the Lea Bridge Road Depot.

Please provide information regarding communications with the proposers of the project and any other bodies involved, including other interested parties such as the Lee Valley Regional Park Authority.

Please provide information regarding discussions within [the council] regarding this project and how it may affect other projects already known about in relation to this site, in particular the East London Waterworks Park ...”.

5. The council responded on 12 March 2024, citing regulation 7(1) of the EIR (extension of time) and promising a full response by 9 April 2024.
6. The council then responded on 16 May 2024 and said it may hold the requested information. However it went on to apply several exceptions to the request. It cited regulation 12(4)(c) of the EIR, and invited the complainant to resubmit the request and specify which services of the council, and which other bodies and projects, the request relates to. It also refused to disclose information, on the basis of regulations 12(5)(d) and 12(5)(f).
7. Following an internal review, the council wrote to the complainant on 18 June 2024. It maintained its original position in respect of regulations 12(4)(c) and 12(5)(d), however it didn't mention regulation 12(5)(f).

## **Scope of the case**

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8. The complainant contacted the Commissioner on 24 June 2024 to complain about the way their request for information had been handled.
9. They said:

"I consider [the council] should supply the information ... The council has delayed, failed to respond, required me to complain to the ICO about its failure to provide the information at an earlier stage, has extended the time for replying as long as it can ... I believe all parts of the request should be met ... I am not in a position to say who has received correspondence. The authority recognises the project I am requesting correspondence about has been properly identified. The request is not too broad or vague. The matter concerned has not reached the planning stage so reference to planning is irrelevant. The request concerns information about [the council's] involvement in the project ...".

10. The Commissioner contacted the council for submissions, and a copy of the withheld information.
11. In its response, the council said that the information it holds, relevant to the request, is held for the purposes of a planning pre-application consultation. It provided the Commissioner with a sample of the withheld information, to show the type of records the council holds.
12. The council's submissions cite regulations 12(4)(c), 12(4)(d), 12(5)(d) and 12(5)(f).
13. The Commissioner carefully considered the scope of the request, and comments that the council made in its responses to the complainant and its submissions to the Commissioner. He contacted the council again, and asked it to confirm whether the council held any information about the project or facility other than planning pre-application information (eg any information held by other council services).
14. The council then confirmed that all records it holds relate to the planning pre-application process only.
15. The complainant has recently (5 December 2024) stated that they are "now expecting correspondence and advice from the planning department to be included in my request", even if that wasn't the type of information they were seeking when they made the request (see also paragraph 41 below).
16. The Commissioner considers that the scope of this case is to decide whether any of the exceptions cited by the council apply. First, he'll

address regulation 12(4)(c); the Commissioner then proposes to focus on regulation 12(5)(d). He'll also consider relevant procedural matters.

17. The Commissioner is satisfied that the request falls under the EIR – the request and withheld information respectively relate to a proposed development project and the planning pre-application process associated with that development.

## Reasons for decision

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### Regulation 12(4)(c)

18. Regulation 12(4)(c) provides that a public authority may refuse to disclose information to the extent that the request is formulated in too general a manner, and the public authority has complied with regulation 9 (advice and assistance).
19. The Commissioner's guidance<sup>1</sup> explains that the phrase 'too general a manner' means a request is unclear or non-specific, rather than one that is too large or extensive in coverage.
20. In its original response, the council acknowledged that the request was "specific in respect of the location of the site and the nature of the development proposal for which information is sought". However it argued that the request didn't specify a particular function of the council (eg its role as Local Planning Authority or its responsibility for children's services), and that the terms 'other bodies' and 'other projects' were too general. It invited the complainant to resubmit the request and specify which services, other bodies and other projects the request relates to.
21. The complainant replied that the request wasn't "ambiguous or too general", a view they maintained in their initial correspondence with the Commissioner (see paragraph 9).
22. In its submissions, the council has argued that the complainant's comments in the internal review request indicate that the request:

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-12-4-c-requests-formulated-in-too-general-a-manner/>

“actually pertains primarily (and potentially solely) to matters relating to the running of the facility and agreements/discussions pertaining to operational matters, [ie] to information held by [council] services other than Planning”.

23. The council argued that this consideration supports its original reference to regulation 12(4)(c).
24. However, as noted earlier (paragraphs 13 – 14), the Commissioner has asked the council whether it actually holds any information of the type referenced in the comments quoted in paragraph 22, and the council has confirmed that it doesn't.
25. The Commissioner considers that the request wasn't formulated in too general a manner, even if it wasn't as specific as the council wanted it to be.
26. He considers the request was clear and specific enough for the council to identify and locate the information requested.
27. The Commissioner finds that the council wasn't entitled to cite regulation 12(4)(c) to refuse the request.

### **Regulation 12(5)(d)**

28. Regulation 12(5)(d) provides that a public authority may refuse to disclose information to the extent that disclosure would adversely affect the confidentiality of the proceedings of any public authority, where such confidentiality is provided by law.
29. As the Commissioner's guidance<sup>2</sup> explains, there are four questions to consider:
  - What are the proceedings?
  - Is the confidentiality of those proceedings provided by law?

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<sup>2</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-12-5-d-confidentiality-of-proceedings-environmental-information-regulations/>

- Would disclosing the information adversely affect that confidentiality?
  - In all the circumstances of the case, does the public interest in maintaining the exception outweigh the public interest in disclosure?
30. The Commissioner has issued a relatively recent, detailed decision notice involving a request for planning pre-application information<sup>3</sup>. The public authority in that case cited regulation 12(5)(d), as the council has in this case.
31. The council's comments are similar to those made by the public authority in IC-115533-Y4T6, both on the engagement of the exception and the balance of the public interest.
32. The council told the complainant that the planning pre-application process represents a 'proceeding' for the purposes of regulation 12(5)(d); that the proceedings are protected by a common law duty of confidence (it said the information isn't otherwise accessible, isn't trivial, and was provided to the council in circumstances that would impart an obligation of confidence); and that disclosure would adversely affect the confidentiality of the pre-application process.
33. The complainant has told the Commissioner eg that reference to planning is irrelevant, as the matter hasn't reached the planning stage (see paragraph 9 above); they also said they don't see how requesting information regarding what the council knew about the project is "of concern or illegitimate", or why advice to a possible developer should be withheld.
34. The Commissioner is satisfied that the exception is engaged, for the reasons explained in paragraphs 22 – 36 of the decision notice cited in paragraph 30 above.
35. On the public interest test, the council acknowledged to the complainant that there's a public interest in the work of local government being

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<sup>3</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022697/ic-115533-y4t6.pdf>

scrutinised, and in transparency (including transparency around proposals for development on publicly-owned land) and accountability.

36. Against disclosure, the council listed harm to the general principle of confidentiality (there's an expectation that the pre-application process is confidential); harm to the effectiveness of the pre-application process (disclosure "would limit frank, open and honest discussion"); that the pre-application process isn't a forum for interested third parties to comment on proposals; the council also said no planning application has been submitted, and that plans may yet be substantially amended before an application, or an application may not come forward at all.
37. The complainant has argued eg that there are "issues around the choice of the site and exactly what role [the council] has played in this project"; and that members of the public will have limited time to research and object to any application as part of the planning application process.
38. As noted above (paragraph 14), the council has confirmed that the only relevant information it holds is planning pre-application information.
39. The Commissioner agrees with the council, that the public interest favours maintaining the exception. Given the similarities between this case and the circumstances of IC-115533-Y4T6, the Commissioner considers that it's appropriate to direct readers to his reasoning in the decision notice for that case, rather than repeat it at length here.
40. In particular, the Commissioner highlights paragraphs 46 – 47 and paragraph 49 of the decision notice in IC-115533-Y4T6. Those paragraphs explain that there will always be a general public interest in protecting confidential information; that there is a considerable public interest in ensuring that the effectiveness of the planning pre-application process isn't undermined; and that the planning pre-application process isn't designed to provide an opportunity for the public to comment on proposals by developers. Paragraph 49 of that decision notice explains:  
  
"... once a planning application has been submitted the planning process provides precisely such a role and opportunity. In the Commissioner's view ... this route of engagement in the planning process for interested third parties at a later stage in the process, but still prior to a local authority's decision on a particular application,

arguably reduces the public interest in disclosure of information about pre-planning”.

41. The Commissioner also emphasises that in this case, whilst the complainant wanted to discover what the council knew about the secure children’s home project and when, the council has stated that the information it holds is planning pre-application information. Therefore, disclosing the withheld information is unlikely to achieve the complainant’s goals. It’s not the type of information that the complainant was originally seeking (the complainant said to the Commissioner on 5 December 2024, regarding “correspondence and advice from the planning department”, that they “had not actually expected to receive information of that kind. My request was originally framed as a request for information about what was known and when it was known”).
42. Given the Commissioner’s finding that regulation 12(5)(d) is engaged and should be maintained, he hasn’t considered regulations 12(4)(d) or 12(5)(f).

### **Procedural matters**

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43. The council failed to notify the complainant within 20 working days that it was relying on regulation 7(1) to extend the deadline for responding to 40 working days; furthermore, the council failed to provide its refusal notice within 40 working days.
44. The council therefore breached regulations 7(3) and 14(2) respectively.



## **Right of appeal**

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45. 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)

46. 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.
47. 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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