

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 1 August 2022

Public Authority: Stockton-on-Tees Borough Council

Address: PO Box 11
Municipal Buildings
Church Road
Stockton-on-Tees
Cleveland
TS18 1LD

Decision (including any steps ordered)

1. The complainant has requested information relating to fireworks display at Riverside Park, which took place on 7 November 2021.
2. The Commissioner's decision is that Stockton-on-Tees Borough Council ("the council") has correctly applied regulation 12(5)(a) EIR to withhold the information.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 2 November 2021, the complainant wrote to the council and requested information in the following terms:

"Apologies if my original email wasn't clear. I wasn't asking permission to fly a drone - just advising that I would be operating one to film the display. As an experienced drone operator, I am well aware of the current regulations and can assure you that the drone will be operated within current CAA guidelines. Please note that there was a change in legislation relating to drones at the end of 2020 which you may not be aware of. The CAA CAP2007 is likely relevant."

To ensure that I am operating within the current guidelines, what I was requesting was the following information:

1. A copy of the risk assessment for the event.

2. *Where the fireworks will be launched from.*
3. *The approximate height the fireworks will reach."*
5. The council originally considered the request under the Freedom of Information Act 2000 ("FOIA"). On 5 November 2021 it refused to provide the requested information citing section 31 FOIA as the basis for doing so.
6. The complainant requested an internal review on 8 November 2021. The council responded on 16 November 2021, maintaining its original position to withhold the information. It stated that to disclose the information, would provide individuals with sensitive information which could impact on law enforcement and make events vulnerable to crime.

Scope of the case

7. The complainant contacted the Commissioner on 17 November 2021 to complain about the way their request for information had been handled. On the complaint form, the complainant stated:

"I do not believe that the exemption would apply to all information held in their risk assessment."
8. On 8 June 2022, the Commissioner wrote to the council advising that he considered the request fell under the remit of EIR. He also asked it to revisit the request to consider if it was able to provide any information in response to parts 2 and 3 of the request.
9. The Commissioner also advised that if the council agreed that the request falls under EIR and decided to apply a different exception, it must notify the complainant and provide further submissions under the relevant regulation.
10. The council issued a revised response to the complainant on 6 July 2022. It refused to provide the information under regulation 12(5)(a) EIR stating that, the disclosure of the information could provide individuals with sensitive information about how the council manages the risk to public safety at the event.
11. The complainant has not provided any further submissions to the Commissioner following receipt of the revised response dated 6 July 2022. The Commissioner has exercised his discretion and accepted the complaint without an internal review, due to the time that has elapsed.
12. The Commissioner considers the scope of his investigation to be to establish whether the public authority is entitled to withhold the requested information under regulation 12(5)(a) EIR.

Reasons for decision

Regulation 12(5)(a) – international relations, defence, national security, or public safety

13. Regulation 12(5)(a) allows a public authority to refuse to disclose information if its disclosure would adversely affect –
 - (a) international relations, defence, national security, or public safety’.
14. The council argues that disclosing the withheld information would adversely affect public safety.
15. To demonstrate that disclosing the information would harm one of the interests in 12(5)(a), the council needs to:
 - a) identify a negative consequence (adverse effect) of the disclosure that is significant (more than trivial) and is relevant to the exception claimed;
 - b) show a link between the disclosure and the negative consequence, explaining how one thing would cause the other;
 - c) show that the harm is more likely than not to happen.
16. When considering whether an exception is engaged the Commissioner's approach is to consider what harm would occur if the information were placed in the public domain and freely accessible to all. The question therefore is whether making the information freely accessible to anyone and everyone would cause that harm.
17. To support its arguments, the council provided the Commissioner with the withheld information. This included the risk assessment for the event and the full site plan, which the Commissioner has fully considered in reaching his decision in this matter.

The council's arguments

18. The council highlighted that the risk assessment was conducted to help mitigate any risks associated with the event including details relating to the prevention of crime, sabotage, and terrorism. It added that, releasing the risk assessment, even in its redacted form, could provide individuals with sensitive information about how the council manages the risk to public safety at the event. The council argued that the disclosure of the information could allow the information to be used for

criminal purposes, sabotage or terrorism, and impact on law enforcement, making the event more vulnerable, and heighten the level of risk to the public.

19. The council also stated that, to disclose information relating to the location where the fireworks were to be launched and the approximate height the fireworks will reach, would adversely affect the ability to protect the launch site, public, public buildings, and industrial sites from crime, acts of sabotage and terrorism. The council is of the view that flying drones at public events pose a security risk particularly with the high numbers of the public in attendance. It also exercised its legal right to prohibit the flying of drones during the event.
20. The council considers that the likelihood of occurrence is probable as the event has a number of objectors, particularly in relation to the use of public funds within the current economic climate. It is of the view that the contentious climate is likely to continue well into the future and when coupled with the high number of people who attend the event, a disclosure of the withheld information would raise the level of risk if the information were made publicly available.
21. The council argues that although the risk may be small there is potential for the harm caused to the public by such an occurrence to be severe.

The Commissioner's analysis

22. Looking to the tests identified by the Commissioner in paragraph 16 above:
23. The Commissioner is satisfied that the negative consequences identified by the council are significant and relate to the harm which the exception is intended to prevent. In that, to release the requested information would adversely affect the council's ability to ensure public safety at the event.
24. Although the event in question has passed, the Commissioner accepts the council's argument that whilst they conduct new risk assessments for each event, there are similarities between risk assessments and considerations, and therefore the exception still applies. The council has therefore identified a relevant risk which is associated with the exemption in regulation 12(5)(a).
25. A disclosure under EIR is considered to be a disclosure to the whole world and should be considered in that light. The Commissioner is satisfied that disclosing the risk assessment, the location where the fireworks were to be launched and the approximate height that the fireworks would reach, risks individuals using the information as a means to plan sabotage, crime and terrorism.

26. The Commissioner notes the contentious nature of the event due to the use of public funds, which is a potential for individuals to seek to cause criminal damage or to plan sabotage and terrorism. The Commissioner notes that terrorism is a pertinent risk to large gatherings and public events.
27. The Commissioner also accepts the council's argument that although the risk may be small, there is potential for the harm caused to the public by such an occurrence, to be severe. Thereby increasing the likelihood of such an incident occurring to the point where it can be said that that harm is more likely than not to occur if the requested information were to be disclosed.
28. Having considered the tests set out in his guidance¹, the Commissioner is satisfied that disclosing the risk assessment, the location where the fireworks were to be launched and the approximate height that the fireworks would reach, would have an adverse effect upon public safety and therefore the exception in regulation 12(5)(a) is engaged.
29. The Commissioner has therefore conducted the public interest test required by regulation 12(1). In doing so, he has considered the presumption towards the disclosure of the information which is set out in regulation 12(2).
30. The test, set out in regulation 12(1)(b) is whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

The public interest test

Public interest in favour of disclosure

31. The Commissioner recognises that greater transparency over the event and decisions of the council may help to alleviate the concerns within the community. There is a public interest in creating greater transparency over the information which the council used to reach its decisions on the safety of the event.

The public interest in maintaining the exception

32. The likelihood of harm from crime, sabotage or terrorism occurring at the event may be small, however there is potential for the harm caused to the public by such an occurrence to be severe.

¹ [International relations defence national security or public safety \(regulation 12\(5\)\(a\)\)-v1.1- EIR guidance - 20203112 \(ico.org.uk\)](#)

33. The Commissioner understands the council's concerns that a disclosure of the withheld information to the whole world would increase the risk to public safety.
34. There is a public interest in ensuring safety at the event. The Commissioner understands that the complainant is an experienced drone operator however, the disclosure of such information is likely to raise the level of risk at such events.

The Commissioner's conclusion

35. In this case the Commissioner's view is that the public interest in maintaining the exception at regulation 12(5)(a) outweighs that in the information being disclosed.
36. The public interest in the information being disclosed, and therefore creating greater transparency over the event is outweighed by the additional risks associated with disclosing detailed information about the event to the whole world.
37. The council was not, therefore, obliged to disclose the requested 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.

Signed

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF