

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

Decision notice

Date: 3 March 2014

Public Authority: Uttlesford District Council
Address: London Road
Saffron Walden
Essex
CB11 4ER

Decision (including any steps ordered)

1. The complainant has requested a copy of the drafts of a Highways Impact Assessment report.
2. The Commissioner's decision is that Uttlesford District Council correctly relied on Regulation 12(4)(d) (unfinished documents) not to provide the requested information.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 21 June 2013 the complainant wrote to Uttlesford District Council ("UDC") and requested information in the following terms:
 - 1) A copy of the latest draft of the Highways Impact Assessment;
 - 2) Copies of each previous draft of the Highways Impact Assessment which has been submitted to UDC; and
 - 3) A copy of the terms of reference in accordance with which UDC has commissioned the Highways Impact Assessment.
5. UDC responded on 4 July 2013. It stated that whilst it held the information requested at 1 and 2 it relied on regulation 12 (4)(d) not to

communicate it to the complainant. It did, however, release the information requested at 3.

6. Following an internal review, UDC wrote to the complainant on 5 August 2013. It stated that it upheld its original decision.

Scope of the case

7. The complainant contacted the Commissioner on 18 August 2013 to complain about the way his request for information had been handled.
8. The complainant confirmed to the Commissioner, on 21 November 2013, that the final version of the Highways Impact Assessment was now publically available. Nonetheless the complainant asked the Commissioner for his decision as to whether UDC's original refusal accorded with EIR.

Reasons for decision

9. Regulation 5(1) of the EIR provides that "*a public authority that holds environmental information shall make it available on request*". A public authority may only refuse to disclose information where an exception applies.
10. If an exception applies, the information is still to be disclosed unless "*in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information*" (regulation 12(1)(b)). This is assessed by having regard to the overriding presumption in favour of disclosure. The result is that the threshold to justify non-disclosure is a high one.
11. Regulation 12(4)(d) is engaged when the request relates to material that is still in the course of completion, unfinished documents or incomplete data. Material which is still in the course of completion can include information created as part of the process of formulating and developing policy, where the process is not complete.
 - Draft documents are unfinished even if the final version has been produced.
 - Data that is being used or relied on at the time of the request is not incomplete, even if it may be modified later.
12. If the information in question falls into one of those categories, then the exception is engaged. It is not necessary to show that disclosure would

have any particular adverse effect in order to engage the exception, but any adverse effects of disclosure may be relevant to the public interest test.

13. The information request was specifically for "drafts" of a document called or to be called the Highways Impact Assessment. Accordingly the exception is engaged given what was requested.
14. Under regulation 12(1)(b), notwithstanding the exception is engaged, information can only be withheld if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
15. UDC identified the following public interest factors that merited disclosure:
 - a. Openness
 - b. Transparency
 - c. Accountability
 - d. Broadening of policy input
 - e. Would contribute to public debate
16. UDC identified the following public interest factors that merited the maintenance of the exception:
 - a. Facilitates a safe thinking space for policy development
 - b. Releasing various drafts may mean that an unnecessary and time-consuming exercise in comparing drafts
17. The complainant, on or around 10 December 2013, in correspondence to the Commissioner said that there is a presumption in favour of disclosure, so in principle it should have been disclosed unless there was a public interest in not disclosing it. The complainant also said that the draft document may be different from the final version and this would favour releasing the information. The complainant believes that the UDC has a policy of refusing EIR and FOIA requests where disclosure of the information might cause them embarrassment or not be in their political interests, the current request being a case in point.
18. The Commissioner notes the general public interest in disclosing environmental information, derived from the purpose of the EIR. He also accepts that releasing the information, when requested, would have facilitated the public debate on the particular environmental issue to which the information relates.

19. However, as the process of formulating policy on the particular issue was still ongoing when the request was received, disclosure of the drafts would have made it difficult to bring the process to a proper conclusion.
20. The Commissioner appreciates the importance of public authorities being afforded safe space (thinking space) and drafting space when considering whether, and on what terms, a policy should be adopted and pursued. In this case the fact that the policy had not been finalised added considerable weight to the argument that disclosure would prejudice this safe space.
21. The Commissioner has therefore decided that, in all the circumstances, the public interest favours maintaining the exception. In this case the view of the Commissioner is that, at the time of the request, the public interest in preserving that safe space outweighed the public interest in disclosure.
22. The Commissioner wishes to stress that he reaches this decision on the circumstances that prevailed at the time the request was originally refused by UDC.

Right of appeal

23. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

24. 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.
25. 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

Jon Manners
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