

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 19 May 2014

Public Authority: Department for Communities and Local Government

Address: Eland House
Bressenden Place
London
SW1E 5DU

Decision (including any steps ordered)

1. The complainant has requested information relating to a planning appeal. The Department for Communities and Local Government provided some information but withheld other information under the EIR exceptions for internal communications (regulation 12(4)(e).
2. The Commissioner's decision is that the Department for Communities and Local Government has correctly applied regulation 12(4)(e) to the requested information and that the public interest favours maintaining the exception.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 19 June 2013 the complainant wrote to the Department for Communities and Local Government (DCLG) and requested information in the following terms:

(In relation to the planning appeal by Jelson Homes regarding land at Melton Road (Ref: APP/X2410/A/12/2173673))

- "(1) The "detailed submission" received on 7 May 2013 as referred to the letter sent by Mr Nick Boles MP (the Parliamentary Under Secretary of State (Planning)) to Mrs Nicky Morgan MP (the MP for Loughborough) dated 24 May 2013;*
 - (2) Any submissions, representations and internal memoranda or other material received by the Secretary of State or Mr Boles in respect of the appeal from officials at the Department for Communities and Local Government and / or the Planning Inspectorate; and*
 - (3) All other correspondence entered into between the Secretary of State (or Mr Boles or officials at the Department for Communities and Local Government and / or the Planning Inspectorate) and any other person in respect of the appeal."*
5. The DCLG responded on 16 July 2013. It provided some of the requested information and withheld other information under the EIR exception for internal communications (regulation 12(4)(e)).
 6. Following an internal review the DCLG wrote to the complainant on 16 August 2013. It stated that it was maintaining its original position.

Scope of the case

7. On 20 September 2013 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner confirmed with the complainant that his investigation would consider whether, in withholding some of the requested information, DCLG had correctly applied regulation 12(4)(e) of the EIR.

Reasons for decision

Regulation 12(4)(e) – internal communications

9. Regulation 12(4)(e) of the EIR states:

"For the purposes of paragraph 1(a), a public authority may refuse to disclose information to the extent that...

(e) the request involves the disclosure of internal communications."

10. Regulation 12(4)(e) is a class based exception so it is not necessary to demonstrate prejudice or harm to any particular interest in order for its engagement.
11. The withheld information consists redactions which have been made to 3 specific documents, namely, a letter dated 7 May 2013 from the DCLG's planning casework department to a DCLG Under Secretary of State (the "full submission", a summary of the full submission and an internal email.
12. The Commissioner has viewed the withheld information and it is as described by the DCLG. That is, it is communications between individuals within the DCLG and therefore they are clearly internal communications for the purposes of regulation 12(4)(e).
13. As the exception is engaged the Commissioner has gone on to consider the public interest test.

Public interest in disclosure

14. DCLG has acknowledged that there is a general public interest in information relating to the environment and associated decision making being disclosed. It has also noted that the EIR (under regulation 12(2)) provides a general presumption in favour of disclosing information disclosure of the information could promote public participation in the planning process.
15. DCLG has further noted that there is a legitimate public interest in the planning process being transparent and accountable and, whilst the planning appeal process provides a mechanism for accountability, disclosure of relevant information would ensure that any appeal would be fully informed.

Public interest in maintaining the exception

16. In support of its view that the exception should be maintained the DCLG provided the Commissioner with some relevant background details.
17. DCLG explained that applications for planning permission are made, in the first instance, to local planning authorities. Decisions made by local planning authorities can be appealed to the Secretary of State. Such appeals are usually heard and determined by a planning inspector although in certain circumstances the Secretary of State may recover an appeal for their own decision. Most appeals recovered by the Secretary of State are the subject of a local inquiry.
18. DCLG further explained that, whilst in the case to which the request relates, the Secretary of State is making the final decision, the planning inspector prepares a report after the inquiry setting out their conclusions and making a recommendation to the Secretary of State. Once the inspector's report is issued it, and any other post-inquiry evidence is considered by officials who prepare advice for the Secretary of State. A decision made by the Secretary of State is set out in a decision letter issued to the relevant parties and there is a right of appeal against the decision via the High Court.
19. DCLG confirmed that, in this case, the decision made on the planning appeal by Jenson Homes in connection with their planning application, as well as the planning inspector's report was issued on 14 May 2013. The complainant submitted an appeal to the High Court seeking to quash the Secretary of State's decision and the judgement was handed down on 19 February 2014¹.
20. DCLG has argued that the public interest in favour of informing the appeal process has already been served by the full availability (via publication of the Secretary of State's decision and Planning Inspector's report) or disclosure of relevant information. DCLG has highlighted that, at all stages in the planning process and subsequent appeals, the reasons for decisions have been placed in the public domain.

¹ Case number: CO/7867/2013.

21. DCLG has also noted that, as the decision maker, the Secretary of State is responsible and accountable rather than their officials. It has argued that, as it is their decision which carries legal weight in the face of an appeal, there is less public interest in disclosing other internal considerations in this regard. DCLG has argued that, in any event, the withheld information, which comprises limited redactions, would not serve to enhance public understanding of the issues or improve engagement beyond the information already in the public domain.
22. DCLG has argued that it is essential that Ministers are able to rely upon the free and frank advice of officials as part of the decision making process. In this case, whilst the Secretary of State had issued their decision on the appeal at prior to the request being received, an appeal against that decision was in progress at the High Court. At the time of the request, therefore, DCLG needed to defend the Secretary of State's decision and, disclosure of the information, would invade the safe space needed to freely explore the relevant issues.
23. DCLG has further submitted that the sort of discussions that are identified in the withheld information, if they are to remain frank and open, benefit from them occurring in the belief that they might not soon be publically disseminated. DCLG has argued that disclosure of the information at the time of the request would, given the ongoing nature of the appeal, be likely to inhibit the frankness and candour of officials contributing to any discussions. This, in turn, would restrict the quality of the decision making process.

Balance of the public interest

24. The Commissioner considers that the volume of published information and the information disclosed by the DCLG in response to the request have served the public interest in transparency in this matter. He accepts that disclosure of the withheld information would not add anything of substance to public engagement in this matter, at least not to warrant the potential effects of disclosure on the ability of DCLG to engage in effective decision making. The Commissioner also acknowledges that, in respect of accountability, the planning appeal and legal processes provide appropriate remedies for parties' seeking to overturn decisions.
25. On balance, the Commissioner finds that the public interest factors favour the maintenance of the exception rather than the disclosure of the withheld information. The more relevant factors are the proximity of the information request to the date of the Secretary of State's decision, the need to avoid the fettering of the decision making process by fear of

premature disclosure, the then public availability of the Secretary of State's decision letter and the planning inspector's report, and the on-going legal challenge to the Secretary of State's decision.

Right of appeal

26. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. 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

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