

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

Date: **6 June 2025**

Public Authority: **London Borough of Tower Hamlets**
Address: **Tower Hamlets Town Hall**
160 Whitechapel Road
London
E1 1BJ

Decision (including any steps ordered)

1. The complainant submitted a request to London Borough of Tower Hamlets (the Council) for all communications sent to or from any member of the Council staff (including the Cabinet and Mayor) regarding the establishment of a "Culturally Sensitive Substance Misuse Recovery Centre" at 15 Chandler Street. The Council confirmed that it held information falling within the scope of the request but considered this to be exempt from disclosure on the basis of regulation 12(4)(e) (internal communications) of the EIR.
2. The Commissioner's decision is that some of the communications do not fall within the definition of 'internal communications' and therefore are not exempt from disclosure on the basis of regulation 12(4)(e). The Commissioner accepts that the remaining information is exempt from disclosure on the basis of regulation 12(4)(e) but that the public interest favours disclosure of this information.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
 - Provide the complainant with all of the information falling within the scope of his request. In doing so, as described in this notice, the

Council can redact the names and contact details of certain parties on the basis of regulation 13(1) (personal data).

4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. The complainant submitted the following request to the Council on 24 September 2024:

'I am writing to request information under the Freedom of Information Act 2000. In order to assist you with this request, I am outlining my query as specifically as possible. I would like to receive copies of all written communications that have been sent via email or hard/paper copy, to or from any member of the London Borough of Tower Hamlets Council staff (including Mayor Rahman and members of his Cabinet), regarding the establishment of a "Culturally Sensitive Substance Misuse Recovery Centre" at 15 Chandler Street E1W, and it's associated Planning Application under ref: PA/24/01545/NC | Change of use of first, second and third floors of existing building from ancillary community training facilities used in connection with the existing ground floor pre-school facility (Use Class E) to a Substance Misuse Recovery Centre (Sui Generis) with associated internal alterations at ground floor level to form a separate and self-contained entrance from Meeting House Alley. | 15 Chandler Street, London, E1W 2QL.

The data I am requesting should include communications involving all earlier (if any) iterations of the title this proposed service was discussed under, prior to being known as the "Culturally Sensitive Substance Misuse Recovery Centre."

I would be interested in any information held by your organisation regarding my request. I understand that I do not have to specify particular files or documents, and that it is the department's responsibility to provide the information I require.'

6. The Council responded on 30 September 2024 and confirmed that it held information falling within the scope of the request but considered this to be exempt from disclosure on the basis of regulation 12(4)(e) (internal communications) of the EIR.

7. The complainant contacted the Council on 1 October 2024 and asked it to conduct an internal review of this refusal.
8. The Council responded to the internal review on 28 October 2024. The review confirmed that the requested information was considered to be exempt from disclosure under regulation 12(4)(e) of the EIR.

Scope of the case

9. The complainant contacted the Commissioner on 30 October 2024 in order to complain about the Council's handling of his request. More specifically he complained that:

- The request should have been handled under FOIA rather than the EIR.
- In any event, he disputed the Council's decision to rely on regulation 12(4)(e) of the EIR to withhold this information as he considered there to be a compelling public interest in the disclosure of the information.
- He was also concerned that the internal review may have been completed by the same officer who issued the initial refusal notice.

Reasons for decision

Is the requested information environmental?

10. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;

- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

11. The complainant noted that although information about planning and planning matters are often classed as environmental information, in this instance he was sceptical that the work proposed by the Council met this criteria. He highlighted that all of the work proposed by the Council involves work within the building itself, not in the surrounding area and there were no environmental impacts that he was aware of.

12. The Commissioner recognises that a previous decision has concluded that information on internal alterations in buildings are not environmental information (the case of Black v Information Commissioner EA/2011/0064 concerned the fitting of reproduction or antique fireplaces). However, in the circumstances of this case the Commissioner is conscious that whilst the proposal only includes internal rather than external alterations, it also relates to a change in use of the building. The Commissioner considers that a change in a building's use is likely to have an impact on the local area and environment. Indeed he notes that a number of objections that have been raised about the proposal include concerns that the change of use will result in an increase in noise, a factor listed in 2(1)(b) of the EIR. Therefore, the Commissioner considers that this planning application – and discussion of the proposed change of use to which the requested information relates – is information on a measure for the purposes of regulation 2(1)(c) likely to have an impact on factors listed in regulation 2(1)(b).

Regulation 12(4)(e) – internal communications

13. Regulation 12(4)(e) states that a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications. It is a class-based exception, meaning there is no need to consider the sensitivity of the information in order to engage the exception. Rather, as long as the requested information constitutes an internal communication then it will be exempt from disclosure.

14. In deciding if a communication is internal consideration needs to be given to whether the communication was sent both internally and externally. As the Commissioner's guidance explains:

"A communication sent internally and to an external third party is not an internal communication. You have communicated it both internally and externally. The unique feature of an internal communication is that it is **only** circulated internally."¹

15. Furthermore, consideration needs to be given to whether a communication is forwarded externally. The Commissioner's guidance explains that:

"If you forward an internal communication to someone outside the public authority, that communication generally stops being classed as internal...

...A communication from a third party does not automatically become an internal communication if it is later circulated within the public authority. However, if information from the external communication is later reproduced in a separate internal communication, that separate communication is internal, irrespective of the origin of the content.

If an external communication is forwarded as an attachment to an internal email, the attachment is not usually internal. However, the fact that someone has circulated it within the authority, can bring it within the scope of the exception. Depending on the wording of the request, an attachment which has been circulated internally can form part of the internal communications being requested."

16. In the circumstances of this case the communications in the scope of the request consist of emails. The Commissioner's guidance provides the following advice on applying the above principles to emails and email chains:

"An internal email sent from an individual within a public authority to multiple recipients within that public authority is an internal communication.

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-12-4-e-internal-communications/>

An email sent or forwarded from an individual within a public authority to a third party does not constitute an internal communication, even if they have also sent it within the public authority...

... An email received from a third party does not become an internal communication just because someone later forwards it within the authority. The internal email forwarding it on is an internal communication.

You may need to divide an email chain into internal and external sections for the purposes of applying this exception. You do not need to consider every email separately. If an internal email chain is forwarded or copied to a third party, the whole chain up to that point has been sent outside the public authority and therefore ceases to be an internal communication. It makes sense to look at the latest emails first and work backwards. If the latest emails are internal emails, these constitute internal communications. At the point an email has been sent or copied externally, the whole email chain up to that point ceases to be internal."

17. Having reviewed the withheld information in the scope of this request, the Commissioner noted that a number of emails were sent to, or copied to external third parties, or consist of chains containing emails from third parties.
18. The Commissioner contacted the Council, identified the third parties in question, and explained that at that stage his preliminary view was that any emails sent to, received from or copied to these individuals would not be exempt from disclosure on the basis of regulation 12(4)(e) as they would not constitute internal communications. The Commissioner explained to the Council that he would welcome any further submissions it wished to provide if it wished to maintain its position that some (or all) of the emails with these recipients constituted internal communications. The Commissioner noted that his guidance acknowledged that there are exceptional circumstances which might justify an argument that a communication with an external third party should be seen as internal for the purposes of regulation 12(4)(e).
19. The Council did not provide the Commissioner with any further submissions on this point.
20. Therefore, for the reasons set out above at paragraph 17, and applying the principles set out in his guidance quoted at paragraph 16 the Commissioner has concluded that a number of emails falling within the scope of the request do not constitute internal communications. Such emails cannot therefore be exempt from disclosure on the basis of

regulation 12(4)(e) of the EIR. The Commissioner has therefore ordered the Council to disclose this information.

21. In disclosing this information the Commissioner considers that the Council can redact the names, addresses and contact details of external third parties; the names and contact details of junior Council officials; and, the contact details – but not the names - of senior Council officials on the basis of regulation 13(1) (data protection) of the EIR. Such redaction is consistent with the Commissioner's approach to similar information in previous cases.²
22. As identification of the emails requires the Commissioner to describe them, he has listed these emails in a confidential annex, a copy of which will be provided to the Council only.
23. The Commissioner accepts that the remaining information falling within the scope of this request does constitute internal communications on the basis that it consists of emails that were only sent to, from or copied to recipients within the Council. Therefore such information is exempt from disclosure on the basis of regulation 12(4)(e). The Commissioner has gone on to consider the public interest test in relation to these communications.

Public interest test

24. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions.

Public interest in favour of maintaining the exception

25. The Council explained that it applied this exception because members of staff are allowed to discuss the merits of proposals, and the implications of decisions, internally without outside interference. It allows a space to think in private when reaching decisions.
26. Furthermore, the Council argued that there is a strong public interest for local authorities to be able to communicate freely with each other and provide and receive advice in confidence. It noted that to assist staff members in decision making they are provided with information including consideration of all the facts, which will include 'for and against' arguments that are tailored for each project and circumstance.

² <https://ico.org.uk/media2/migrated/decision-notices/4029361/ic-266959-n0v3.pdf> see paragraphs 41 to 46

The Council noted that the full advice provided does not always contribute to the final decision and may contain 'for information' advice. It is in the public interest for staff to be able to receive free and frank opinions and advice on issues that can be discussed in a confidential manner.

27. With regard to the circumstances of this case, the Council argued that it had followed the required statutory process for the planning application which remains a live application yet to be determined.
28. It explained that it was aware that the complainant has submitted other FOI requests on this subject, but as far as it was aware these had been responded to.

Public interest in favour of disclosing the information

29. The Council acknowledged that there is a general public interest in authorities being accountable for the quality of their decision-making. There is also the general public interest for local authorities to be transparent in their dealings and transactions.
30. The complainant provided the Commissioner with detailed submissions to support his view that the public interest favoured disclosure of the information falling within the scope of his request. The Commissioner has summarised these submissions below.
31. The complainant explained that in August of 2024, it came to the attention of residents in Wapping (London E1W postcode), that the Council intended to convert a property it owned in Wapping, used currently as a Community Centre and nursery, for co-use as a Drugs Rehab Centre under the same roof.
32. The complainant explained that there was considerable local opposition to this proposal; he cited the figure of there being in excess of 1000 objections submitted to the Council.
33. Furthermore, he argued that the Council had failed to follow both statutory and non-statutory consultation processes.
34. The complainant argued that despite the concerns and objections which had been raised with the Council their responses had not provided any data or verifiable evidence to support its contention that the location of a rehab centre in Wapping was logical.
35. The complainant explained that in order to understand the Council's decision making, he had submitted two FOI requests seeking the data for where current users of such services in the borough were located. However, he explained that the responses and Council's handling of

these requests did not provide him with any understanding as to the decision making process to locate the centre in this location, hence he submitted the request which is the subject of this notice.

36. With regard to the Council's argument that it needed a safe space to discuss issues, the complainant explained that he was not aware of anything in the legislation which supported this position. In any event, he noted that the concept that public authorities needed a safe space to make decisions, or that significant weight that should be attributed to such arguments, is one that had been treated sceptically both by academics and the Commissioner in the past.
37. In terms of the public interest in disclosure, the complainant identified the following factors:
38. Firstly, transparency and accountability. He argued that in the absence of any other verifiable data, the written communications sought by this request are the only tangible proof of what has been driving the apparently irrational decision to locate the centre in the Council's proposed site.
39. Secondly, promoting public understanding. The complainant explained that he had made enquiries of the Council as to the technical criteria on which buildings within the borough were deemed suitable or not so as to understand why the building in Chandler Street had been chosen, but the responses provided did not address these queries.
40. Thirdly, safeguarding democratic process. The complainant argued that the Council had breached its obligations to the electorate by failing to adhere to both statutory and non-statutory consultation processes, and pre-planning requirements.
41. Fourthly, securing the best use of public and environmental resources. The complainant cited a document entitled "Best Value Standards and Intervention; a statutory guide for best value authorities" which stated that:

" Appropriate governance structures should be in place to oversee these arrangements, and the process of consultation and engagement should be inclusive, open and fair. There are statutory requirements on local authorities to engage with Integrated Care Partnerships, Integrated Care Boards, Community Safety Partnerships, safeguarding adults and children's boards, Youth Offending Management Boards and many others. There are also statutory best value requirements around consultation and on considering the social value of services when reviewing service provision. An inclusive approach that accepts challenge is an indicator of a confident organisation."

42. The complainant argued that Council has ignored this in its attempt to bypass consultation. Instead, it had hurried a planning application through without appropriate consultation or scrutiny.
43. Fifthly, suspicion of wrongdoing. The complainant argued that by ignoring its statutory and non statutory obligations in a rush to planning, the Council has voided a staged, statutory process intended to ensure that its decisions are not driven by an agenda or bias. This matter has been rushed to planning without the Council complying with its obligations to consult, nor did it carry out proper external surveys prior to sending the proposal to planning.
44. In summary, the complainant argued that there should be a clear audit-trail accounting for the decisions taken, and the public money that the Council proposes to spend on the back of those decisions. However, at present there is no documentation, no minutes or no records regarding this decision. Furthermore, the complainant argued that everything the Council has presented in "evidence" is hearsay. In his view it followed that the only tangible record it's possible for him to access as part of an attempt to find an audit-trail will be correspondence sought by this request.

Balance of the public interest arguments

45. With regard to attributing weight to the public interest arguments in favour of maintaining the exception, the Commissioner accepts that a public authority needs a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction. The safe space arguments may carry significant weight in some cases. In particular, the Commissioner considers that the need for a safe space will be strongest when the issue is still live.
46. In the circumstances of this case the Commissioner accepts that at the time of the request this matter is one that could be considered to be 'live'; that is to say the planning application in relation to the proposal had not yet been determined.
47. Furthermore, the Commissioner recognises, albeit primarily via the complainant's submissions rather than the Council's, that this is a controversial project which has resulted in considerable local opposition. As a result the Commissioner accepts that in this case, it is not implausible to argue that disclosure of the withheld information would be likely to result in external interference and distraction from the Council's internal discussions regarding this issue.
48. However, in the Commissioner's view the Council's arguments to support the view that the public interest favours maintaining regulation

12(4)(e) are somewhat generic and top level. Such arguments did not make any real reference to the content or substance of the actual information itself to explain or elaborate on why disclosure of such information would be likely to be harmful to the safe space, beyond making the point that the planning application remained live. As noted, to the extent that the Commissioner is aware of the controversial nature of this project this is via the complainant's submissions and arguments, as opposed to any explanation or emphasis by the Council of the reaction this proposal has generated and thus why the need for a safe space is particularly pressing in this case.

49. Whilst the Commissioner can see the potential significant weight that a case regarding the need for a safe space could be made in this case, in order for him to accept this in his view a public authority has to do more than simply refer to generic reasons regarding the rationale behind safe space arguments and note that the issue/decision making remains ongoing. Rather, it has to engage more directly with the specific circumstances of this case and focus its arguments not simply on such circumstances but also directly on the content of the withheld information. Therefore whilst the Commissioner accepts that some weight should be attributed to the public interest in maintaining the exception, based on the arguments provided to him by the point this decision notice is issued he considers these to be relatively limited.
50. With regard to the public interest arguments in disclosure of this information, as discussed above the Commissioner recognises that the Council's proposals in respect of this have proved to be controversial. He also notes that they have attracted some media interest, both locally and nationally.³ The Commissioner appreciates the complainant's concerns that the Council has failed to follow appropriate processes in terms of consultation prior to the planning application being submitted and moreover that there is an absence of information in the public domain about the rationale behind the decision to locate the centre in the proposed location. It is not the role of the Commissioner to reach a judgement as to whether particular consultation processes have been properly followed. However, in terms of balancing the public interest arguments he accepts the complainant's point at the time of the request that there was arguably a lack of a clear explanation as to why this particular location had been chosen.

³ <https://www.dailymail.co.uk/news/article-13876495/parents-fury-plans-open-drug-rehab-centre-nursery-Wapping-east-london.html>
<https://www.bbc.co.uk/news/articles/c30ld1myzedo>

51. Having considered the content of the withheld information the Commissioner accepts that disclosure of this would provide a direct insight into the Council's considerations in relation to this proposal. Whether such information would address all of the complainant's queries about the project is perhaps open to question, but disclosure of the information would certainly reveal how the Council considered the proposal internally up to the date of the complainant's request.
52. In view of the above, ie the controversy which the project has caused, the apparent lack of publicly available information which explains why this site was chosen and details of the Council's rationale and methodology which led to this decision, the Commissioner accepts that the public interest arguments in favour of disclosure attract considerable weight. This is in contrast to the weight that should be attributed to the Council's more generic arguments for maintaining the exception.
53. In the circumstances of this case, and taking into account the above factors, the Commissioner considers that the presumption in favour of disclosure should prevail and therefore the information must be disclosed. In doing so, the personal data described at paragraph 21 above should also be redacted.

Other matters

54. The complainant raised a concern that the internal review of his request may not have been carried out by a different officer to the one that issued the initial refusal. (Whilst the refusal notice and internal review itself were not signed by a specific individual, the complainant noted that it was the same officer who had sent him both responses.)
55. As the Commissioner's guidance on conducting internal reviews under the EIR explains "It is good practice for the internal review to be carried out, wherever possible, by somebody other than the person who issued the initial response."⁴
56. The Council confirmed to the Commissioner that a different officer conducted the internal review.

⁴ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/internal-reviews-under-the-environmental-information-regulations-eir/#carry-out>

Right of appeal

57. 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

58. 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.

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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF