

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

**Date:** 19 May 2025

**Public Authority:** Local Government and Social Care  
Ombudsman

**Address:** PO Box 4771  
Coventry  
CV4 0EH

**Decision (including any steps ordered)**

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1. The complainant requested an investigation report into a particular planning related issue from the Local Government and Social Ombudsman (the 'LGSCO'). The request was refused by the LGSCO applying Regulation 12(5)(d) of the EIR – the exception for the confidentiality of proceedings.
2. The Commissioner's decision is that the LGSCO correctly handled the request under the EIR and that Regulation 12(5)(d) was properly applied.
3. No steps are required as a result of this notice.

**Request and response**

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4. On 5 November 2024, the complainant wrote to the LGSCO and requested information in the following terms:

"I am the [redacted] and agent, acting for one of the landowners to which this complaint refers.

The complaint was made by the Wirksworth and Middleton Cricket Club against the Planning Department at Derbyshire Dales District Council in November 2023 (I was told it was submitted on 27.11.2023).

The complaint was in regards to a planning application for a housing development of 12 houses, whereby the council had approved a fence to be constructed on land controlled by the cricket club, without formal notification or consultation. Local Planning References 19/00455/OUT and 22/00634/REM.

[Redacted] owns part of the land on which the development was approved.

I have again been told that the investigation was finalised and reported on in June 2024.

Can we please be supplied with a copy of the decision/report in relation to this complaint as it has been part of the process for delaying the building of a new home for [redacted], some desperately needed low-cost housing and some work for the builders who purchased the majority of the land."

5. The LGSCO responded on 2 December 2024. It refused to provide the requested information, citing Regulation 12(5)(d), the EIR exception for the confidentiality of proceedings.
6. The complainant requested an internal review on 2 December 2024.
7. Following its internal review, the LGSCO wrote to the complainant on 16 December 2024 and maintained its position.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 17 December 2024 to complain about the way his request for information had been handled. His main concerns are as set out under the public interest section at paragraph 34 of this notice.
9. The Commissioner has considered whether the LGSCO was correct in handling the request under the EIR and whether it was entitled to rely on Regulation 12(5)(d) to refuse it. He has viewed the withheld information.

### **Reasons for decision**

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#### **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 LGSCO said it considered Regulations 2(1)(a), (b) and (c) of the EIR to apply. It explained this was because the requested information is about the state of the land and landscape and the position of a fence between two neighbouring properties (Regulation 2(1)(a)), and as the fence is a factor likely to affect the landscape in (a) (Regulation 2(1)(b)). The LGSCO also said that the requested information is about a section 73 application. This is legislation which refers to section 73 of the Town and Country Planning Act 1990 (a measure as per Regulation 2(1)(c)).
12. The Commissioner considers that the request was correctly considered under the EIR. For procedural reasons, he has therefore assessed this case under the EIR.
13. The Commissioner will next consider whether the LGSCO was entitled to rely on Regulation 12(5)(d) of the EIR.

## **Regulation 12(5)(d) – confidentiality of proceedings**

14. Regulation 12(5)(d) of the EIR 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.
15. As the Commissioner's guidance<sup>1</sup> explains, there are four questions to consider:
  - What are the proceedings?
  - Is the confidentiality of those proceedings provided by law?
  - 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?
16. The LGSCO told the Commissioner it considers its statutory decision-making powers to be "proceedings" ie the investigation process of each complaint and the resulting decision.
17. The Commissioner notes that the term "proceedings" is not defined in the EIR. In the Commissioner's view the term 'proceedings' should be taken to mean a formal means to consider an issue and reach a decision, and should be governed by formal rules.
18. Furthermore, the Commissioner's guidance states that proceedings "could refer to an investigation by the Local Government Ombudsman into a complaint against a local authority", as is the case here.
19. The Commissioner therefore accepts that complaints to the LGSCO and the resulting outcomes/decisions have the necessary formality to constitute proceedings for the purposes of Regulation 12(5)(d) of the EIR.
20. The LGSCO told the Commissioner that confidentiality is provided by Section 32(2) of the Local Government Act 1974, which states:

"Information obtained by a Local Commissioner, or any person discharging or assisting in the discharge of a function of a Local

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-12-5-d-confidentiality-of-proceedings/>

Commissioner in the course of or for the purposes of an investigation under this Part of this Act shall not be disclosed except—

(a) for the purposes of the investigation and of any report, statement or summary under section 30, 31 or 31B] above; or

(aza) for the purposes of an investigation under Part 3A of this Act and of any statement, adverse findings notice or summary under section 34H, 34I or 34J in relation to such an investigation; or

(aa) for the purposes of a complaint which is being investigated by the Parliamentary Commissioner or the Health Service Commissioner for England (or both); or

(b) for the purposes of any proceedings for an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained, by virtue of this Part of this Act, by a Local Commissioner or by a person discharging or assisting in the discharge of a function of Local Commissioner or for an offence of perjury alleged to have been committed in the course of an investigation under this Part of this Act or for the purposes of an inquiry with a view to the taking of such proceedings, or

(c) for the purpose of any proceedings under section 29(9) above,

and a Local Commissioner and persons discharging or assisting in the discharge of a function of a Local Commissioner shall not be called upon to give evidence in any proceedings (other than proceedings within paragraph (b) or (c) above) of matters coming to his or their knowledge in the course of an investigation under this Part of this Act."

21. The LGSCO explained that Sections 30, 31 and 31B refer to the publication of its decisions, Part 3A of the Act covers investigations of private adult social care providers and Section 29(9) covers the LGO taking action against a body in jurisdiction not providing it with information. The LGSCO also told the Commissioner that:

"A request for an unpublished decision is therefore caught by Section 32(2) of the Local Government Act 1974."

22. In other words, Section 32(2) of the Local Government Act 1974 ('LGA') prohibits the disclosure of information obtained by a Local

Commissioner, or any person discharging or assisting in the discharge of a function of a Local Commissioner, in the course of, or for the purposes of, an investigation under this part of the LGA. This information can only be disclosed in very limited circumstances, including the investigation itself and any published report or decision.

23. The Commissioner considers the LGSCO's reference to section 31B(1) of the LGA (which provides an exemption from the prohibition in section 32(2) of the LGA) is a gateway on which it relies to publish, in the main, anonymised versions of its determinations on its website. It is at the discretion of the LGSCO in a given case as to whether it uses the exemption to disapply the prohibition and therefore use this gateway. It is not within the Commissioner's remit to question the use, or not, of any LGA exemption in a particular case. This is a decision for the LGSCO alone. Therefore for these reasons, if the LGSCO decides not to use the exemption to the prohibition in a particular case, the prohibition from disclosure under Section 32(2) of the LGA must continue to apply.
24. In the case under consideration here, the LGSCO has explained that it voluntarily publishes 96% of its decisions on its website but it determined that this case was not suitable for publication (see paragraph 37 of this notice).
25. With regard to the second condition, the Commissioner accepts that the withheld information has the quality of confidence as it is clearly not of a trivial nature, is not in the public domain, and was communicated in circumstances importing an obligation of confidence.
26. The third condition requires the determination as to whether disclosure would have an adverse effect. The exception is only engaged where disclosing the information would adversely affect that confidentiality. It is not enough that the confidentiality is provided by law, there must also be an adverse effect on that confidentiality.
27. The LGSCO is relying on the higher threshold of "would" have an adverse effect on confidentiality should the requested information be disclosed. The interest that is protected by Regulation 12(5)(d) of the EIR is the confidentiality of proceedings, where that confidentiality is provided by law.
28. The Commissioner's aforementioned guidance on Regulation 12(5)(d) states:

"'Adversely affect' means there must be an identifiable harm to or negative impact on the interest identified in the exception. Furthermore, the threshold for establishing adverse effect is a high one, since it is necessary to establish that disclosure would have an adverse effect. 'Would' means that it is more probable

than not, ie a more than 50% chance that the adverse effect would occur if the information were disclosed.”

29. The LGSCO said that disclosure would breach the obligation of confidence, which would undermine the relationship between it and the individual who made the complaint. The LGSCO argued that such a disclosure would undermine the confidentiality of proceedings not only for this individual but for all past, present and future individuals making complaints to the LGSCO.
30. The LGSCO argued that to disclose the requested report when it has taken a conscious decision against its usual approach to publish, would adversely affect the confidentiality of those proceedings.
31. The Commissioner can only consider the case before him. He notes that the LGSCO has proactively determined that the report should not be published, which only occurs in 4% of cases. Given this, the Commissioner accepts that release of the withheld report would adversely affect confidentiality.
32. The three conditions set out in paragraph 15 are met. The Commissioner is therefore satisfied that the exception contained in Regulation 12(5)(d) is engaged.

### **Public interest test**

33. 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 arguments in favour of disclosure**

34. The complainant submitted the following in favour of releasing the requested information:

“The LGO has stated that it is not in the public interest to disclose the information they have as a result of their investigation.

The initial complaint relates to a planning application, the process of which is progressed in the full view of public scrutiny.

In correspondence with the LPA [Local Planning Authorities] since the initial complaint the ombudsman report (the requested data) has been referred to as a reason for application refusal/consideration without any detail being given.

This decision goes against the principle of open and transparent government.



We are trying to build some houses and are not in a position to negotiate with the council because:

The investigation and decision were made in secret with only one party providing information which has not been independently fact checked.

I do not need any personal or personally identifying information, nor any outcomes of poor performance identification, just the recommendations of the ombudsman on which the LPA are relying on in their planning process.”

35. The LGSCO recognised the public interest arguments in favour of disclosure:

- Local public interest in the issue at the heart of the LGSCO decision – the planning matter.
- Local public interest in possible maladministration by the Council.

#### **Public interest arguments in favour of maintaining the exception**

36. Against disclosure, the LGSCO submitted the following arguments, explaining that it had given particular weighting to those in bold text:

- **Disclosure would breach the obligation of confidence, which would undermine the relationship between the LGSCO and our complainant. Not only for this complainant but for all past, present and future complainants.**
- **The fact that the confidentiality is “provided by law” implies that there is a public interest in protecting it.**
- The release of the withheld information may not necessarily increase public knowledge of the issues.
- **Disclosure of the withheld information would set a precedent with regards to publication and/or partial publication of our decisions, where we have taken a conscious decision against our usual approach which is to publish.**

37. In respect of the last argument the LGSCO explained that it:

“publishes 96% of our decisions. We publish these voluntarily on our website. There is no legal requirement for us to do this. In 2024 we published over 12,000 decisions on our website as part



of our commitment to being an open and accountable ombudsman service.

Further information about this is available on our website here<sup>2</sup>:

In a very small number of cases, where it is not in the complainant's interest or where anonymity may be compromised, we chose not to publish a decision. We do not take the decision not to publish lightly, there is a high bar and it must be signed off by an Assistant Ombudsman or Assessment Manager.

Whilst we appreciate that the decision to withhold the requested information in this particular instance could be seen as overly bureaucratic and unhelpful, we must consider our statutory powers and the precedent that would be set, if we were to release this information against the presumption in favour of disclosure in Regulation 12(2) of the EIR.

In doing so, we must also consider other cases where we choose not to publish decision statements, not limited to environmental information. For example:

- Safeguarding in cases involving vulnerable members of society (such as children services or adult social care).
- Employment or personnel matters (such as our complainant is employed by a body in jurisdiction)".

### **Balance of the public interest**

38. As set out in his guidance on Regulation 12(5)(d), the Commissioner accepts that there will always be a general public interest in protecting confidential information. Breaching an obligation of confidence undermines the relationship of trust between confider and confidant. For this reason, the grounds on which confidences can be breached are normally limited. Therefore, where the exception is engaged, the Commissioner accepts that there will always be some inherent public interest in maintaining it.
39. He is mindful that the vast majority (ie 96%) of the LGSCO's decisions are published and that it is rare for it to determine that a decision should not be made public.
40. The Commissioner recognises that the complainant has a personal interest in the information and he acknowledges that there is a broad

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<sup>2</sup> <https://www.lgo.org.uk/decisions>

public interest in disclosing information that provides transparency around decisions made in respect of planning matters.

41. However, the Commissioner is conscious that this particular investigation and report have been consciously withheld from the usual publication process, which carries significant weight. He does not consider it appropriate to rule that such information should be disclosed under the EIR, effectively a disclosure to the world at large, given the conclusion of the LGSCO.
42. Taking all of the above into account, the Commissioner has concluded that the public interest in favour of withholding the information in this case is greater than the public interest in disclosure. Whilst the Commissioner has been informed by the presumption in favour of disclosure, he is satisfied that, for the reasons given above, the exception has been applied correctly.
43. It follows that the Commissioner finds that the LGSCO has properly relied on Regulation 12(5)(d) of the EIR.

## **Right of appeal**

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44. 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)

45. 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.
46. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Carol Scott**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**