

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

Date: 24 October 2011

Public Authority: Shropshire County Council
Address: Shirehall
Abbey Foregate
Shrewsbury
Shropshire
SY2 6ND

Decision (including any steps ordered)

1. The complainant has requested a schedule of works held by the council relating to building work completed by a third party on a particular property.
2. The Commissioner's decision is that Shropshire County Council has correctly applied the exemption for information provided to it on a voluntary basis, where it could not require that information from the third party.
3. The Commissioner does not require the council to take any steps in respect of this notice.

Request and response

4. On 13 January 2011 the complainant wrote to Shropshire County Council and requested information in the following terms:

"Please supply the schedule of works completed by (name redacted). This request is made under the Freedom of Information Act."

This followed previous correspondence wherein the complainant had highlighted that work by the third parties on their property had resulted to damage being caused to his own.

5. The council responded on 12 February 2011. It stated that the information was exempt because it was commercially confidential.
6. However following further correspondence and an internal review the council wrote to the complainant on 30 March 2011. It stated that the information had been provided to it in confidence, on a voluntary basis, and was therefore exempt.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He considers that the information which he asked for should have been disclosed to him.

Reasons for decision

8. The withheld information is a schedule of works which was carried out by a third party on commercial property. The complainant's property had been damaged by water following work carried out on either that, or another property adjoining the complainant's. The complainant was therefore seeking information on the work which was carried out as a result of that.
9. Regulation 12(5)(f) of the EIR states that a public authority may refuse to disclose information where its disclosure would adversely affect the interests of the person who provided the information where that person
- (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;

- (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
 - (iii) has not consented to its disclosure;
- 10. The Commissioner must consider whether a disclosure of the information would have an adverse effect on the interests of the third party.
- 11. The complainant's property was damaged and there may be a potential for legal action to be taken against any party whose actions caused the damage to occur.
- 12. The information was provided to the council in order for the third party to check whether it needed to obtain any consents, planning permissions or licences to carry out the work involved.
- 13. The council states that the information was not requested under any statutory powers and that it was provided on a voluntary basis by the third party.
- 14. The Commissioner asked the council to confirm whether the council could require the third party to provide the information to it under any of its powers under the circumstances of the case. It confirmed that it could not have. It has no legal powers to require information from a third party under the Party Wall Act 1996 as the work which was carried out is purely a matter of civil law between the parties. No building consents were required by the third party in order for the work to be carried out, and there was not requirement for a listed building application which may have required it to obtain a schedule of intended works.
- 15. The Commissioner is therefore satisfied that the information was provided on a voluntary basis, and that the council had no legal ability to require the third party to provide it with the information.
- 16. The Commissioner is further satisfied that the council has no legal powers to disclose that information. It was provided to it on a voluntary basis, purely for the purposes of ensuring that all necessary consents were obtained prior to the work being carried out.

17. Although the council failed to provide information to the Commissioner demonstrating that it holds that information in confidence the Commissioner is satisfied that the third party would have considered that the information he was supplying would be held in confidence by the council.
18. The Commissioner is also satisfied that the council would consider that it would be expected to hold such information in confidence.
19. The information is not trivial and is not available to the public from other sources.
20. The Commissioner is therefore satisfied that the council could show under the circumstances that it holds that information under a duty of confidence.
21. The Commissioner also considers that the council would, in any event, be unable to disclose that information without a legal justification or a power to do so. Local authorities can only act within their powers and duties. In this case the Commissioner cannot recognise either a power or a duty under which it would be entitled to disclose this information, which was provided to it on a voluntary basis, to third parties. The Commissioner considers that the only legal justification for doing so would be under the Regulations. The council received that information on a voluntary basis and would have no powers to disclose it further without the consent of the third party.
22. The council has provided evidence that it asked the third party for its consent to disclose the information to the complainant however the third party declined to give that consent.
23. The Commissioner is therefore satisfied that the exception is engaged.
24. The exception is subject to a public interest. The Commissioner must consider whether in all the circumstances of the case the public interest in disclosing the information means that it should be disclosed in spite of the fact that the exception is engaged.
25. The test is whether the public interest in maintaining the exception outweighs the public interest in the information being disclosed.
26. When carrying out the test the Commissioner must take into account that the Regulations provide a specific presumption towards disclosure.

The public interest in the information being disclosed

27. The Commissioner notes that the information relates to work being carried out by a third party on a party wall.
28. The Commissioner recognises that as an essentially private, civil matter between the parties, the council had no duties or powers to either request the information or to make any decisions relating to the intended work. As the council had no real purpose or reason for obtaining the information, and did not have a regulatory role in the work which was being carried out the Commissioner therefore recognises that the public interest in the information being disclosed is minimal. Matters relating specifically to this case are essentially private matters which do not affect the public as a whole.
29. Nevertheless the Commissioner recognises that there is some public interest in the information being disclosed in order that the council can be seen to be acting transparently, and that it can be properly its decisions can be scrutinised.

The public interest in the exception being maintained

30. The central public interest in the information being withheld relates to the ability of the public to provide information in confidence to public authorities in order to assure themselves that they have obtained all necessary consents and meet all necessary conditions prior to work going ahead.
31. The Commissioner also recognises a further public interest which follows naturally from this. The authority can provide a degree of trust and confidence to members of the public that they can provide it with information and discuss matters informally without fear that information they provide may subsequently be disclosed by the authority.
32. Individuals who provide their information to the council on an informal basis in order to obtain such guidance would not expect that information to be disclosed more widely unless there is a statutory reason for that to occur. For example this might occur because planning permission is required, and so a notification of intended works would need to be published in accordance with planning requirements. This was not the case in this instance.

33. If the council were required to disclose this information in response to a request under the Act then individuals may in the future be dissuaded from providing information to the council on an informal basis.
34. This could result in errors or uncertainty over the need for planning consents and planning permissions as the council may not be in a position to provide specific advice which individuals need to know.
35. Additionally this would curtail the amount of information of this sort which is provided to the council, thereby preventing the system of identifying where council involvement is needed from working as effectively as it is currently able to in matters of this kind.
36. The Commissioner is satisfied that there is as strong public interest in informal dialogue of this sort continuing. It allows both parties to identify their legal position easily and cheaply, without formal or bureaucratic requirements interfering with efficient working practices. A disclosure would potentially lead to a lessening of the oversight that the council has of planning matters.
37. The Commissioner is therefore satisfied that if information of this sort is disclosed on a regular basis it would lead to that process being adversely affected. This in turn would adversely affect the interests of those wishing to volunteer information to the council in this way, including the third party in this case.
38. The Commissioner's decision is therefore that the public interest in maintaining the exception outweighs that of disclosing the information in this instance.

Right of appeal

39. 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

40. 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.
41. 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
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