

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

Date: 13 December 2012

Public Authority: Shropshire Council

Address: Shirehall
Abbey Foregate
Shrewsbury
SY2 6ND

Decision (including any steps ordered)

1. The complainant has requested information relating to the Dorrington Village Green application. Shropshire Council (the Council) explained that some of the requested information was not held so was exempt under regulation 12(4)(a) of the Environmental Information Regulations 2004 (EIR). It said that some of the requested information was held however it refused to provide this information under regulation 12(4)(e) EIR which relates to internal communications.
2. The Commissioner's decision is that the Council correctly applied regulation 12(4)(a) EIR as some of the requested information is not held. The Commissioner does not however consider that regulation 12(4)(e) EIR is engaged in this case as the information it has been applied to could not be classed as internal communications. The Commissioner does however consider that some of the information to which regulation 12(4)(e) has been applied is the complainant's own personal data. This has been identified in the 'Scope' section of this Notice. This information is not therefore covered by this Notice under regulation 5(3) EIR and is not subject to the steps below.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - The Council must disclose the information to which regulation 12(4)(e) has been applied which is the information requested at point 2 of the request.

4. The public authority must take these steps within 35 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. In February 2012 the complainant wrote to the Council and requested information in the following terms (in relation to the Dorrington Green application):
 1. A copy of the Inspector's hand-written notes.
 2. A copy of Tim Ward's notes and those of his colleague(s).
6. The Council responded on 21 February 2012. It stated that the information requested at point 1 was not held. It said that the information requested at point 2 was exempt under regulation 12(4)(e) EIR as the request was for internal communications.
7. Following an internal review the Council wrote to the complainant on 14 May 2012. It upheld its original decision.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. The Commissioner has considered whether the Council holds any information relevant to point 1 of the request. In relation to point 2 of the request the Commissioner has considered whether the Council was correct to withhold the information under regulation 12(4)(e) EIR.
10. Upon viewing the withheld information in relation to point 2 of the request the Commissioner considers that some of it would amount to the complainant's own personal data. Under regulation 5(3), "to the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data. The Commissioner considers that where the complainant's name or initials appear in the notes along with his views or comments he made, this constitutes his own personal data. The Commissioner has therefore only considered the information which does not constitute the complainant's own personal data under the EIR.

Reasons for decision

Point 1 of the request

11. Regulation 12(4)(a) EIR states that, "a public authority may refuse to disclose information to the extent that (a) it does not hold that information when an applicant's request is received".
12. The Council explained that the requested hand-written notes were destroyed upon completion of the inspector's report and a copy was not passed to the Council.
13. The Council also provided the Commissioner with a statement made by the inspector which confirms this.
14. Based upon the Council's submissions, the Commissioner considers that on the balance of probabilities the information requested at point 1 is not held. The Commissioner therefore considers that regulation 12(4)(a) EIR is engaged in this case.

The public interest test

15. Regulation 12(1)(b) of the EIR requires that all exceptions, including regulation 12(4)(a), are subjected to a public interest test. However, it is not possible for the Commissioner to do this given his finding that the requested information is not held to which the public interest could apply.

Point 2 of the request

16. Regulation 12(4)(e) EIR states that, "a public authority may refuse to disclose information to the extent that (e) the request involves the disclosure of internal communications."
17. In this case the Council has explained that the requested notes are personal to the individuals who attended the meeting and are not part of any official Committee report, formal record or transcript of the proceedings. It said that the notes had not been communicated or shared with anyone else (including any other Council officers, apart from collating the records for this information request) or been considered as a Council record. The Council said it was therefore of the view that the notes are internal communications.
18. In the Commissioner's guidance on internal communications it states that, "The concept of a communication is broad and will encompass any information someone intends to communicate to others, or even places on file (including saving it on an electronic filing system) where others

may consult it. It will therefore include not only letters, memos, and emails, but also notes of meetings or any other documents if they are circulated or filed so that they are available to others.”

19. In this case the Council has explained that the notes were not communicated or shared within the Council as they were personal notes made by the individuals who attended. It said that the notes were only communicated for the purpose of responding to this EIR request.
20. As the Council has explained that at the time the request was made the notes had not been communicated or shared with anyone else, the Commissioner considers that they could not be classed as internal communications.
21. The Commissioner therefore considers that regulation 12(4)(e) is not engaged in this case.

Right of appeal

22. 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

23. 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.
24. 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

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