

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 28 October 2015

Public Authority: Birmingham City Council

Address: Council House
Victoria Square
Birmingham
B1 1BB

Decision (including any steps ordered)

1. The complainant has requested recorded information held by Birmingham City Council in connection with planning application 2014/09159/PA. This concerns the change of use of a residential property to a place of worship and faith-based educational institution.
2. The Commissioner's decision is that the Council is entitled to withhold certain pieces of recorded information in reliance on Regulations 12(4)(e) and 13 of the EIR. He also finds that the Council has complied with Regulation 5(1) of the EIR, where it has advised the complainant that it does not hold certain other pieces of information.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. The complainant wrote to Birmingham City Council and requested information in the following terms:

"A planning application has been submitted to the Council and determined under reference 2014/09159/PA

Please could you provide, in electronic format, and in their originally saved, and unredacted file type (such as, but not limited to .docx, .doc, .txt, .jpg, .jpeg, .pdf etc) copies of the following from the Council's

electronic document management system for application reference 2014/09159/PA:

1. *All third party comments received by the Council, including 5000 comments received by email that officers referred to in the planning committee meeting on 30 April 2015*.*
2. *All complaints and compliments received.*
3. *All scanned letters and documents from third parties such as neighbours and members of the public.*
4. *All file notes, including hand written notes from the case officer file, annotations and corrections on draft committee reports, post it notes, and electronic file notes.*
5. *All officer reports, including copies and, where relevant, scan of previous versions of the case officer report, and scans of any corrections and changes made to the draft officer report during the pre-agenda process.*
6. *All photographs*
7. *All consultation responses**
8. *All letters, emails and correspondence sent out*
9. *All internal emails, Memos and Letters*

Where a document has been versioned or superseded electronically, please could you provide copies of the previous versions in addition to the most recent version(s) held on the electronic file.

**Please note that, as this information was requested in writing to Planning and Regeneration on 5th January 2015, 15th January 2015 and 15 February 2015 and has not been provided despite multiple follow up requests, that a formal complaint is being raised in parallel with this request."*

5. The Council acknowledged receipt of the complainant's request on 11 May 2015.
6. On 13 May the Council wrote to the complainant about his request. It advised him that the requested information contains some personal data relating to third parties and that the Council would need to give consideration to any applicable exceptions under the EIR before a determination is made about disclosure.
7. The Council advised the complainant that the following exceptions could be engaged: Regulation 12(5)(f) – where disclosure would adversely affect the interests of the person who provided the information; Regulation 12(4)(b) – where the request is manifestly unreasonable; and Regulation 13(1) – where the requested information is third party personal data. Additionally, the Council informed the complainant that

Regulation 7(1) allowed it to extend the twenty day compliance period up to forty days.

8. The complainant wrote to the Council, also on 13 May, to complain about its handling of his request for information.
9. The Council responded to the complainant's complaint on 4 June 2015. The Council advised the complainant that it was correct to consider his request under EIR rather than FOIA. It noted that there was large quantity of data held on its planning portal and admitted that his requests for information had not been dealt with in a timely manner by the appropriate service area. Consequently the Council conceded that the complainant had not been given sufficient time to appeal its planning decision.
10. On 11 June the complainant submitted another complaint about the Council's handling of his request.
11. The Council responded to the complainant's second complaint on 17 June. The Council explained that he had been advised, in its letter of 13 June, that the Council was required to consider the public interest test to determine whether any exceptions were engaged under the EIR, and that the deadline for responding to his request had been extended to allow for this. The complainant was informed that the Council intended to provide its response no later than 7 July.
12. The Council also confirmed that it held 5145 documents within the scope of the complainant's request, of which 5110 documents will require redaction of third party personal data.
13. On 24 June the Council sent the complainant its final response. This can be accurately summarised as:

Part 1: The Council holds over 5000 comments which it received in connection to the planning application. The Council is withholding these comments in reliance on Regulation 12(3) and Regulation 13.

Part 2: The Council received no compliments or complaints about the planning application, other than the comments referred to under item 1.

Part 3: All scanned letters and documents from third parties such as neighbours and members of the public are withheld in reliance on Regulations 12(3) and 13.

Part 4: Information relevant to item 4 can be found on the Council's website at www.birmingham.gov.uk/planningonline and www.birmingham.gov.uk/democracy. There is no requirement for the Council to retain additional notes. The Council provided the complainant

with the following – template for acknowledgement letters, template for consultation letters, label sheet, site visit sheet, file notes template, planning permission notification sheet, site visit work sheet and a quality checklist.

Part 5: The Council confirmed that it holds previous versions of reports which are held electronically. The Council refused to disclose this information in reliance on Regulation 12(4)(e) – internal communications.

Part 6: The Council provided the complainant with copies of all the photographs it holds.

Part 7: All of the consultation information is recorded in the responses the Council received referred to under item 1. The Council confirmed that this information was being withheld in reliance on Regulations 12(3) and 13.

Part 8: the complainant was informed that the Council does not retain copies of the correspondence it sent out in respect of this planning. The templates used to draft the letters were provided at item 4 above.

Part 9: All the information which the Council holds and which is relevant to this item is withheld in reliance on Regulation 12(4)(e) – internal communications.

Scope of the case

14. The complainant initially contacted the Commissioner on 15 June 2015 to complain about the way his request for information had been handled. The complainant indicated that he was concerned about Birmingham City Council's refusal of his request and about the time taken by the Council to make its response.
15. On 19 June the complainant wrote to the Commissioner again. Since making his initial complaint, the Council had sent the complainant a further letter in respect of its handling of his request. This letter prompted the complainant to assert that the Council was "actively working to either prevent or delay our access to any of this critical information". The complainant was particularly concerned about the Council's intention to use the maximum time allowed by the EIR for complying with his request.
16. The Commissioner has investigated whether the Council has correctly applied Regulations 13 and 12(4)(e) to the information it holds and whether it has complied with its duty under Regulation 5(1) of the EIR

to provide environmental in response to a request for information. This notice sets out the Commissioner's decision.

Reasons for decision

Is the requested information 'environmental information'?

17. The Council has made its responses to the complainant's request under the terms of the EIR. Having considered the nature of the withheld information and having examined some of the withheld comments made in response to the particular planning application, the Commissioner is satisfied that the information is environmental information and that the request should be considered under the provisions of the EIR.

Regulation 13

Parts 1, 3 and 7 of the request

18. The Council has confirmed its reliance on Regulation 13(1) of the EIR in respect of the withheld information relevant to parts 1, 3 and 7 of the complainant's request.
19. Regulation 13 of the EIR provides an exception to disclosure of personal data where the applicant is not the data subject and where disclosure of the personal data would contravene any of the data protection principles.
20. In order to engage regulation 13, the information sought by the applicant must satisfy the definition of personal data provided by section 1(1) of the Data Protection Act 1990 ("the DPA").
21. Section 1(1) of the DPA defines personal data as:

"data which relate to a living individual who can be identified (a) from those data, or (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller."
22. Here, the Council has determined that the information requested by the complainant contains the personal data of third party individuals who responded to the consultation in respect of the particular planning application.
23. The personal data contained in the withheld information is comprised of the names of individuals, their statements of opinion and their email addresses.

24. It is the Council's position that the withheld information also constitutes sensitive personal data on the grounds that it meets the definition provided by section 2(b) of the DPA. The Council asserts that the individuals can be identified from the representations it received and the comments could be used to construe those individuals' race or ethnic origins or their political views.
25. Section 2(b) of the DPA defines sensitive personal data as:
 - "...personal data consisting of information as to—
 - (a) the race or ethnic origin of the data subject,
 - (b) his political opinions,
 - (c) his religious beliefs or other beliefs of a similar nature..."
26. In order to determine whether a public authority may disclose personal data under the regulation 13 of EIR, the public authority must determine whether such disclosure would contravene the first data protection principle.
27. The first data protection principle states:
 - "Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—
 - (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."
28. To satisfy the first data protection principle the public authority must conclude that the processing is fair to the data subjects and also would satisfy at least one condition from Schedule 2 of the DPA, and, where the requested information is sensitive personal data, at least one condition from Schedule 3 of the DPA.

The Council's representations to the Commissioner

29. It is the Council's assertion that disclosure of the recorded information relevant to parts 1, 3 and 7 of the complainant's request would be unfair to those individual respondents. In support of its assertion, the Council has made the following representations.
30. The Council has advised the Commissioner that it considers the individuals who responded to the planning consultation did so in their private capacities and that the withheld information relates to those individuals' private or home life. Furthermore, the Council asserts that many of the comments made relate to the objector's political views.

31. It has directed to the Commissioner's attention to the terms of the Town and Country Planning (Development Management Procedure) (England) Order 2015¹ and also to the fair processing statement on its website.
32. The Order requires the Council, as the Local Planning Authority ("LPA") to maintain a register of Planning Applications in its area. The Order allows each LPA to determine what information is put on the register.
33. The fair processing statement advises would be objectors that:

"If you make comments on a Planning Application, we do not currently publish these online. However, they are available for inspection by the public and copies are provided on request. Therefore you might like to ensure that phone numbers, signatures and email addresses are omitted."

34. Notwithstanding the advice provided to objectors in the fair processing notice, the Council is mindful of the guidance issued by the Planning and Regulatory Services Online ("PARSOL"). This second edition of the PARSOL guidance – written in collaboration with the Information Commissioner's Office, states –

"It is incumbent on local authorities to publish personal data only as the law requires and to exercise care and good judgement when publishing any further personal data it holds."

Also:

"...the Information Commissioner recommends that local authorities exercise extreme care when considering publishing documents which contain sensitive personal data."

35. Given that withheld information comprises 5,110 documents or comments, the Council determined that it would be impractical for it to contact the individuals concerned to ask whether they would be willing to consent to the disclosure of their personal data.
36. Additionally, the Council has a strong suspicion that some of the 5,110 comments had been 'manufactured', being generated through the use of social media. It was aware that 'Britain First' – a right wing group, had loaded a picture of Birmingham Central Mosque onto its Facebook and Twitter accounts. The accounts displayed the following statement: "yet another mosque is being built in Birmingham click here if you object",

¹ <http://www.legislation.gov.uk/ukxi/2015/595/contents/made>

and the readers were invited to enter their names and email addresses and then to press "submit". The reader's details were then used to populate the emails which the Council received.

37. Those persons who submitted their details would not have known that the planning application related to a residential property as this was not visible to them on the Britain First sites.
38. It is the Council's normal procedure to ask West Midlands Police to comment on a planning application. Here, the police chose not to comment on the application itself but it advised the Council that the comments should not be used by the Planning Committee for the purpose of any decision. The police also advised the Council that it had received no reports of any aggression towards the property and that there was no known racist activity in the area. As a precautionary measure the police suggested that the comments should be retained and placed on file should there be future aggression towards the property.
39. Consequently the Council took the decision to withhold the comments from the Planning File: Their existence was however mentioned in the Planning Officer's report which was considered by the Planning Committee. Subsequently a clause was placed on the Council's website, making clear that racist comments would not be accepted in the future.
40. The Council did not investigate whether the comments were genuine or not and because of this it was unable to attribute them to their declared authors or to anyone else. Consequently, the Council determined that it would not be fair or lawful to process the data further.
41. The Council has advised the Commissioner that there are only certain factors which can be taken into account when considering objections to a planning application. These factors are termed 'material considerations' and include loss of light, privacy, highway issues, noise and disturbance and nature conservation. Many of the withheld comments were emotive in nature and therefore they are not material considerations. Those comments were not relevant for the purpose of the Council's regulatory activity and the Council decided that it would be a disproportionate for it to approach each and every local resident based on their emotive comments.
42. Having received the 5110 comments, the Council amended its website to make clear to respondents that only certain comments would be accepted. The website now states:

"...please note that we cannot accept comments which include statements of a defamatory nature. If such comments are identified

they will be returned and will not be taken into consideration in assessing the Planning Application."

The Commissioner's considerations and decision

43. The Commissioner must make clear that he has not examined all of the withheld information relevant to parts 1, 3 and 7 of this request. He has however read a sample of the comments which the Council is withholding and also the comments which the Council supplied to the complainant after he had lodged an appeal against the Council's decision.
44. The comments made available to the complainant were disclosed by a planning officer under the Council's normal planning procedure and appeals procedure and not under the provisions of the EIR. The Council has informed the Commissioner that it wrote to the originators of the disclosed comments to make them aware that their comments would be forwarded to the appellant.
45. The Commissioner has carefully considered the Council's representations. He accepts the Council's position that the withheld comments constitute the personal data of those persons who made them, or of the persons they are attributed to. The comments examined by the Commissioner were sent to the Council by email and by post. They contain details of support or objection to the application, and the majority appear to have the names, addresses, email addresses and telephone numbers of their purported originators.
46. Some of the comments make specific reference to the originator's attendance at a mosque and of their children's attendance at a madrassa. This information, coupled with the personal identification information which accompanies the comments, leads the Commissioner to conclude that the some of the withheld information is sensitive personal data, satisfying the definition provided by section 2(c) of the DPA.
47. When considering whether a disclosure of personal data under the EIR would contravene the first data protection principle, the Commission first considers whether the proposed disclosure would be fair to the data subjects – the persons who submitted their comments.
48. The first point to make is that the data subjects apparently chose to submit their comments freely: It is probable that they made this choice on the limited information available to them on the Britain First sites and in the likelihood of them not having seen the fair processing statement on the Council's website, which advises them that their comments might

be made available to the public for inspection or by the provision of copies.

49. On its face, the fair processing statement appears to provide the data subjects with a legitimate expectation that their personal data would be subject to disclosure under the Council's planning procedures, and similarly under the provisions of the EIR. Ordinarily, the Commissioner would find that there is some reasonable grounds for the Council to consider that disclosure under the EIR would be fair.
50. In this case however, the Council became suspicious about the comments it received in connection with this particular planning application. It noted the significant volume comments it received and also that many of the comments were essentially the same, or identical, by virtue of the words and phrases used.
51. The Council's suspicions led to its belief that the comments were not necessarily those of their stated originators. The Council determined that the comments were likely to be the result of a concerted campaign against the application which had utilised social media such as Facebook. Consequently 5,110 of the comments were not considered as part of the planning process.
52. Having examined the comments disclosed to the complainant, the Commissioner considers that the Council's suspicions are certainly credible. He too notes the overwhelming similarity of the comments: They are often short and repetitive, emotive in nature and not of material consideration to the planning application.
53. Likewise, he finds that many of the comments were made by people living a considerable distance from Birmingham, in places as diverse as Enfield in Middlesex, Newcastle Upon Tyne, Bristol, Harlow in Essex and Kirkcaldy in Fyfe.
54. Given these facts, the Commissioner considers that the Council was correct to act with caution in respect of the withheld comments.
55. The Council has assured the Commissioner that the advice given by the Police was that the 5,110 comments should not be used to base any decisions in respect of the planning application, but that they should be kept on file in the event that there is future aggression against the property.
56. He fully accepts that it would be a significant task to verify the origins of these comments. Such a task would be unwarranted because the 5,110 comments were not found to be 'material considerations' and therefore not germane to the consideration of the planning application.

57. Taking all the above into account, the Commissioner has decided that it would be unfair to the data subjects – real or potentially usurped, to have their personal data disclosed under the EIR.
58. The Commissioner accepts the Council's position that some of the comments constitute sensitive personal data on the grounds that they disclose the political views of data subjects. He considers that the Council is justified in making this assertion having established the involvement of the Britain First organisation as being the catalyst for many of the comments which were submitted.
59. He also accepts that some of the comments are sensitive personal data by virtue of satisfying the definition provided by section 2(c). This is because some of them clearly relate to the religion or religious beliefs of identifiable living persons – see paragraph 43 above.
60. Having found that the withheld comments contain a mixture of personal data and sensitive personal data, and having decided it would be unfair to the data subjects to have their data disclosed to the complainant under the EIR, the Commissioner has not gone on to consider whether the Council could satisfy any of the conditions for processing in Schedule 2 of the DPA – where the comments contain personal data, and Schedule 3 of the DPA – where the comments contain sensitive personal data.
61. Notwithstanding this, the Commissioner readily accepts that the complainant has a legitimate interest in knowing the objections made in respect of the planning application. This legitimate interest has been satisfied to a large extent by the Council's provision of the comments which were disclosed to the complainant as part of the appeal process. The complainant's legitimate interest must be balanced against the rights, freedoms and legitimate interests of the originators of the withheld comments, and given that the Planning Committee did not consider the withheld comments when deciding on the planning application, the Commissioner cannot find any justifiable, legitimate and necessary reason for their disclosure under the EIR.
62. The Commissioner's decision is that the Council has correctly applied Regulation 13 to the information it has withheld in respect of parts 1, 3 and 7 of the complainant's request.

Items 5 and 9 of the request

63. The Council has confirmed that it is relying on Regulation 13 and Regulation 12(4)(e) to withhold the information which the complainant seeks at parts 5 and 9 of his request.

64. The Council has provided the Commissioner with copies of the withheld information and its assurance that this is all of the information it holds which is relevant to parts 5 and 9 on the complainant's request.
65. The withheld information is comprised of five versions of a planning officer's report to the Council's Planning Committee, made in respect of the planning application.
66. The Council has explained to the Commissioner that the officer's report is a working document: During the drafting process, the officer's initial or original report may require amendments to be made. This requires officers to create a 'new' version of the original. Each of the five iterations of the report reflects this process and they record the various changes which have been made.
67. The Council asserts that the requested information should also be withheld under regulation 13 because the planning officer's comments constitute his personal data.
68. It also asserts that the report is intended only for the Council's internal use and consequently the Council considers that it should also be withheld in reliance on Regulation 12(4)(e).
69. The Council argues that Regulation 12(4)(e) is designed to protect its decision making process, and specifically in respect of safeguarding the Planning Application comments procedure. It points out that the withheld information is only circulated internally within the Council.

Regulation 12(4)(e) – internal communications

70. Regulation 12(4)(e) of the EIR states that a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications.
71. The first question to consider is whether the information is a 'communication' for the purposes of the Regulations. The Commissioner considers that a communication 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.
72. Having examined the withheld information, the Commissioner is satisfied that it constitutes a communication for the purpose of the Council's application of Regulation 12(4)(e): the information being five iterations of a report made by an officer of the Council for consideration by the Planning Committee. The report can be properly characterised as a communication for the purpose of this exception.

73. There is no definition of what is meant by 'internal' contained in the EIR.
74. In this case, given that the withheld information comprises of a report made to the Planning Committee, the Commissioner readily accepts that the report is an internal communication: The Commissioner is therefore satisfied that Regulation 12(4)(e) is engaged.
75. Where Regulation 12(4)(e) is engaged, it is subject to a public interest test required by Regulation 12(1). The test is whether in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
76. When carrying out the test the Commissioner must take into account a presumption towards the disclosure of the information which is required by Regulation 12(2).

The public interest in maintaining the exception

77. In essence the public interest considerations relating to the Regulation 12(4)(e) relate to the protection of thinking space and the ability to have full and frank discussions without fear that the information will be disclosed.
78. In this case the various iterations of the planning officer's reports relate to the 'safe space' needed for the Council to properly carryout its functions away from interference and distraction. Essentially, the Council is concerned that disclosure of the information would affect the ability of its officers to develop ideas effectively, to debate live issues with candour and to reach informed decisions.
79. Disclosure of the different versions of the officer's report would inhibit the Council from having free and frank discussions in the future and the resulting loss of frankness and candour would damage the quality of advice leading to poorer decision making – in essence disclosure would have a 'chilling effect'.
80. Generally, once a decision has been taken the private thinking space or 'safe space' required to properly consider a matter is diminished and the sensitivity of the information is reduced. Here, at the time the complainant made his request, the matter was subject to an appeal against the Council's decision.
81. Following his examination of the withheld information, the Commissioner is satisfied that there is nothing in the withheld information which would add to the public's understanding of the reasoning behind the Council's actions, and which would increase the public interest in its disclosure.

82. The large amount of publically available information concerning the planning application is, in the Commissioner's opinion, sufficient to satisfy the public interest in there being a transparent planning process.
83. There is a clear public interest in allowing officials to communicate with one another about a particular matter, without fear of disclosure and before that matter is finally settled. If that information was to be disclosed prematurely, it could be used, as in this case, to challenge the decision via judicial review.

The public interest in the information being disclosed

84. The central public interest in the information being disclosed relates to retaining the openness and transparency of planning decisions which will ultimately affect the local community in the vicinity of the properties associated with this planning application.
85. The Commissioner notes that there is a strong argument that planning decisions and the process leading to those decisions should be as open and transparent as possible. Ideally all parties should be fully informed about the issues considered by the Council. The public should be satisfied that the final decisions have been made openly and have been fully explained.
86. The public affected by planning decisions should know all the facts and reasoning which lies behind them and consequently, being better informed, the Commissioner believes that the public would have a greater ability and be more inclined to actively participate in the decision making process.
87. Many of the arguments supporting greater openness rest in the decisions themselves and in the general openness of the planning process. This is generally provided by the availability of documents associated that process.

Conclusion

88. The Commissioner has considered the Council's representations. He recognises the merit in those arguments favouring disclosure as well as those favouring continued reliance on Regulation 12(4)(e). The question of balancing the factors to determine whether the information should be disclosed is not an easy one in this case.
89. The Commissioner notes that, at the time of the complainant's request, the planning application was subject to an appeal. Consequently the Commissioner considers that disclosure of the withheld information, at the time the request was made could detrimentally affect the Council's

decision making procedures and potentially lead to less full and frank advice being provided by officers of the Council.

90. On balance, the Commissioner has decided that greater weight has to be given to those factors which favour withholding the internal communications. He is particularly persuaded by the need for the Council's officers to have a 'safe space' in which to deliberate potentially controversial issues. He also recognises the real danger of the 'chilling effect' which disclosure could have in respect of future planning issues and decisions.
91. The Commissioner has decided that the public interest lies in maintaining the exception in this instance and that the Council is entitled to rely on Regulation 12(4)(e) to withhold its internal communications.
92. In view of his decision that the Council is entitled to rely on Regulation 12(4)(e) to withhold the various iterations of the planning officer's report, the Commissioner has not gone on to consider the Council alternative reliance on Regulation 13. The Commissioner notes however that the Council has not advanced any credible arguments in support of its application of Regulation 13: It has not persuaded the Commissioner that the officer's report is anything other than the professional opinions of a professional officer, acting in his professional work capacity and that disclosure of the report would contravene at least one of the data protection principles.

Items 2, 4 and 8 of the request

Duty to make environmental information available on request

93. Regulation 5(1) of the EIR states that –

“...a public authority that holds environmental information shall make it available on request.”

94. The Commissioner has sought to determine whether, on the balance of probabilities, the Council holds any recorded information which is relevant to parts 2, 4 and 8 of the complainant's request.
95. The Commissioner makes this determination by applying the civil test of the balance of probabilities. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.
96. The Commissioner investigated this complaint by asking the Council a number of questions about the searches it has made to locate the information sought by the complainant in parts 2, 4 and 8 of his

request. Likewise he has asked the Council questions about the possible deletion/destruction of relevant information.

97. In its response to his enquiries the Council has assured the Commissioner that it holds no information in respect of parts 2, 4 and 8 of this request.
98. The Council has advised the Commissioner of its practice to scan Planning Application notes onto its document management system "IDOX", and then to destroy the paper copies once a decision is reached.
99. A search for information relevant to parts 2, 4 and 8 of the request was restricted to the Council's IDOX system on its shared network drive and to the 5,110 comments located in a separate electronic folder on the shared network drive.
100. The Council stores information on its IDOX system under the appropriate Planning Application reference number. This reference number was used as the appropriate search term to locate relevant information to these parts of the complainant's request.
101. The Council has assured the Commissioner that no documents have been destroyed which fall within the scope of parts 2, 4 and 8 of the request. The Council would be able to interrogate its IDOX system to determine when relevant information was scanned and then make a determination as to when the hard-copy paperwork was destroyed.
102. There is a statutory requirement for the Council to retain all information held on a planning file. This requirement is reflected on page 69 of the Council's Corporate Retention Policy which concerns Application Processing and specifically to "records documenting discussion and assessment before submitting planning applications", and to "pre-planning advice". A copy of the retention policy was supplied to the Commissioner.
103. The Commissioner has considered the representations made by the Council in respect of items 2, 4 and 8, and applying the civil test mentioned above, and in the absence of any evidence to the contrary, the Commissioner has decided that the Council does not hold any further recorded information under the terms of the complainant's request.
104. The Commissioner has therefore determined that the Council has complied with Regulation 5(1) of the EIR in respect of parts 2, 4 and 8 of the request.

Regulation 7 – Extension of time to comply with a request

105. Regulation 7 of the EIR provides that a public authority may extend the 20 day compliance period to 40 working days. It states –

“...the public authority may extend the period of 20 working days referred to in paragraph (2) to 40 working days if it reasonably believes that the complexity and volume of the information requested means that it is impractical either to comply with a request within the earlier period or to make a decision to refuse to do so.”

106. The Council has informed the Commissioner that it relied on Regulation 7 because the complainants request concerned a large number of documents and because the validity of these documents was in doubt. Consequently the Council determined it was necessary to seek advice from solicitors in its Legal Department on the potential disclosure of those documents.

107. The same solicitors also advised the Council in respect of its reliance on Regulation 7.

108. The Commissioner has considered the Council's handling of the complainant's request. He has determined that the Council had reasonable justification to extend the 20 working day compliance period in respect of this request by virtue of the Council's need to consider the significant volume of documents it holds and the nature of the information those documents contain. The Commissioner's decision is that the Council was entitled to rely on Regulation 7 in respect of this request.

Other matters

109. The complainant has asserted that the Council had an ulterior motive in denying him access to the information he had requested and for deliberately extending the compliance period under Regulation 7 of the EIR. This assertion was put to the Council for comment or rebuttal.

110. The Council has emphatically denied the existence of any ulterior motive: It has stressed to the Commissioner that its response to the complainant's request was determined solely by the volume and nature of documents it holds and by its need to consult with its solicitors.

111. Again the Council has stressed that the 5,110 comments documents were not part of its consideration of this particular planning application, and as a result of the complainant's request, the Council is currently

reviewing its processes and procedures regarding personal data and planning comments.

112. In view of his decision in respect of the complainant's request, the Commissioner accepts that Council had no ulterior motive in denying the complainant access to the information he seeks.

Right of appeal

113. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

114. 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.

115. 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