

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

Date: 1 November 2022

Public Authority: Tower Hamlets Council
Town Hall
Mulberry Place
5 Clove Crescent
London
E14 2BG

Decision

1. The Commissioner's decision is that at the time of the request Tower Hamlets Council was entitled to withhold some of the information the complainant has requested under regulation 12(5)(e) of the EIR, which concerns commercial interests. The Council breached regulation 14(3) of the EIR as it incorrectly issued its refusal under FOIA and not the EIR.

Request and response

2. The complainant made the following information request to Tower Hamlets Council ('the Council') on 1 October 2021:
"[1] What are the current estimated costs for the new town hall at the old Whitechapel Hospital?
[2] When is it likely to be finished by?
[3] How many meetings room will there be?
[4] Have there been any changes made due to COVID about the use of the building?"
3. The Council addressed parts 2-4 of the request. Having advised it was handling the request under the EIR, the Council's final position with

regards to part 1 was to withhold this information under section 43(2) of FOIA, which also concerns commercial interests.

Reasons for decision

4. This reasoning covers first, whether the Council handled the request under the correct legislation and second, whether the information could be withheld because it was commercially sensitive.
5. When it acknowledged receiving the request, the Council advised it would handle the request under the EIR but went on to provide a response and internal review under FOIA.
6. The requested information concerns a redevelopment project. As such the Commissioner is satisfied that the information is environmental information under regulation 2(1)(c) of the EIR¹, and also potentially regulation 2(1)(e). It is not clear to the Commissioner why the Council reverted to FOIA.
7. Because the Council issued its refusal under FOIA and not the EIR it breached regulation 14(3) of the EIR. This concerns the exception(s) a public authority is relying on to withhold information and why the exception(s) are engaged.
8. Information can be withheld under regulation 12(5)(e) of the EIR if disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
9. At the time of the request in October 2021, the Council explained that it considered that disclosing the estimated costs of converting a former hospital into its new town hall would adversely affect its own commercial interests, and those of the contractor. This was because, at that time, the cost estimates were being assessed and evaluated against the terms and conditions in its 'Design and Build' contract, which had a £109.5m value. The Council advised that any change to the works was subject to review and a robust contract management process.
10. The Commissioner has considered four tests. First, he is satisfied that the requested information is commercial in nature. Second, he is

¹ <https://www.legislation.gov.uk/uksi/2004/3391/regulation/2/made>

satisfied that the information is subject to confidentiality by law because it is not trivial and is not otherwise accessible and so has the necessary quality of confidence.

11. Third, the Commissioner has considered whether the confidentiality is provided to protect a legitimate economic interest. The Council's correspondence to the complainant is not clear on this point. However, the Commissioner considers that disclosing the detailed estimated costings at the time of the request would undermine the Council's position in a competitive marketplace. It would have a detrimental impact on its ability to get best value for the works to be carried out, as its commercial bargaining position would no longer be protected. Disclosing the information would undermine the contractor's commercial interests as it would provide its competitors with an insight into the contractor's costings.
12. Finally, the Commissioner is satisfied that the confidentiality would inevitably be affected if the Council disclosed this information.
13. Since the four tests have been satisfied the Commissioner finds that regulation 12(5)(e) of the EIR is engaged as disclosing the information requested at part 1 of the request would adversely affect the Council's and the contractor's commercial interests. He has gone on to consider the associated public interest test.
14. The Council noted that there is a public interest in it being open and transparent in how it delivers public services. Disclosing the information would help assure the public that the Council undertakes commercial transactions on a competitive, commercial basis. Disclosure would enable the public to better scrutinise how the Council spends public money, such as when it purchases goods and services or awards contracts to private sector companies.
15. Regarding the public interest in withholding the information, the Council's argument is not strong; it is the position described at paragraph 9 of this notice. That is not a clear, public interest argument. However, the Commissioner considers that there is a public interest in the Council being able to achieve the best value for money that it can, and in there being a pool of well-performing organisations with which the Council can contract.
16. Other than the public having "the right to know", the complainant has not brought to the Commissioner's attention any particular concerns about the regeneration project in question that might strengthen the argument for disclosure.
17. In the absence of such concerns the Commissioner finds that what public interest there is in this matter is met through the information the Council disclosed and in the associated information actively published on

the 'New Town Hall' section of its website. The Commissioner's decision is therefore that at the time of the request, the public interest favoured maintaining the regulation 12(5)(e) exception to protect the Council's commercial interests and those of its contractor.

Right of appeal

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

19. 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.
20. 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

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