

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 18 October 2022

Public Authority: London Borough of Lewisham
Address: Town Hall
Catford Road
London
SE6 4RU

Decision (including any steps ordered)

1. The complainant has requested information regarding planning consultations that the Council undertook for Lewisham Tall Buildings Study and Addendum. The above public authority ("the Council") relied on regulation 12(4)(d) of the EIR (material in the course of completion, unfinished documents, and incomplete data) to withhold the information.
2. The Commissioner's decision is that:
 - The information being withheld under regulation 12(4)(d) of the EIR engages that exception, and the public interest favours non-disclosure.
 - However, the Commissioner has concluded that the Council breached regulation 5(2) of the EIR by failing to respond to the request within 20 working days and by failing, within the same time period, to inform the complainant that it was seeking to rely on regulation 12(4)(d).
3. No steps are required as a result of this decision notice.

Request and response

4. On 17 June 2022, the complainant wrote to the public authority and requested information in the following terms:

"In the planning consultation, Lewisham Tall Buildings Study & Addendum, the Council has said: "As this is an evidence base document which has been prepared by independent consultants to provide an objective assessment we are not asking whether you agree or disagree with the findings of the Addendum"

Please provide full information on the consultant(s) commissioned above, including:

- (a) their name
- (b) their qualifications
- (c) any tender and/or commissioning documents
- (d) any instructions and/or directions given to the consultants
- (e) all correspondence between officers and the consultant(s)
- (f) all correspondence between planning officers and elected members on this subject.

Please consider EIR and FOI for this request."

5. The Council responded on 19 August 2022 and provided some information within scope of the request but refused to provide the information at point e) citing regulation 12(4)(d) of the EIR as its basis for doing so. The Council upheld its original position at internal review.

Reasons for decision

6. The following analysis sets out why the Commissioner has concluded that the Council was entitled to rely on regulation 12(4)(d) of the EIR in this particular case.
7. Regulation 12(4)(d) of the EIR allows a public authority to withhold information which is in the course of completion, unfinished documents, or incomplete data.
8. The Commissioner is satisfied that the withheld information can be categorised as material in the course of completion. He accepts that the information in question forms part of the process of assessing the Local Plan. That process is not yet settled, and no final decision has been made. As such, the Commissioner has decided the Council was entitled to apply regulation 12(4)(d) of the EIR to the information it is

withholding. He has therefore gone on to consider the associated public interest test.

Public Interest Test

The Council has recognised that there will always be some public interest in disclosure of information to promote transparency and accountability of public authorities, the free exchange of views and more effective public participation in decision making, all of which ultimately contribute to a better environment. However, they argue that: "Officers should be able to openly discuss, collaborate and debate ongoing issues without fear of these discussions being released for external scrutiny. And "Further to the above, it should be noted that the timing of the request can affect the weighting of the public interest arguments. As mentioned earlier, this issue is still very much live and ongoing so protecting the integrity of a decision making process is vital."

9. The complainant argues that: "In the absence of any further documentation, then question (e) becomes crucial. The correspondence requested is limited. It is defined by the terms of the request under EIR concerning this historic, discrete piece of work concerning Tall Buildings and Planning parameters. No specific cases or live planning applications are involved.
10. They go on to argue that: "The statement that this is "evidence based" and "an objective assessment" cannot otherwise be corroborated without some release of correspondence as requested in (e)."
11. And "it should now be clear to public authorities that the exceptions are not absolute and that information may be disclosed even though an exception is engaged. How can a request for information about the commissioning of consultants be chilling? In favour of further release of information is the need for a proper debate regarding planning policies and the evidence that they are constructed upon - the public interest."

The Commissioner's conclusion

12. Regulation 12(2) of the EIR states that a public authority shall apply a presumption in favour of disclosure.
13. However, public interest considerations should always be relevant to the exception being relied upon, to the specific nature of withheld information and to the context at the time of the request.
14. The Commissioner has reviewed both the complainant's requests and the public authorities' responses, and on the evidence presented to him in this case, the Commissioner considers that the Council has

demonstrated that the information relates to and informs a decision-making process that is incomplete and that its disclosure would, by misinforming public debate, impede the decision-making process that it supports.

15. Therefore the Commissioner's view is that the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(d) was applied correctly.

Regulation 5(2) – time for compliance

16. Regulation 5(1) of the EIR states: "Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request."
17. Regulation 5(2) states: "Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."
18. In this case the complainant initially requested information on 17 June 2022. Whilst the Council did not issue a refusal notice until 19 August 2022. Therefore, the Commissioner has concluded that the council breached regulation 5(2) of the EIR.

Right of appeal

19. 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

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

20. 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.
21. 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

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