

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

**Date:** 17 May 2023

**Public Authority:** North West Leicestershire District Council  
**Address:** Whitwick Road  
Coalville  
Leicestershire  
LE67 3FJ

**Decision (including any steps ordered)**

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1. The complainant has requested all correspondence in relation to a planning application.
2. The Commissioner's decision is that NWLDC was entitled to rely on regulation 12(4)(d) (Material in the course of completion) and regulation 12(4)(e) (Internal Communications) of EIR to withhold the information at the time of the request.
3. The Commissioner does not require the NWLDC to take any further steps.

**Request and response**

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4. On 14 September 2022, the complainant wrote to NWLDC and requested information in the following terms related to Planning Application 22/01126/OUT:

"We would like to see any and ALL correspondence in relation to this planning application, published in the public domain, prior to its recommendation / determination...."

"...We would also like confirmation that ALL documents relating to this application, including but not limited to, the original report from (Name Redacted) to (Name redacted) recommending refusal and the 'missing' correspondence referred to in (Name redacted) email, will be forwarded to us as requested. Please can you confirm a timescale for receipt of this?"

5. NWDLC responded on 7 October 2022 and provided some information within the scope of the request but refused to provide the draft planning application report citing the following EIR exceptions:
  - Regulation 12(4)(d) (Material still in the course of completion).
  - Regulation 12(4)(e) (Internal communications).
6. On 9 October 2022, the complainant wrote to NWDLC and said:

"We reiterate our request that all documents, including but not limited to, emails, internal and external documents, telephone calls etc are released to us (It is apparent from the documents already disclosed, that further emails / communications are missing)."
7. Following an internal review NWLDC wrote to the complainant on 4 November 2022 in which it maintained its original position.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 3 January 2023 to complain about the way the request for information had been handled as they believed that not all information had been disclosed on the NWLDC planning application portal.
9. The Commissioner considers that the scope of the case is to determine if NWLDC is entitled to rely on regulations 12(4)(e) and 12(4)(d) of the EIR to withhold the requested information.

### **Reasons for decision**

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#### **Is the requested information environmental?**

10. Regulation 2(1) of the EIR defines environmental information as being information on:
  - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity

and its components, including genetically modified organisms, and the interaction among these elements;

- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
  - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;
  - (d) reports on the implementation of environmental legislation;
  - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
  - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
11. As this request is for recorded information relating to a draft planning application report, the Commissioner believes that the requested information is likely to be information on administrative measures as described at regulation 2(1)(c) and for procedural reasons, he has therefore assessed this case under the EIR.

**Regulation 12(4)(d) – Information in the course of completion, unfinished documents and incomplete data**

12. Regulation 12(4)(d) provides an exception to the duty to make environmental information available when the request relates to material which is still in the course of completion, unfinished documents, or incomplete data. The Commissioner's guidance on regulation 12(4)(d)<sup>1</sup> details his view that draft documents will engage the

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<sup>1</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/regulation-124d-eir/>

exception because a draft of a document is by its nature an unfinished form of that document

13. The withheld information comprises of a draft report prepared by the Senior Planning officer and the planning committee.
14. In this instance, as the complainant is requesting a draft version of a report which has now been finalised and published, the Commissioner considers regulation 12(4)(d) is engaged.
15. NWLDC has also cited regulation 12(4)(e) in respect of the same information. Where two EIR exceptions have been applied to the same information, a public authority is entitled to aggregate the public interest. The Commissioner will therefore consider whether regulation 12(4)(e) of the EIR is also engaged before considering the balance of the public interest.

### **Regulation 12(4)(e) – internal communications**

16. Regulation 12(4)(e) states that information is exempt from disclosure if it involves 'the disclosure of internal communications'. It is a class-based exception, meaning there is no need to consider the sensitivity of the information in order to engage the exception. Rather, as long as the requested information constitutes an internal communication then it will be exempt from disclosure.
17. The Commissioner has considered the information withheld by NWLDC, on the basis of this exception and he is satisfied that it constitutes internal communications shared between the planning officers at NWLDC and therefore regulation 12(4)(e) is also engaged.
18. In reaching his decision the Commissioner has considered the balance of the public interest both in favour of and against disclosing the information at the time the request was made for both exceptions as the reasoning is the same if not similar.

### **Public interest in favour of disclosure**

19. The Commissioner is aware that the development subject to this planning application has been controversial, and that two previous applications were denied.
20. NWLDC has confirmed that all documentation is either now on the portal or has been released to the complainant and that it has been fully open and transparent. It confirmed that there is no more information to disclose as the final version of the report is already published.
21. The Commissioner is also aware that the assessment from NWLDC's planning officers changed from "refuse" to "permit" during the course of

considering the application. The final report with a "permit" decision was published onto NWLDC's planning portal on 1 December 2022.

22. NWLDC acknowledged that there is public interest in all planning matters and proposals which may impact residents and the disclosure of draft reports for potential redevelopment offers the public an opportunity to consider the impact of any proposals in their local area.
23. Additionally, NWLDC appreciates the importance of increasing public accountability and transparency on the quality of its decision making and the public can view and comment on live planning applications via the planning application portal on its website.

### **Public interest in maintaining the exception**

24. NWLDC additionally argued that information contained within draft documents may not be accurate and can differ quite substantially to the final document. The release of the draft report prior to completion could misinform the public and be detrimental to the planning applications, resulting in NWLDC having to defend comments, explain any differences between the two reports and justify recommendations which are not yet decided.

### **The Commissioner's analysis**

25. The Commissioner is mindful that the purpose of both exceptions is to provide authorities with a safe space within which decisions, discussions and exchanges of view can take place without the process being frustrated or hindered by premature public scrutiny.
26. He considers that the extent to which disclosure would have a detrimental impact on internal processes will be influenced by the particular information in question and the stage the process had reached at the point the request was responded to. There will always be a stronger public interest in protecting a process that is ongoing than one that has concluded.
27. The Commissioner has considered the arguments provided by both parties. He recognises the legitimate public interest in disclosing information that would inform the public about decisions concerning activities that may have an impact (whether positive or negative) on the environment. He is mindful that access rights under the EIR are designed to support public access to environmental information and public participation in decision making.
28. The Commissioner recognises the complainant's concerns in this matter. The final version of the report is now in the public domain and there

may therefore be a public interest in understanding how the final version differed from earlier versions. However, the Commissioner is required to consider matters as they stood at the point NWLDC issued its refusal notice – which was prior to the final recommendation being made.

29. A key factor in assessing the weight of public interest arguments is the extent to which the information itself would inform public debate on the issue concerned. There is always an argument for presenting a full picture of how a decision was made or arrived at. If disclosing incomplete material or draft documents would support this, then it increases the weight of the argument for disclosure.
30. Additionally, the Commissioner is mindful that a public authority is required to apply a presumption in favour of disclosure, and in any event the public interest in maintaining an exception must outweigh the public interest in disclosure. If the public interest is balanced, then the information in question must be disclosed.
31. The Commissioner also considers that a safe space is required around a sensitive and emotive topic. The issue would have been particularly sensitive at the time the request was responded to, given the subject, the previous applications on similar matters which have been refused and the potential for ongoing appeals in the future.
32. Therefore, the Commissioner considers that there is a strong public interest in protecting NWLDC's ability to exchange correspondence and deliberate in a private space internally as in this case, the process was still ongoing, and the planning application was still being decided at the time the request was made.
33. Disclosing a report, whose conclusions had yet to be finalised, whilst the decision-making process was ongoing would have caused confusion and would have distracted NWLDC from making the decision. Releasing a preliminary conclusion that had yet to be formally agreed upon would also have put NWLDC at risk of being accused of having "pre-determined" the matter. There is very little public interest in requiring a public authority to defend a decision that it has not yet made or even fully considered.
34. The Commissioner does not consider that the presumption in favour of disclosure changes this conclusion.
35. The Commissioner notes that the planning application decisions in relation to this matter have now been determined, the process has concluded and there will be no further internal discussion required. That would suggest that the need for a safe space has reduced considerably. However the Commissioner is required to consider matters as they stood at the point at which the request was responded to – which was whilst the decision-making process was still live.

36. Consequently, the Commissioner finds that the public interest in maintaining the exceptions at regulation 12(4)(d) and regulation 12(4)(e) does outweigh the public interest in disclosing the withheld information.
37. As such, the Commissioner has decided the Council was entitled to apply regulations 12(4)(d) and 12(4)(e) of the EIR to withhold the information.

## **Right of appeal**

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38. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

39. 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.

40. 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 .....**

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**