

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

**Date:** 19 March 2024

**Public Authority:** South Ribble Borough Council  
**Address:** Civic Centre  
West Paddock  
Leyland  
Lancashire  
PR25 1DH

**Decision (including any steps ordered)**

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1. The complainant requested from South Ribble Borough Council (the Council) information relating to a planning application and matters regarding the planned upgrade of outdoor sports facilities at Lostock Hall Academy. The Council provided some information but relied on regulations 12(4)(e) (internal communications), 12(5)(b) (course of justice) and 13 (personal data) of the EIR to withhold the remaining information.
2. The Commissioner's decision is that the Council is entitled to rely on regulation 12(4)(e) to refuse to comply with the request. He also finds that the Council had issued its review response in accordance with regulation 11(4) of the EIR, and it complied with its obligations under regulation 9 of the EIR to offer advice and assistance.
3. However, the Commissioner finds that the Council breached regulations 5(2) and 14(2) of the EIR by failing to respond to the request within 20 working days. The Commissioner does not require the Council to take any further steps as a result of this decision.

## Request and response

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4. On 8 February 2023, the complainant wrote to the Council and requested information in the following terms:  
  
"Lostock Hall Academy Sports Provision - Planning Application  
07/2022/00398/FUL  
AND  
Subsequent work to rejuvenate existing outdoor sports facilities  
2022/2023  
  
All reports; emails, documentation and other associated information within SRBC, between SRBC and its agents and Lostock Hall Academy and its agents with regard to the funding, proposed development/agreement and planning related and other matters at both a Councillor and Officer level with regard to the planned upgrade of outdoor sports facilities (including community usage) at Lostock Hall Academy over the past 3 years."
5. On 8 March 2023 the Council responded and provided the complainant with some redacted emails.
6. The complainant replied to the Council and deemed the information to be insufficient, the Council supplied further documents to him on 30 March 2023.
7. On 11 April 2023 the complainant asked for an internal review, as he did not consider the documents disclosed had sufficiently met his request.
8. On 8 June 2023 the Council provided its review response. It suggested to the complainant to "narrow the requested search parameters" and if he could limit the request to certain departments/Heads of Service/Directors/Members and between 18-24 months, as this would assist them in providing the response.
9. On 11 July 2023 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
10. During the Commissioner's intervention, on 10 November 2023 the Council provided its submissions and answers to the questions posed in his letter. After revisiting the request, the Council acknowledged it had not cited any FOI exemptions in its response to the complainant, and therefore implied section 12 (cost of compliance) of FOIA to rely upon. However, the Council stated that in hindsight, it could have relied upon regulations 13(1) and 12(4)(e) of the EIR.

11. On 5 December 2023 the complainant narrowed his request by limiting it to specific postholders/departments, but he wished to retain the three year period. He also emphasised that he is seeking information of “those colleagues who have had involvement in the stated project (original FOI request of 8 February 2023).”
12. On 6 December 2023 the Council informed the Commissioner of its intention to comply with the complainant’s narrowed request in due course, and that it will state any exemptions it has identified and intends to rely upon.
13. On 31 January 2024 the Council informed the Commissioner that as the complainant had narrowed his request, it deemed section 12 of FOIA does not apply. The Council said it was considering the documentation which had been retrieved and that it may rely on other exemptions. It also stated it was looking to provide as much of the information as possible to the complainant.
14. On 5 February 2024 the Council provided its response to the complainant’s narrowed request. It supplied a link to the processed documents and stated that this includes the first half of the documents relating to his request, with a view to disclosing the remainder in due course. The Council also confirmed that a large number of documents had been redacted as it considered the information to be third party personal data, and cited regulations 12(3) and 13 of the EIR.
15. On the same day, the Council informed the Commissioner that upon review of the emails identified by the search, some of the documents had been withheld. The Council applied regulations 12(4)(e) and 12(5)(b) of the EIR to that information.
16. On 21 February 2024 the complainant returned to the Commissioner to complain about the way his request for information had been handled.

## **Reasons for decision**

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17. This reasoning covers why the Council was entitled to rely on regulation 12(4)(e) of the EIR to withhold some of the requested information.

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

18. 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.

19. The Commissioner's published guidance<sup>1</sup> on this exception defines a communication as encompassing any information which someone intends to communicate to others. This includes information communicated by letter, memo, email and covers official information contained in non-corporate channels or locations (private email accounts, private messaging accounts e.g. WhatsApp, Facebook Messenger and messages sent on private mobile devices). Communications also include information which has been filed on paper or electronically where others may consult it.
20. An internal communication is a communication that stays within one public authority.
21. Regulation 12(4)(e) is a class-based exception, meaning there is no need to consider the sensitivity of the information to engage the exception. If information represents an internal communication, the exception will apply.
22. The withheld information in this case, comprises parts of internal emails between council officers which relate to the planned upgrade of outdoor sports facilities at Lostock Hall Academy.

### **The Council's position**

23. The Council relied on regulation 12(4)(e) of the EIR relating to internal communications during the initial discussions of the project, relating to deliberations between differing departments, and their comments around the potential structure of the project. The Council said the funding and budget implications were also discussed alongside information about developing the land by using a specific planning budget.
24. The Council provided the Commissioner with documents which reveal internal communications between different departments within the Council. Having examined the withheld information, the Commissioner is satisfied that it comprises communications that are solely "internal" to the Council. This information, therefore engages regulation 12(4)(e) of the EIR.

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-12-4-e-internal-communications/about-this-exception/>

### **Public interest test**

25. The Commissioner has considered whether the public interest in maintaining the exception outweighs the public interest in disclosing the information.

### **Public interest arguments in favour of disclosing the information**

26. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions.
27. The Council recognises that there is a strong public interest to demonstrate openness, transparency and accountability within Council functions. The understanding of how projects are introduced, budgeted and progressed, could be seen as within the interests of the public, assisting in clearing assumptions and confirming the process that was adopted.
28. The complainant argued that it is within the interests of the public, and it would assist in clearing assumptions and potential misconceptions around this matter, if all the information relating to his request was disclosed. With regard to some of the information which was disclosed by the Council, the complainant does not believe that it provides "a complete picture of how the Council funded Sports Development project at Lostock Hall Academy and has been introduced, budgeted and progressed." The complainant is also of the view that there are "significant gaps in what has been disclosed, for example, questions posed by one person but no copy of the response received etc..."
29. The Commissioner acknowledges the content of the withheld information, which concerns the planned upgrade of outdoor sports facilities at Lostock Hall Academy. He accepts that disclosure would assist in the public understanding the process that was adopted and decision-making with regard to the planned upgrade of this development. The Commissioner's view is that there is a particularly weight in the public interest in favour of disclosure, and this is due to the implications of the decision-making in this area.

### **Public interest arguments in favour of maintaining the exception**

30. In its submissions to the Commissioner, the Council said it would be preferred for the Council to protect internal deliberations and their decision-making process allowing a safe space for ideas to be voiced and discussed without external scrutiny.

31. The Council explained that the project attracted a considerable amount of attention alongside the ongoing tensions between the local residents and the school. The Council said the initial stages of the project would affect the current position of the project with problems still being live between the parties. Disclosure, the Council believes, could potentially cause harm to the current position of the project by the communications being used for political and individual gain. It said this would be in order to potentially sway the current issues or attract further scrutiny into a project that is designed to serve the community as well as the school.
32. The Council argued that it should be able to freely access, enquire and consider legal advice provided by their internal department. It said disclosure of such information would inhibit the Council from seeking general legal advice, and referred to an appeal<sup>2</sup> to demonstrate its argument.
33. The Council further argued that public access to privileged information of this nature, whilst the issues are still 'live' would provide an indication of the issues faced alongside any strengths and weaknesses which the Council possess. This, it said, would not portray a balanced environment within the interests of justice.
34. The Commissioner notes from the Council's submissions, the purpose of the initial discussions of the project emails. He also notes the deliberations between the departments which include their comments around the potential structure of the project. Other discussions were relating to funding and budget plans, and information about developing the land.
35. The Commissioner acknowledges the importance of a "safe space" for ideas to be discussed and to allow the Council to carry out internal deliberation. Arguments about "chilling effects" and the "safe space" are at their strongest when the issues involved in the internal communication are still live. The Commissioner notes that, in this case, matters relating to the project in question were ongoing. Therefore, the Commissioner considers that the issue was live at the time of the request.

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[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1949/Salford%20City%20Council%20EA.2015.0276%20\(04.07.17\).pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1949/Salford%20City%20Council%20EA.2015.0276%20(04.07.17).pdf)

## **Balance of the public interest**

36. The Commissioner accepts that there will always be some public interest in disclosure to promote transparency and accountability of public authorities, greater public awareness and understanding of environmental matters, a free exchange of views, and more effective public participation in environmental decision-making.
37. The weight of this interest will vary from case to case, depending on the profile and importance of the issue and the extent to which the content of the information will actually inform public debate. However, even if the information would not in fact add much to public understanding, disclosing the full picture will always carry some weight as it will remove any suspicion of "spin".
38. The Commissioner recognises that the release of internal communications may create a "chilling effect" on the free and frank exchange of views and ideas, also on future discussions and debates. These exchanges, he considers, are necessary in order for the Council to take decisions based on advice and consideration of all options relating to environmental plans. The Commissioner accepts the risk of such an effect is likely to be higher if information is disclosed whilst the plans are live and ongoing.
39. The Commissioner considers the argument for a safe space for internal communications carries significant weight in this case. Given the detrimental impact disclosure may have on the quality of decision-making, there is a stronger public interest in not disclosing the withheld information.
40. In reaching a decision, the Commissioner has taken into account the fact the Council disclosed to the complainant a significant amount of information relating to the request. He considers that this goes some way to satisfying the public interest in disclosure.
41. Considering all the circumstances of this case, whilst he acknowledges the topic associated with the request has been the subject of local and media interest, the Commissioner's decision in the public interest in maintaining the exception outweighs disclosure. Therefore, the Council was entitled to withhold some of the information under regulation 12(4)(e) of the EIR.

## **Conclusion**

42. As the Commissioner has determined that the Council was entitled to withhold some of the information under regulation 12(4)(e), he has not gone on to consider the Council's application of regulations 12(5) and 13 of the EIR.

## Procedural matters

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43. Regulation 5(2) of the EIR states information shall be made available as soon as possible and no later than 20 working days after the date of receipt of the request.
44. Regulation 14(2) of the EIR states a refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.
45. On 5 February 2024 the Council provided its response to the complainant's narrowed request of 5 December 2023, which is 42 working days after the date of receipt of the request. Therefore, the Commissioner found a breach of both regulations 5(2) and 14(2) of the EIR.
46. Regulation 11 of the EIR covers public authorities' obligations in relation to the carrying out of internal reviews of the handling of requests for information.
47. Regulation 11(4) of the EIR states that a public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.
48. The complainant asked for an internal review on 11 April 2023, and the Council provided its review response on 8 June 2023.
49. The complainant raised concerns that it had taken "over 2 months since the SRBC commitment to complete the internal review process, within 3 weeks I received the SRBC Internal Appeal Decision...".
50. However, the Commissioner calculated that the Council's response was provided 40 working days after the request was received. Although provided on the last (maximum) day, and just within the time, it did not exceed the time limit, therefore, the Commissioner found that the Council complied with regulation 11(4) of the EIR.

## Other matters

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### Regulation 9 - Advice and assistance

51. Regulation 9(1) of the EIR states that a public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.



52. In this case, the Council provided information relating to the request, but the complainant deemed it to be insufficient, subsequently, the Council disclosed additional information. Following further correspondence between the complainant and the Council, the complainant believed that the Council had not provided him with "support or guidance with regard to any refinement of my request". However, the Commissioner notes that in its review response, the Council advised the complainant to narrow the requested search parameters, and suggested ways he could limit his request in order to assist it in providing a response.
53. The Commissioner considers this to constitute a reasonable level of advice and assistance, and is therefore satisfied the Council complied with its obligations under regulation 9 of the EIR to offer advice and assistance.

## Right of appeal

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54. 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)

55. 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.
56. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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