

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 24 May 2019

Public Authority: Cornwall Council
Address: County Hall,
Treyew Road
Truro
TR1 3AY

Decision (including any steps ordered)

1. The complainant has requested information on the decision making process which the council took to allow caravans to remain parked on a field. The council disclosed some information but applied Regulation 12(5)(b) (course of justice) to withhold other information.
2. The Commissioner's decision is that the council was correct to apply Regulation 12(5)(b) to withhold the information.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 22 June 2018, the complainant wrote to council and requested information in the following terms:

"This request concerns two static caravans that are sited in [address redacted].

There are extant enforcement notices on these caravans for them to be removed by direct action in 2017.

Due to logistics and weather Cornwall Council stated caravans would be moved in spring 2018.

Despite numerous emails to Council caravans are still in situ.

Information required is...details of the decision making process that has taken place which allows the caravans in question to remain illegally in [address redacted]."

5. The council responded on 19 July 2018. It confirmed that it holds information falling within the scope of the request, however it applied Regulation 12(5)(b) to withhold it.
6. Following an internal review the council wrote to the complainant on 21 September 2018. It upheld its position that the information was exempt under Regulation 12(5)(b) but did provide the complainant with a decision making flowchart which demonstrated the decision making steps which the council would go through regarding such situations.

Scope of the case

7. The complainant contacted the Commissioner 15 November 2018 to complain about the way his request for information had been handled.
8. The complainant argues that the council was not correct to withhold the information under Regulation 12(5)(b).

Reasons for decision

9. Regulation 12(5)(b) of the EIR states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect - the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
10. The course of justice at Regulation 12(5)(b) is a broad exception which encompasses any adverse effect on the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature. The Tribunal affirmed this view in the case of *Surrey Heath Borough Council v Kevin McCullen and the ICO (EA/2010/0034)* when they acknowledged that the Regulation covered more than just legal professional privilege.
11. Paragraph 12 of the Commissioner's guidance on the application of Regulation 12(5)(b)¹ specifically states that the exception may cover:

"information about law enforcement investigations or proceedings. This would cover the obvious example of information about a police investigation but could also include information about other types of civil and criminal investigations and proceedings, such as those carried out under planning or charity law, or those related to tax collection, immigration controls and health and safety regulations;"
12. As such, the Commissioner accepts that 'an inquiry of a criminal or disciplinary nature' is likely to include information about investigations into potential breaches of legislation, for example, planning law or environmental law.
13. The complainant said that the background to this case relates to extant enforcement notices issued against a landowner who has stationed two caravans on land. Enforcement notices were issued in 2016 requiring the caravans to be moved, however the fact that the caravans remain in place has led him to believe that the council has made a decision not to take action to have the caravans removed. The council however confirmed that: *"The Council has made no formal decision to allow the caravans to remain stationed on the land and the investigation is ongoing."*

¹ https://ico.org.uk/media/for-organisations/documents/1625/course_of_justice_and_inquiries_exception_eir_guidance.pdf

14. Having considered the council's arguments, and reviewed the withheld information, the Commissioner recognises that the information represents evidence that, at the time of the request, related to a live and ongoing investigation surrounding a potential breach of planning laws.
15. As the situation is still 'live' the Commissioner considers that it is clear that a disclosure of the requested information would not only inhibit the council's ability to effectively carry out its functions in this respect, but would damage public confidence in such activities being undertaken appropriately and with due regard to the rights and expectations of involved parties.
16. In view of the above, the Commissioner is satisfied that it is more probable than not that disclosure of the information would adversely affect the course of justice, and that the exception provided by Regulation 12(5)(b) is therefore engaged.

The public interest

17. Regulation 12(1)(b) requires that, where the exception under Regulation 12(5)(b) is engaged, a public interest test should be carried out to ascertain whether the public interest in maintaining the exception outweighs the public interest in disclosing the information. In carrying out her assessment of the public interest test, the Commissioner is mindful of the provisions of Regulation 12(2) which states that a public authority shall apply a presumption in favour of disclosure.

The public interest in disclosure

18. The complainant argues that the council has made a decision and issued enforcement procedures against the landowner to have the caravans removed but it appears that no further action has been taken. He argues that the community are concerned about antisocial behaviour issues associated with the caravans and the site in question, and there is therefore a public interest in the information being disclosed.
19. The council considered that the following public interest factors were in favour of the disclosure of the information:
 - Disclosure of the information will increase access to information held by the authority, and allow scrutiny of the public authority's decisions.
 - Disclosure could make reasons for the authority's decision more evident and increase public understanding on the issues. An informed and involved public helps to promote good decision making by public bodies.

- Disclosure could enhance the scrutiny of the authority
 - Disclosure could contribute to public debate on the issue and safeguard the democratic process.
 - Disclosure could increase public participation in decision making/council processes
 - Disclosure would provide increased accountability for the spending of public money and upholding standards of integrity and securing the best use of public resources.
 - Disclosure would provide enhanced transparency of local authority actions and activities – ensuring justice and fair treatment for all
20. The Commissioner considers that some weight must always be attached to the general principles of accountability and transparency. These in turn can help to increase public understanding, trust and participation in the decisions taken by public authorities.
21. She is satisfied that there is a public interest in the disclosure of the information given the fact that the council does not dispute that enforcement notices were issued and yet the planning issues which the complainant refers to remain present. There is a public interest in the council providing information which explains why that is the case.

The public interest in the exception being maintained

22. The council has confirmed that the information relates to a live and ongoing investigation. The council argues that disclosure of the information would not only impede it from being able to undertake an investigation effectively, confidentially, and without outside influence, but would compromise the justice and fair treatment expected by involved parties.
23. It argues that there is a strong public interest in the local authority being able to effectively carry out its legal obligations and planning enforcement activities without a disclosure of information damaging the integrity of a live investigation and harming the course of justice.
24. The Commissioner recognises that the degree of harm which would occur to the course of justice is closely linked to the timing of a request and the associated stage that a relevant process has reached. She accepts that the disclosure of information whilst the issue remains ongoing is significantly likely to cause a greater degree of harm to an investigation than after its completion. She has therefore given due weighting to this in her consideration of where the balance of the public interest lies.

25. The council said that whilst the planning process is a public one, planning enforcement is not automatically an entirely public process, and that this is, at least in part, because of the possibility of unlawful behaviour, and possible prejudice to any legal or judicial processes which may arise. The council further argued that disclosing the information would adversely affect the course of justice in relation to enforcement proceedings.
26. The council also argues, as an additional point, that there are likely data protection issues relating to the disclosure of information relating to enforcement procedures being taken against a specific landowner beyond what would normally be expected to be disclosed.

Balance of the public interest

27. The public interest inherent in this exception will always be strong due to the fundamental importance of the general principle of upholding the administration of justice, and in particular, the importance of not prejudicing inquiries or investigations.
28. Having considered the arguments in this case the Commissioner is satisfied that the public interest in the exception being maintained outweighs the public interest in the information being disclosed. The council was therefore correct to apply Regulation 12(5)(b) to withhold the information.

Right of appeal

29. 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

30. 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.
31. 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
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