

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 25 November 2022

**Public Authority:** City and County of Swansea  
**Address:** Civic Centre  
Oystermouth Road  
Swansea  
SA1 3SN

### **Decision**

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1. The complainant requested information from the City and County of Swansea ("the Council") relating to a specific planning application.
2. The Commissioner's decision is that the Council is entitled to rely on regulation 12(4)(e) (internal communications) to refuse to provide the withheld information.
3. The Commissioner does not require the Council to take any steps.

## Request and response

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4. The complainant made the following information request to the Council on 7 April 2022:

"Request under the Freedom of Information Act relating to Planning Application number: [reference redacted]

Please accept this email as a request for the following information in respect of the above application:

1. Copy of all emails exchanged between Planning Officers and Highway Officers.
2. Copy of all emails exchanged between Planning Officers [name redacted] and [name redacted].
3. Copy of all emails exchanged between [name redacted] and Officer [name redacted].
4. Copy of all emails to and from [name redacted].
5. Specific confirmation from each Officer that all emails requested have been disclosed.

This list is not exhaustive and further requests may be made."

5. The Council refused to provide the requested information citing regulation 12(4)(e) (internal communications) of the EIR.
6. During the course of the Commissioner's investigation, the Council disclosed some information within the scope of question 4 of the request to the complainant. However, the Council maintained its reliance on regulation 12(4)(e) to refuse to provide the remainder of the requested information.

## Reasons for decision

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7. This reasoning covers whether the Council is entitled to rely on regulation 12(4)(e) of the EIR to refuse to provide the withheld information.
8. Regulation 12(4)(e) provides an exception for information which constitutes an 'internal communication'. In order for the exception to be engaged it needs to be shown that the information in question

constitutes a communication within one public authority, specifically, the authority to which the request is made.

9. The exception for internal communications is class-based, meaning that there is no need to consider the sensitivity of the information in order to engage the exception. However, such factors might be relevant when considering the balance of the public interest.
10. The Commissioner is satisfied from the wording of the request that information falling within the scope of questions 1, 2 and 3 of the request would constitute internal communications as the complainant has requested correspondence between two departments within the Council and correspondence between specific Council officers relating to a specific planning application.
11. With regards to the information requested in question 4 of the request, in its submissions to the Commissioner, the Council explained that it has reviewed the information it holds within the scope of question 4 of the request. It stated that all the information held within the scope of question 4 of the request, except that which has been disclosed to the complainant, constitutes internal communications.
12. The Commissioner is satisfied that the withheld information constitutes internal communications and therefore, he finds that regulation 12(4)(e) is engaged. The Commissioner will now go on to consider the public interest test.
13. With regards to the public interest test, in its initial response to the request, the Council outlined its arguments in favour of disclosing the withheld information. The Council stated that the request has been made solely by the complainant on a live planning application. It considers that disclosing the withheld information would add little to the public debate as a detailed Officer Report has been taken to the Planning Committee.
14. The Council also outlined its arguments in favour of maintaining its reliance on regulation 12(4)(e). The Council stated that the complainant has requested information relating to a specific planning application which is currently being progressed. It explained that there is already information relating to the planning application within the public domain such as formal comments and a Committee Report.
15. The Council considers that it is reasonable to ensure that internal communications and discussions relating to the planning application remain confidential until the application has been formally determined. The Council explained that planning applications can be finely balanced and Council officers need to be able to openly discuss the weight

attributed to individual factors before a decision is made on a planning application. The Council considers that disclosing information relating to a live planning application could damage the quality of advice provided on other planning applications received by the Council.

16. Therefore, the Council considers that on balance, the public interest in maintaining its reliance on regulation 12(4)(e) outweighs the public interest in disclosing the withheld information.
17. The Commissioner recognises that there is public interest in the openness and transparency of the Council. However, as the withheld information relates to a live planning application, the Commissioner accepts that the Council needs to maintain a safe space to freely and frankly discuss the merits of the planning application without external interference.
18. 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. As stated in the Upper Tribunal decision *Vesco v Information Commissioner* (SGIA/44/2019):

“If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure...” and “the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations” (paragraph 19).
19. In this case 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)(e) was applied correctly.

## Right of appeal

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

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

21. 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.
22. 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 .....**

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