

By email:
request-473350-
eaf953de@whatdotheyknow.com

Please ask for/reply to: Sarah Kelly
sarah.kelly@croydon.gov.uk
Your Ref:
Our Ref: Internal Review 9333

Date: 09 October 2018

Dear Mr Whiteside,

**Internal Review under the Environmental Information Regulations 2004
Regarding Request for Information Ref. F/CRT/10009333**

I write further to your request for an internal review dated 13 August 2018 under the Environmental Information Regulations 2004 ('EIR') regarding your request for information.

I have set out below, details of your request for information ('EIR request'), your internal review request, and my internal review investigation.

EIR Request

I understand the council received your EIR request (ref. F/CRT/10009333), on 26 March 2018. Your EIR request asked for the following information:

"Planning Application 18/00648/HSE

Please provide copies of all information held regarding the above planning application and the Council's consideration of it.

I acknowledge that the documentation submitted by the applicant is available on the Council's website and so could be omitted here, but to include it would help provide the 'full picture', in one place.

The information provided should include, but not be restricted to, copies of the following:

- *ALL consultation (objection) letters/emails, which should include the TWO I sent myself on 1 and 7 March 2018,*
- *notes from case officer's site visit, and*
- *the full case officer's report WITH recommendation."*

EIR Response

The Information Team issued the response to your request for information ('EIR response') on 13 July 2018. The EIR response stated that comments made by individuals were being withheld under the exception provided by regulation 12(5)(f) of the EIR (disclosure would adversely affect the interests of the person who voluntarily provided the information).

A copy of the EIR response is **attached**.

Your Internal Review Request

In summary, your internal review request states that the EIR response had not included the following information which you had requested:

1. Notes from planning case officer's site visit.
2. The full planning case officer's report with recommendation.
3. Copies of the representations which the council has received regarding this planning application.

A full copy of your internal review request is **attached**.

Internal Review Investigation and Outcome

In carrying out this internal review, I have spoken to the Information Team which was responsible for issuing the EIR response, and to the council's Planning department, since that department would hold the requested information, where it is held by the council.

1. Request for Notes from Planning Case Officer's Site Visit

I have discussed your request for these notes with the Planning department. The department has told me that the planning case officer has no site notes in respect of this planning application, and I apologise that this was not explained in the EIR response. The department has explained that planning officers largely work electronically, and rather than rely on site notes, they work to photographs taken on site, and the plans submitted as part of the planning application. When signing off this application, the officers referred to the plans as well as the photographs.

2. Request for the full Planning Case Officer's Report with Recommendation

The Planning department has told me that as part of their New Ways of Working (which was implemented last year) the department has dispensed with a formal planning report, in a number of situations. Formal planning reports have now been

replaced by a set of informatives which are attached to the grant of planning permission, which in effect give reasons why planning permission has been granted. This also covers any objections or representations in support, and comments accordingly. In this case therefore there was no separate planning report, and I apologise that this was not explained in the EIR response. I **attach** copies of the decision notice and grant of planning permission letter for this planning application, which contain informatives.

3. Request for Copies of Third Party Representations

Your EIR request asked for copies of 'ALL consultation (objection) letters/emails, which should include the TWO I sent myself on 1 and 7 March 2018'.

I have reviewed the decision to withhold copies of the documents which the council holds containing the third party representations, and consider that it is possible to disclose some of the information contained in those representations under the EIR, where disclosing this information is unlikely to identify the individuals who made those representations. This information has been extracted and is disclosed in summary form, in the **attached** document labelled '9333 Information Extracted from Representations'.

I am withholding the remaining information contained in the representations under the exceptions provided by regulations 12(3) and 13 of the EIR (personal data) and 12(5)(f) of the EIR (disclosure would adversely affect the interests of the person who voluntarily provided the information). The grounds for withholding the information under these exceptions are set out below. I have noted that your EIR request included a request for copies of the two sets of representations which you sent to the council yourself. I assume that you will hold copies of these representations, but if you wish to obtain copies of these documents held by the council, you can submit a subject access request to the council to request this information. Please let me know if you would like to make a subject access request for copies of your representations.

(a) Regulations 12(3) and 13 – Personal data

Information is exempt from disclosure on the basis of the exception at regulation 12(3) if it constitutes third party personal data and the conditions in regulation 13 have been met. Under regulation 13 a public authority shall not disclose information if the disclosure would breach any of the data protection principles.

Is the withheld information personal data?

The representations contain details about the objectors themselves, their properties, their opinions, and information relating to neighbouring properties. Information provided in such representations is by nature each party's personal data, and personal data regarding other individuals. Therefore the information in the representations is either personal data in its own right, or in

the case of specific comments made by those parties, when combined with other information known about those individuals.

I consider that a party could still be linked to the information in the representations even where direct identifiers, such as names, are removed. While the council does not post full copies of third party representations regarding planning applications on the online planning register, the council does list the address of each party who has submitted representations in the online planning application file, together with an indication of whether that party has objected to the application (in this case all submitted objections). This means representations containing information about an objector's own property, could be linked to their address published in the online planning application file. Therefore, coupled with other information that a motivated third party could find out about each party, disclosure could still provide sufficient information to identify that party, and link them with specific representations.

Therefore a significant amount of personal data is embedded within the representations.

Would the disclosure of the information contravene any of the data protection principles?

I consider that the disclosure of the information would contravene the first data protection principle. The first data protection principle states that processing of personal data must be fair and lawful.

When deciding whether disclosure of the representations would be unfair, I have taken into account:

- the nature of the information;
- the parties' reasonable expectations regarding what would happen to their personal data; and
- the consequences of disclosure for those parties.

I have also weighed up the rights and freedoms of the data subjects against the legitimate interests in disclosure.

The information in the representations consists of information about the parties who have submitted the representations, including expressions of opinion regarding the works which are the subject of the planning application. The council believes that the individuals submitting representations would have an expectation that their identity would be held in confidence by the council, on the basis that:

- it is currently the council's practice not to post full copies of third party representations on the online planning register. Instead, as stated above, in the online file for a planning application, the council will list the address of each party who has submitted representations, together with an indication of whether that party has objected to the application. The comments made in

the representations are then summarised in the informatives regarding the applications. The informatives for this planning application in the attached decision notice and grant of planning permission letter contain a summary of the issues raised in the representations regarding this application.

- while you have stated that the council should release the requested information on the grounds that the advice note to objectors on the council's website contains a paragraph stating "...legislation requires that any letter/email or online comment you send in response to an application has to be available for inspection by the applicant or anyone else interested in the application. Because of this we cannot take into account comments that are marked "confidential."... this paragraph goes on to state: "...Your letters and emails will not be available to inspect online."

A disclosure under the EIR is a disclosure to the world. If the third party objectors to this planning application knew that their objections would be placed in the public domain via a response to an EIR request, they might instead have chosen not to submit representations, or might have chosen different wording. If the council discloses the representations in a way which means the third party objectors can be identified, given the sometimes emotive nature of planning related issues, those objectors could as a consequence be subject to pressure or personal recriminations, or suffer damage to relationships within the local community, including damage to relationships with other parties about whom they have supplied information.

Disclosure of the withheld information could therefore potentially cause distress to the parties if placed in the public domain, and damage.

There is a legitimate interest in the transparency of public sector organisations and in the public knowing that planning application processes are conducted correctly. However, such legitimate interests must be weighed up against the distress and damage which disclosure could cause. In this case disclosure of representations which could identify objectors could cause distress which would outweigh any legitimate interest in disclosure.

On this basis the council should withhold the remaining information in the representations under regulations 12(3) and 13 of the EIR, as disclosure would be unfair and a breach of the first data protection principle. This letter therefore acts as a refusal notice for the requested information.

(b) Regulation 12(5)(f) - Disclosure would have an adverse effect on the interests of the person who provided the information)

Regulation 12(5)(f) states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the interests of the person who provided the information where that person:

- (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
- (ii) did not supply it in circumstances such that that or any other public authority is entitled to disclose it; and

(iii) has not consented to its disclosure.

The information contained in the third party representations was supplied to the council voluntarily, and the objectors could not have been put under any legal obligation to supply it. Finally, the objectors have not consented to disclosure.

I have gone on to consider whether the release of the information would have an adverse effect. As stated above, the council does not consider that the third party objectors would have expected their representations to be shared with the wider world. The council also considers that if the information were to be made public there would be an adverse effect on the individuals who have supplied it, as disclosing this information could be detrimental to relationships within the local community.

Therefore in my view there would be an adverse effect and the exception provided by regulation 12(5)(f) is engaged. I have therefore gone on to consider the public interest test.

Public interest arguments in favour of disclosure

- the EIR has an express presumption in favour of disclosure.
- disclosure could lead to greater transparency and accountability, in respect of consideration of representations as part of the planning approval process.

Public interest arguments in favour of maintaining the exception

- disclosure could discourage parties from making representations to the council regarding planning applications and, as such, the flow of information would be seriously compromised.

The balance of the public interest arguments

There will always be a public interest in all the information relating to an issue being made available so that the public has the fullest possible picture. However, I also have to consider in this case the damage that could be caused by disclosure, which would have an impact on the person who supplied the information.

With regard to the interests of the individuals who have supplied the comments, the council considers that any comments made were made with the expectation that the objectors' identity would not be disclosed. On this basis, the third parties have shared their views in a free and frank fashion.

Therefore, in my opinion it would be unfair to disclose information which was shared by the objectors, with no expectation on their part that it would be made publicly available. I therefore consider that the arguments in respect of withholding the information, hold significant weight.

The council also believes that disclosure would discourage third parties from making representations in the future, and thus affect the voluntary provision of information regarding planning applications. The council must rely upon members of the public to let it know about problems or issues in respect of planning applications.

I consider that there is a strong public interest in protecting this flow of information to the council. Therefore, having considered the arguments alongside the information itself, I find that the public interest in maintaining the exception outweighs the public interest in disclosure.

On this basis, the council was correct to withhold the remaining information supplied in the representations under regulation 12(5)(f) of the EIR, and this letter therefore acts as a refusal notice for the requested information.

If you are not content with this decision, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire, SK9 5AF

Telephone: 0303 123 1113

The ICO's website is www.ico.org.uk.

Yours sincerely,

Sarah Kelly
Corporate Solicitor