

Terry Flemming

Information Rights Team

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Date: 19 July 2023
Our Reference: 20412097

Dear Mr Flemming

Internal Review - 20412097 - The Meadows Congleton

I am responding to your request for an Internal Review of the above request for information.

Your request for an internal review is detailed below: -

*I am writing to request an internal review of Cheshire East Council's handling of my FOI request 'The Meadows Congleton'.
Within my request I also requested you provide a copy of all internal information (such as emails, communication with local councillors etc) that is not subject to legal privilege.
This appears to have been overlooked in the response given.*

Your request was initially dealt with under the terms of the Freedom of Information Act 2000 (FoIA). However, as the information you have requested is 'environmental' for the purposes of the Environmental Information Regulations 2004 (EIRs), your request should have been dealt with your request under those Regulations instead.

Information relating to an encroachment of land falls within scope of the EIRs as it relates to an activity which is likely to affect the elements and factors of the environment. Your request has therefore been re-considered in accordance with the requirements of the Environmental Information Regulations (EIRs).

1. Please can you provide a copy of all internal information (such as emails, communication with local councillor's etc) that is not subject to legal privilege.

This information is exempt from disclosure under the exception provided by regulations 12(4)(e) of the EIRs, which provides that a public authority may refuse to internal communications.

The concept of a communication is broad and will encompass any information someone intends to communicate to others, or places on file where others may consult it. In this case it applies to all internal documentation as described in your request. This type of information clearly falls within the definition of an internal communication, and I therefore consider that regulation 12(4)(e) is engaged.

The use of the exception set out at Regulation 12(4)(e) is subject to an assessment of the public interest in relation to the disclosure of the information concerned.

Public interest arguments in favour of disclosure:

- There is a general public interest in disclosure to promote transparency and accountability of public authorities, greater public awareness and more effective participation in decision making.
- There is a public interest in understanding the ‘full picture’ around how decisions are reached, and how the arguments for and against a particular course of action are considered.

Public interest arguments for maintaining the exception

- This matter is live and complex, and it is essential that the Council can preserve a safe, private space to consider options and advice, and reach decisions away from the external interference and distraction that disclosure may bring. This is a fundamental part of the ability to arrive at a reasoned view.
- Disclosing details of deliberations on the various courses of actions available into the public domain may prejudice the Council’s position in relation to proposed litigation and prevention measures it seeks to take.

In all the circumstances of the case we consider the balance of the public interest lies in favour of withholding this information.

Decision

The final decision of this review is that it partially upholds your complaint. The request was initially dealt with under the FOIA, rather than the EIRs. An exemption and explanation as to why this information could not be released should have been provided to you in our original response and I apologise that this was not the case.

Next Steps

If you are not content with the outcome of this internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: <https://ico.org.uk>; or Information Commissioner’s Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely

Beverley Murphy
Information Rights Team Leader
Cheshire East Council