



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)**

Appeal No: EA/2014/0236

BETWEEN

STEVE WOZNIACK

Appellant

and

INFORMATION COMMISSIONER

Respondent

Tribunal

**Brian Kennedy QC
Roger Creedon
Narendra Makanji**

**Hearing: 25 February 2015.
Location: Field House, London.
Decision: Appeal Refused.**

Subject Matter: The appeal is brought under section 57 of the Freedom of Information Act 2000 (“FOIA”), as modified by regulation 18 of the Environmental Information Regulations 2004 (“the EIR”) and reliance on regulation 12(4)(d) of the EIR by the Devon County Council (“the Public Authority”)

Regulation 12(4)(d) of the EIR provides a public authority with an exception to its duty to disclose environmental information where the information sought relates to material which is still in the course mod completion, to unfinished documents or incomplete data.

Introduction:

1. This decision relates to an appeal brought under section 57 of the FOIA. The appeal is against the decision of the the Information Commissioner (“the Commissioner”) contained in a Decision Notice (“the DN”) dated 4 September 2014 (reference FER0541210) which is a matter of public record.
2. A paper hearing took place on 25 February 2015 when the Tribunal deliberated on the issues in this appeal.

Background:

3. The Appellant made a request for information to the Public Authority on 16 January 2014 (“the Request”). The request was to be provided with a copy of the draft Traffic Management Plan (“TMP”) for Sidmouth FolkWeek, which was produced by JR Events Services Limited.
4. After a number of exchanges between the public authority and the Appellant, the Appellant clarified his request as the first draft of the TMP which he presumed had been used by the public authority to approve the Folk Festival.
5. On 6 March 2014 the public authority having concluded an internal review of the handling of his information request, advised the Appellant that it is unable to provide him with a copy of the draft TMP on the basis it is exempt from disclosure under regulation 12(4)(d) of the EIR - where the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.
6. The public authority informed the Appellant that disclosure of the draft version of the TMP would *“not substantially assist public debate about the plans for Sidmouth Folk Festival”* and the first version of the TMP contains *“some information which is now considered to be out of date, misleading or incorrect and is in the course of being revised”*. The public authority also explained that disclosure of the draft TMP could prejudice the current negotiations with third parties during the course of developing the final TMP.
7. The appellant complained to the Commissioner on 15 May 2014 about the way his request had been handled and the Commissioner investigated to determine whether the public authority was entitled to rely on regulation 12(4)(d) to withhold the draft TMP document.

The Decision Notice:

8. In the DN at paragraphs 12 to 16 at page 3 of the Open Bundle (“OB”) the Commissioner sets out his reasoning for finding the exception applies in the circumstances of this case.
9. At paragraph 17 DN, page 3 of OB the Commissioner goes on to introduce the Public Interest test and from paragraphs 18 DN at page 3 OB to paragraph 37 DN on pa 5 OB, the Commissioner proceeds to carry out the balancing test of

the arguments in favour of disclosure and arguments against, finding the public interest to be in favour of withholding the TMP document sought by the appellant.

The Notice of Appeal:

10. The Appellant in general terms signifies a general intention to appeal (page 7 of OB). However he seems to be under the impression that because time has moved on the TMP must be beyond the draft stage and should be disclosed. He seems to misunderstand the basic premise that the appeal must be considered as matters stood at the time of the request. Apart from this he has made no cogent or significant argument against the DN or the reasoning therein. He has failed to persuade us that the Commissioner was wrong in reaching the findings and conclusions he did in the DN or in the reasoning for same.
11. The Commissioner clarifies some outstanding issues at paragraphs 16 to 22 (pages 17 & 18 OB) of his Response to the Notice of Appeal but in effect argues that the Appellant has raised no substantive reasons to undermine his DN. We accept this argument and adopt the reasons given by the Commissioner.

REASONS

12. The Tribunal essentially agree with the Commissioners approach to this appeal. We agree with and adopt the assessment on the engagement of regulation 12(4)(d) EIR at Paragraphs 12 to 17 of the DN (page 3 OB). The Appellant has failed to persuade us that the Commissioner was wrong in any way. In fact he appears to recognise the point taken that the appeal must be based around facts as they were at the time of the initial refusal to release the draft TMP (page 20 OB).
13. The Appellant argues that the Public Interest test favours disclosure but again we are not persuaded that the Commissioner is wrong in his assessment of the balance as set out at paragraphs 18 to 36 of the DN (pages 3 -5 OB) and we agree with and adopt his findings and reasoning as set out therein.
14. The TMP, which is the subject matter of the request, and is provided to us in a Closed Bundle is clearly marked Draft on each page and was an early draft at an early stage of planning for the Sidmouth FolkWeek. In our view it clearly falls into the exception under regulation 12(4)(d) EIR and for the reasons identified by the Commissioner, the Public Interest in withholding the document at the material time outweighed the public interest in disclosure.
15. Accordingly we agree with the DN for the reasons given by him and for the reasons given above.