

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 16 July 2026

Public Authority: North Yorkshire Council
Address: County Hall
Racecourse Lane
Northallerton
North Yorkshire
DL7 8AD

Decision (including any steps ordered)

1. The complainant requested information relating to planning applications and planning enforcement matters concerning Leeds East Airport.
2. North Yorkshire Council (the "council") initially withheld the requested information under regulation 12(5)(d) of the EIR. During the Commissioner's investigation it withdrew its reliance on that exception, disclosed additional information and withheld the remaining information under regulations 12(5)(b), 12(5)(g) and 13.
3. The Commissioner finds that the remaining withheld information was correctly withheld under regulations 12(5)(b), 12(5)(g) and 13 of the EIR.
4. The Commissioner does not require the council to take any steps.

Request and response

5. On 23 March 2025 the complainant requested five categories of information relating to planning applications and planning enforcement matters associated with Leeds East Airport. This included legal advice, draft reports, internal correspondence and communications with planning agents. The full text of the request appears in the annex to this notice.
6. The council responded on 2 May 2025. It withheld the requested information under regulation 12(5)(d) (confidentiality of proceedings).
7. Following an internal review, the council maintained its position on 16 June 2025.

Scope of the case

8. The complainant contacted the Commissioner on 17 June 2025 to complain about the council's handling of their request.
9. During the Commissioner's investigation, the council reconsidered its position and issued a fresh response to the complainant. It disclosed a substantial quantity of information and confirmed that it was now withholding only limited information under regulations 12(5)(b), 12(5)(g) and 13 of the EIR.
10. Following that disclosure, the complainant argued that it remained unclear what information had been withheld because the council had not provided a schedule identifying the withheld information and the exceptions relied upon. The complainant therefore maintained that it was not possible to determine whether the request had been answered fully.
11. The Commissioner has considered:
 - whether the council was entitled to rely on regulations 12(5)(b), 12(5)(g) and 13 of the EIR to withhold the remaining information; and
 - whether the council complied with its obligations under the EIR in the manner in which it described the information withheld and the exceptions relied upon.
12. The Commissioner has not considered the council's original reliance on regulation 12(5)(d) because that position was withdrawn during the course of the investigation and the council subsequently disclosed the

majority of the information previously withheld. The Commissioner's decision is therefore concerned only with the information that remained withheld following the council's revised response.

Reasons for decision

Is the requested information environmental?

13. The Commissioner has considered whether the requested information falls within the definition of environmental information in regulation 2(1) of the EIR.
14. The request concerns planning applications, planning enforcement activity, legal advice obtained in connection with those matters, ecological information and correspondence relating to the use and development of land at Leeds East Airport. The Commissioner is satisfied that the requested information concerns measures and activities affecting, or likely to affect, the elements of the environment and factors referred to in regulation 2(1)(a), (b) and (c) of the EIR.
15. The Commissioner therefore finds that the requested information is environmental information for the purposes of regulation 2(1) and that the request falls to be considered under the EIR.

Regulation 12(5)(b) – course of justice

16. Regulation 12(5)(b) of the EIR provides that a public authority may refuse to disclose information where 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".
17. The Commissioner recognises that the concept of the "course of justice" is broader than court proceedings alone. It can include circumstances where disclosure would adversely affect the ability of a public authority to investigate matters and reach decisions in accordance with its statutory functions.

The council's position

18. The council explained that the withheld information includes evidence gathered during an ongoing planning enforcement investigation relating to Leeds East Airport, including material supplied by the site operator, operational records and legal advice obtained during the investigation.

19. The council argued that disclosure would prejudice its ability to exercise its statutory functions under the Town and Country Planning Act 1990. It said that planning enforcement investigations require the gathering and assessment of evidence, consideration of legal advice and evaluation of potential enforcement action. The council considered that disclosure during an active investigation could compromise the integrity of that process, inhibit the collection and consideration of relevant evidence and undermine its ability to reach a properly informed and lawful decision.
20. The council also argued that disclosure could deter the operator concerned, and other parties involved in current or future enforcement investigations, from cooperating fully with the council or voluntarily providing information and evidence. It said that such cooperation is important to the effective operation of its planning enforcement functions.

The Commissioner's findings

21. The Commissioner has reviewed the withheld information. The information comprises material generated and obtained for the purposes of an ongoing planning enforcement investigation, including evidence supplied by the operator of the site, operational records and communications relating to the council's assessment of alleged breaches of planning control. Some of the information also includes legal advice obtained during the investigation.
22. The Commissioner accepts that, at the date of the request and the council's revised response, the planning enforcement investigation remained ongoing. The Commissioner recognises that planning enforcement is a statutory process which requires a local planning authority to investigate alleged breaches of planning control, gather and assess evidence, consider relevant legal and policy considerations and determine whether formal enforcement action is expedient.
23. Having considered the content of the withheld information, the Commissioner is satisfied that disclosure would have been capable of adversely affecting that process. The information reveals evidence obtained and considered by the council during the course of its investigation, together with material that would reveal aspects of the council's assessment of the matters under consideration. Disclosure during the investigation would have had the potential to interfere with the council's ability to conduct that investigation and reach decisions in accordance with its statutory functions. The Commissioner accepts that legal advice obtained for the purposes of the ongoing investigation forms part of the investigative process in this case.

24. The Commissioner also accepts that disclosure of information provided by parties involved in an active enforcement investigation could reasonably be expected to discourage the provision of information and cooperation in future investigations. While the Commissioner acknowledges that public authorities cannot rely on speculative or generic claims of prejudice, the withheld information in this case was obtained and used as part of a live enforcement process. The Commissioner considers there to be a real and tangible risk that disclosure would undermine the effective operation of that process.
25. The Commissioner is therefore satisfied that disclosure would adversely affect the course of justice and finds that regulation 12(5)(b) is engaged.

Public interest test

26. The Commissioner recognises the strong public interest in disclosure. The request concerns environmental information relating to a site which has generated significant public interest and concerns about planning compliance, environmental impacts and the council's regulatory response. Disclosure would increase transparency and accountability regarding the council's handling of those matters.
27. The Commissioner also recognises the particular public interest in understanding the basis upon which the council reaches decisions about whether enforcement action is necessary and appropriate.
28. However, there is a substantial public interest in ensuring that local planning authorities are able to conduct planning enforcement investigations effectively and reach decisions based on a full and frank assessment of the available evidence. There is also a significant public interest in protecting information obtained and generated during an active investigation where disclosure would undermine the integrity of that process.
29. The Commissioner considers that disclosing investigative material while the investigation remained ongoing would have been likely to undermine the council's ability to perform its statutory enforcement functions effectively. This would not be in the public interest.
30. Having weighed the competing factors, the Commissioner finds that the public interest in maintaining the exception outweighed the public interest in disclosure at the time of the request. The council was therefore entitled to rely on regulation 12(5)(b) of the EIR.

Regulation 12(5)(g) – protection of the environment

31. Regulation 12(5)(g) of the EIR provides that a public authority may refuse to disclose information where disclosure would adversely affect:

“the protection of the environment to which the information relates.”
32. The purpose of the exception is to prevent disclosure causing environmental harm. It is commonly applied where information would reveal the location of protected species or otherwise increase the risk of damage, disturbance or persecution.

The council's position

33. The council withheld limited ecological information under regulation 12(5)(g). It explained that the information identified the locations of badgers and that disclosure could expose a protected species to risks including poaching, persecution or disturbance. The council considered that disclosure would therefore harm the protection of the environment to which the information relates.

The Commissioner's findings

34. The Commissioner has reviewed the information withheld under regulation 12(5)(g). The information includes ecological reports, survey data and related correspondence concerning protected species present at the site. In particular, the information identifies the locations of badger setts and contains detailed information about their distribution, condition and use.
35. The withheld badger survey report contains detailed mapping of badger setts across the site, describes the nature and status of individual setts and records evidence of badger activity, movement routes and territory use. The report also contains express warnings that it should be treated as confidential and not released into the public domain because it identifies protected species locations.
36. The Commissioner recognises that badgers are protected under the Protection of Badgers Act 1992. The withheld information goes beyond confirming the mere presence of badgers on the site and would reveal the precise locations and characteristics of identified setts. Disclosure under the EIR would place that information into the public domain without restriction.
37. The Commissioner is satisfied that disclosure would create a real and identifiable risk of disturbance to protected species and their habitats. This is particularly so given that the information identifies individual sett

locations and contains sufficiently detailed information to enable those locations to be identified on the ground.

38. The Commissioner therefore finds that disclosure would adversely affect the protection of the environment to which the information relates and that regulation 12(5)(g) is engaged.

Public interest test

39. The Commissioner recognises the public interest in transparency regarding the council's consideration of ecological impacts associated with the Leeds East Airport site. There is a legitimate public interest in understanding how protected species issues have informed planning and enforcement decisions.
40. The Commissioner also recognises the general public interest in access to environmental information and in scrutinising the accuracy and adequacy of ecological assessments relied upon by public authorities.
41. However, the Commissioner considers there to be a particularly strong public interest in avoiding disclosure that could facilitate harm to protected species or their habitats. The withheld information would reveal precise ecological information concerning badger setts and associated activity. Once disclosed under the EIR, that information would be available to any person without restriction or control.
42. The Commissioner considers that protecting protected species and preventing the risk of disturbance, damage or persecution carries substantial weight in the public interest balance. This weight is enhanced by the specificity of the location information contained within the withheld material.
43. Having considered all the circumstances of the case, the Commissioner concludes that the public interest in maintaining the exception outweighs the public interest in disclosure. The council was therefore entitled to rely on regulation 12(5)(g) in relation to the withheld ecological information.

Regulation 13 – personal data

44. Regulation 13(1) provides an exception from disclosure where information is the personal data of someone other than the requester and disclosure would contravene any of the data protection principles set out in the UK GDPR.
45. In considering whether regulation 13 applies, the Commissioner must decide:

- whether the requested information is personal data; and
- whether disclosure would breach any of the data protection principles.

Is the information personal data?

46. Section 3(2) of the Data Protection Act 2018 defines personal data as:

“any information relating to an identified or identifiable living individual”.

47. The withheld information comprises the names and contact details of individuals, together with other information from which particular living individuals can be identified. The Commissioner is therefore satisfied that the information is personal data for the purposes of the UK GDPR.

Would disclosure be lawful?

48. Article 5(1)(a) of the UK GDPR requires personal data to be processed lawfully, fairly and transparently.

49. Disclosure under the EIR constitutes processing of personal data. In order for disclosure to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply.

50. The Commissioner considers that the only potentially relevant lawful basis is Article 6(1)(f), which permits processing where:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party...”

51. The Commissioner has therefore considered:

- whether there is a legitimate interest in disclosure;
- whether disclosure is necessary to meet that interest; and
- whether the legitimate interest is overridden by the rights and freedoms of the data subjects.

Legitimate interest

52. The Commissioner recognises that there is a legitimate interest in promoting transparency and accountability in relation to the council's handling of planning and enforcement matters. Disclosure would assist public understanding of how the council discharged its statutory functions and communicated with relevant parties.

Necessity test

53. The Commissioner is satisfied that disclosure is necessary to meet the identified legitimate interest because that objective could not be achieved through less intrusive means.

Balancing test

54. The Commissioner has gone on to consider whether the identified legitimate interests are overridden by the rights and freedoms of the individuals concerned.
55. The Commissioner notes that the majority of the withheld personal data relates to individuals acting below senior management level, together with private individuals whose personal details appear within correspondence and supporting documentation. The Commissioner considers that such individuals would have a reasonable expectation that their personal contact details and identifying information would not be disclosed into the public domain in response to an EIR request.
56. The Commissioner has seen no evidence that the withheld personal data is required to further public understanding of the substantive environmental issues raised by the request. The Commissioner considers that disclosure of the information would add little, if anything, to public scrutiny of the council's actions while interfering with the privacy rights of the individuals concerned.
57. In the circumstances of this case, the Commissioner is satisfied that the individuals' rights and freedoms outweigh the legitimate interests in disclosure.
58. As the Commissioner has concluded that there is no lawful basis for disclosure under Article 6(1) of the UK GDPR, disclosure would be unlawful and would therefore contravene the first data protection principle.
59. The Commissioner finds that regulation 13(1) applies to the withheld personal data.

The complainant's concern regarding a schedule of withheld information

60. Following disclosure, the complainant argued that it remained unclear what information had been withheld because the council had not produced a schedule identifying withheld information and the exceptions relied upon.
61. The Commissioner has considered this point carefully.

62. The EIR does not contain a specific requirement for a public authority to provide a schedule or document-by-document index of withheld information.
63. The EIR does not impose a general requirement on public authorities to provide a withholding schedule whenever information is withheld.
64. What the EIR requires is that, where a request is refused in whole or in part, the authority must specify the exception being relied upon and provide reasons sufficient to explain why the exception applies.
65. Whether a schedule is necessary will depend on the circumstances of the case.
66. In some cases involving multiple categories of information or numerous exceptions, a schedule may be the most effective means of explaining what information has been withheld and why.
67. In this case, the council explained that the remaining withheld information comprised:
 - third-party personal data;
 - legal advice and certain evidential material relating to the ongoing enforcement investigation; and
 - information identifying protected badger locations.
68. Having reviewed the withheld information, the Commissioner is satisfied that its nature can be understood from the council's explanation and the Commissioner does not consider a separate schedule was necessary to comply with the EIR.
69. Accordingly, the Commissioner does not find a breach of the EIR arising solely from the council's failure to provide a schedule of withheld information.

Right of appeal

70. 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)
General Regulatory Chamber
PO Box 11230
Leicester
LE1 8FQ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

71. 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.
72. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Christopher Williams
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex – request for information

"In the absence of a timely reply from the council on outstanding matters of concern raised by Ulleskelf Parish Council in relation to land and buildings at Leeds East Airport, Church Fenton - I am now tasked with elevating the Parish Council's concerns. Consequently, I must now ask that you please treat this email as a formal request for information under the Environmental Information Regulations 2004. You will appreciate that this is not a step that has been taken lightly, and this action follows careful consideration by those involved. If I can assist you further during the process of compiling the requested records, please don't hesitate to contact me or my colleague [redacted] who is in copy to this email.

The period of time that this request relates to is between 1st July 2024 and the current date, 23rd March 2025. You are asked to please provide:

1. A copy of all and Briefs (including appendices) issued to, and written Legal Opinion(s) received by the Council relating to the site (excluding those of [redacted] of Kings Chambers). This is expected to including email correspondence, formal written opinion(s) and /or any notes derived from telephone or in-person meetings between employees and Barrister(s) advising the council;
2. A copy of all instructions to and draft reports (in their original unaltered format) returned by [redacted] (and any employees of said company). We are aware of at least documents having been issued to date
3. Copies of all email correspondence, handwritten notes, memos, Teams chats and/or internal memos between any of the following employees of the council relating to the matter, during the dates specified [redacted]
4. Copies of all email correspondence during the dates specified between employees of the council whom are employed within the council's planning department, where the matter relates to: • Planning application ref. ZG2024/0603/S73 • Planning application ref. 2023/0248/FULM • Planning application ref. 2019/0927/COU 1 • Planning enforcement investigations relating to land and buildings Leeds East Airport
5. Copies of all email correspondence during the dates specified to/from employees of the council within the council's planning department and the planning agent (Pegasus) acting on behalf of the applicant, or the applicant [redacted],; where the matter relates to planning applications given the following reference numbers or enforcement investigations relating to the site: • Planning application ref. ZG2024/0603/S73 • Planning application ref. 2023/0248/FULM • Planning application ref. 2019/0927/COU • Planning enforcement investigations relating to land and buildings Leeds East Airport"