

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

Decision notice

Date: 13 January 2016

Public Authority: London Borough of Southwark
Address: PO Box 64529
London
SE1P 5LX

Decision (including any steps ordered)

1. The complainant has requested a copy of the contract signed between the London Borough of Southwark (the Council) and a developer in connection with the sale of the former Tuke School site in Peckham. The Council considered the document was exempt information under section 43(2) (commercial interests) of FOIA and found that the public interest favoured withholding the information. The Commissioner was subsequently asked to consider the Council's refusal of the request.
2. During the course of the Commissioner's investigation, the Council agreed that the EIR and not FOIA was the correct access-regime and, owing to the passage of time that had elapsed, decided it could disclose some of the information contained in the contract. The remainder was withheld under regulation 13 of the EIR where the information constituted third party personal data or regulation 12(5)(e) (confidentiality of commercial or industrial information). The complainant has confirmed that he does not require the disclosure of personal data or financial details. The Commissioner has therefore considered the other items of information that were withheld under regulation 12(5)(e) of the EIR.
3. The Commissioner has found the contractual clauses relating to the overage arrangements engage the exception and that the public interest favours withholding the information. For the remaining items, the Commissioner has determined that the exception does not apply and the information should therefore be disclosed by the Council.

4. The public authority must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 13 May 2014, the complainant wrote to the Council and requested information in the following terms:

[...] a copy of the full contract (including all terms and conditions) signed between Southwark Council and Kitewood Estates Ltd regarding the sale of the former Tuke School site in Woods Road Peckham.

I full understand that any financial details will be redacted.

6. As a response had not been received within the statutory time period of 20 working days, the complainant contacted the Council again on 20 and 24 June 2014 requesting an update. The Council replied on 27 June 2014 to apologise for the delay, which was due to a failure to log the request, and advise that a substantive response would be provided as soon as possible. This was done on 1 August 2014.
7. In its response, the Council informed the complainant that the requested information engaged the 'commercial interests' (section 43(2)) exemption to disclosure in FOIA and had found the balance of the public interest favoured maintaining the exemption.
8. Following receipt of the Council's response, the complainant wrote to the Council on 15 August 2014 and asked it to revisit two areas connected to its handling of the request. Firstly, he highlighted the Council's failure to respond to the request within the time period prescribed by the legislation. Secondly, the complainant argued that it was unlikely section 43(2) of FOIA applied to all aspects of the contract and therefore the Council should have considered providing a redacted version.
9. The Commissioner understands that the request for an internal review was erroneously assigned to another FOI request the complaint had submitted to the Council. This led to a further delay in the Council addressing the points the complainant had raised, with its completed internal review only being provided on 4 November 2014.
10. The reviewer acknowledged the Council's delay in initially responding to the request and apologised for this on behalf of the Council. With regard

to the decision to withhold the requested information, the reviewer considered the Council had correctly relied on section 43(2) of FOIA in relation to the whole of the contract. As part of the weighting exercise carried out in respect of the public interest test, the Council found that important the knowledge that once the sale had been formally completed details of the transaction would be made available via the Land Registry. Upon receipt of a query made by the complainant regarding this latter point, the Council explained that the Land Registry would hold particulars of the transfer of the registered title, including details of the buyer, the seller, identity of the sit and the price.

Scope of the case

11. The complainant contacted the Commissioner to complain about the Council's refusal to disclose a copy of the requested contract between the Council and Kitewood Estates Ltd.
12. The complainant has informed the Commissioner during his investigation that he is content that financial details and any personal data contained in the contract could be withheld. He has asked the Commissioner to consider instead whether there was information outside of these categories that should have been disclosed in response to his request.
13. The Commissioner's analysis of the Council's position with regard to the request follows in the body of the notice.

Reasons for decision

Background

14. On 16 July 2013 a report¹ endorsed by a Cabinet Member recommended to the Cabinet of the Council that it should approve the disposal of the site at Wood's Road, Peckham. The reasons underpinning this recommendation were outlined in the foreword to the report:

This report recommends the sale of land at Wood's Road that was previously the site of Tuke School. Since the enlargement and relocation of that school, this site is surplus to educational

¹<http://moderngov.southwark.gov.uk/documents/s39367/Report%20Disposal%20of%20Property%20at%20Woods%20Road%20London%20SE15.pdf>

requirements and has been identified in the Peckham and Nunhead Area Action Plan for residential use.

The decision will return land to Cossall Park that had been used by the school and will generate a capital receipt that will be invested in improvements for schools and other children's facilities.

15. The Cabinet resolved to accept this proposal.

The applicable regime – FOIA or the EIR?

16. The EIR and FOIA give rights of public access to information held by public authorities. The regimes are, however, distinct from each other. The EIR derived from European law and exclusively covers environmental information. FOIA, by contrast, provides an access-regime to most other types of official records held by public authorities. A public authority must therefore decide under which piece of legislation information should be considered.
17. 'Environmental information' is defined at regulation 2(1) of the EIR. In accordance with the European Council Directive 2003/4/EC from which the EIR derives, it is the Commissioner's view that the definition should be interpreted widely. This is based on the construction of regulation 2(1), which states that environmental information is "any information...on" the factors described at paragraphs (a) – (f). Importantly, it is not necessary for the information itself to record or reflect a direct effect on the environment in order for it to be environmental.
18. Differently constituted Information Tribunals have decided that information relating to planned developments would constitute environmental information and should therefore be considered under the EIR. While adopting this same position, however, the Tribunal in *The London Borough of Southwark v The Information Commissioner* (EA/2013/0162, 9 May 2014)² cautioned when considering a request for a planning viability assessment that there may be a tendency to overuse the EIR (paragraph 29).
19. The Council originally dealt with the request in accordance with FOIA. Upon becoming involved by way of the complaint, the Commissioner indicated to the Council that there seemed to be a strong case for

²[http://www.informationtribunal.gov.uk/DBFiles/Decision/i1279/London%20Borough%20of%20Southwark%20EA.2013.0162%20\(09.05.14\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i1279/London%20Borough%20of%20Southwark%20EA.2013.0162%20(09.05.14).pdf)

finding that the EIR applied. This was based on the understanding that the disposal of the land by the Council was done with the expectation that the site would be developed by the purchaser. Insofar as the development would affect the landscape, it appeared likely that the contract of purchase fell within the definition of environmental information set out at regulation 2(1)(c) of the EIR. This definition will be satisfied where the information is on a measure or an activity and the measure or activity (not the information itself) must affect or be likely to affect the environmental elements and factors described in 2(1)(a) and (b), or be designed to protect the elements in (a). For these reasons, the Commissioner invited the Council to reconsider its position in respect of the request and the application of FOIA.

20. The Council responded as follows:

We are grateful for your guidance on whether to consider this matter under the provisions of the Freedom of Information Act 2000 (FOI) or the Environmental Information Regulations 2004 (EIR). The council addressed the original query under FOI because the request was put to us on that basis. The council notes the ICO view that EIR is likely to apply in this case, but with due respect does not feel that this diminishes the extent to which FOIA also applies, nor that the council acted inappropriately in assessing both the original request and the subsequent review under that legislation.

21. Notwithstanding this view, the Council went on to reassess the request under the EIR. The Council maintained that at the time the request was made it was correct to withhold the requested document. It noted, however, that the circumstances relating to the sale of the site had progressed since that time. This had the effect of lessening the sensitivity of parts of the contract and for this reason the Council said that it would support the release of a redacted version of the contract; redactions being made for the following:

- 1) Personal information relating to individuals
- 2) Financial information
- 3) Commercially sensitive clauses which if publicised could impact on the future negotiating position of affected parties in similar transactions
- 4) Contract clauses remaining in force. In this case that means the arrangements around additional receipts potentially due to the Council ("overage")

22. The above categories of information listed by the Council have been used for reference purposes in this notice.
23. A version of the contract was subsequently sent to the complainant, with the Council explaining that the redactions had been made under regulation 13 where the information constituted third party personal data and regulation 12(5)(e) of the EIR to all other items of withheld information.
24. The complainant responded to the Commissioner by explaining his dissatisfaction with the extent of the redactions. He reiterated that he had no interest in seeing the financial details contained in the contract, and specifically the agreed sums of money relating to the sale, or the personal details of those involved. He disputed, however, the Council's assertion of contract details and clauses would have a prejudicial effect.
25. The Commissioner has therefore gone on to consider the Council's application of regulation 12(5)(e) to the withheld information except where, in accordance with the complainant's instructions, that information represented financial details or personal data (namely, that information referred to at categories 1) and 2) above).

Regulation 12(5)(e) – confidentiality of commercial or industrial information

26. Regulation 12(5)(e) of the EIR allows that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

27. The construction of the exception effectively imposes a four-stage test, each condition of which must be satisfied for the exception to be engaged:
 - (i) The information is commercial or industrial in nature
 - (ii) Confidentiality is provided by law. This will include confidentiality imposed on any person by the common law of confidence, contractual obligation, or statute.
 - (iii) The confidentiality is protecting a legitimate economic interest. Where the arguments refer to the economic interests of a third party, it will not be sufficient for a public authority to speculate on the potential harm of disclosure but its views should be based on

evidence demonstrating that the arguments genuinely reflect the concerns of the third party.

(iv) The confidentiality would be adversely affected by disclosure. Although this is a necessary element of the exception, the Information Tribunal (*Bristol City Council v Information Commissioner and Portland and Brunswick Squares Association* (EA/2010/0012, 24 May 2010)³ found that disclosure of truly confidential information into the public domain would inevitably harm the confidential nature of that information. As such, if the preceding three stages of the test are fulfilled, it will follow that the exception will be engaged. Where this is the case, a public authority must next go on to consider the balance of the public interest in disclosure.

28. Taking into account the purpose of the exception, the Council has responded to (i) – (iv) in turn. To place the arguments in context, the Commissioner has also been provided with an unredacted version of the contract.

(i) Is the information commercial or industrial in nature?

29. The Commissioner has explained that the whole of the information contained on the contract is related to the sale of the site conditional on planning consent and other matters. This includes details of the site, the parties, the proposed development, the price to be paid, the conditions attaching to the sale, the mechanics of the transaction generally, details around acceptable planning consent, the circumstances under which the contract will become unconditional or alternatively be terminated, and a raft of provisions around additional receipts potentially due to the Council. The Council considers that all of this information is self-evidently commercial in nature.
30. The Commissioner's guidance⁴ on the exception states that for information to be commercial in nature, it will need to relate to a commercial activity, either of the public authority or a third party. He goes on to say that the essence of commerce is trade and a commercial activity will generally involve the sale or purchase of goods or services,

³[http://www.informationtribunal.gov.uk/DBFiles/Decision/i392/Bristol_CC_v_IC_&_PBSA_\(0012\)_Decision_24-05-2010_\(w\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i392/Bristol_CC_v_IC_&_PBSA_(0012)_Decision_24-05-2010_(w).pdf)

⁴ https://ico.org.uk/media/for-organisations/documents/1624/eir_confidentiality_of_commercial_or_industrial_information.pdf

usually for profit. The contract in this case relates to the sale of an asset and therefore the Commissioner is satisfied that the document satisfies the description of information that is commercial in nature.

(ii) Is confidentiality provided by law?

31. Confidentiality in this context will include confidentiality imposed on any person by the common law of confidence, contractual obligation or statute. The exception can cover information obtained from a third party, or information jointly created or agreed with a third party, or information created by the public authority itself.
32. The Council has submitted that the contractual information is subject to the common law of confidence. The common law of confidence will apply where information has the necessary quality of confidence and is shared in circumstances importing an obligation of confidence.
33. For information to have the necessary quality of confidence, the information must not be trivial nor can it already be in the public domain. The Commissioner is satisfied that both of these factors are present in this situation.
34. With regard to the creation of an obligation of confidence, this can be explicit or implied and may depend on the nature of the information and the relationship between the parties. The Commissioner considers that a useful test is to consider whether a reasonable person in the place of the recipient would have considered that the information had been provided to them in confidence.
35. The Council has argued that, leaving aside for a moment its status as a public authority, information relating to a commercial property transaction would normally be expected to import an obligation of confidence. This is reflected in the Council's reporting of the transaction and the existence of a confidentiality clause (which is referred to below). In the circumstances, the Commissioner accepts that the common law of confidence does apply and therefore this stage of the test is met.
36. For completeness, however, reference is also made here to the Council's assertion that the information may also be subject to another type of confidence imposed by law. The Council stated:

Contractual obligation is imposed here by a provision in the sale agreement to which we now draw your attention. Clause 16.9 governs announcements and the release of information in regard to the sale agreement. Given our status as a public authority we have reserved scope to release information if so required by a competent authority. The nature of our commercial position is that we seek to present our case for exclusion.

37. The Commissioner has found that the contract is covered by the common law of confidence and, consequently, he has not been required to assess whether there are other ways in which this stage of the test may be satisfied. Nevertheless, the Commissioner does acknowledge that for the purposes of the exception confidentiality may be provided for in law if the public authority can establish that there is a binding confidentiality clause covering the requested information. As the Commissioner's guidance also makes clear, however, this does not allow public authorities to contract out of their obligations under the EIR by inserting or accepting broadly drafted confidentiality clauses.

(iii) Is the confidentiality protecting a legitimate economic interest?

38. The Commissioner's guidance explains that legitimate economic interests could relate to retaining or improving market position, ensuring that competitors do not gain access to commercially valuable information, protecting a commercial bargaining position in the context of existing or future negotiations, avoiding commercially significant reputational damage, or avoiding disclosures which would otherwise result in a loss of revenue or income.

39. When determining whether there is an economic interest that needs protection, a public authority must consider the sensitivity of the information at the date of the request and the nature of any harm that would be caused by disclosure. It is not enough that disclosure might cause some harm to an economic interest. A public authority needs to establish it is more probable than not that disclosure would cause some harm.

40. The Council considers that the economic interests of Kitewood Ltd, the third party intending to purchase and develop the site, and its own economic interests would be harmed through the release of the information. To put the arguments in perspective, the Council has provided the following information relating to the sale of the site:

At the time of the original request (13 May 2014), the status of the matter was that conditional contracts had been entered into between the council and the developer. The developer had not submitted a planning application at that stage although this took place shortly afterwards as envisaged by the contract. At that date we would have assumed completion within six to twelve months depending on the progress of the planning application and associated matters.

41. Later on its submissions the Council goes on to say:

A marketing period and a competitive bidding process resulted in the offer from the developers being selected as the best available at the time and put forward to Cabinet for approval. The offer contained items of detail put to us confidentially which were taken forward into the contract for sale. Other provisions in the contract were negotiated between the parties over a lengthy period in which the council sought to achieve the best position for itself and the developers did likewise.

42. With regard to the economic interests of Kitewood Ltd, the Council has provided the Commissioner with a copy of a letter from the developer dated 13 April 2015 concerning the potential disclosure of the contract.

43. The developer made plain its wider belief that the contract should not be disclosed in whole (or in part) as it contains commercially confidential and sensitive information the disclosure of which could prejudice future commercial relations and negotiations between my client and the Council. With regard to the contract itself, the developer asserted that it contained a number of complex provisions relating to the planning, sales proceeds and clawback which continue to affect the site. It further advised that disclosure could invalidate a particular item of protection provided for in the contract. Regarding the wider picture relating to the sale of the site, the developer considered it was worth noting that transfer documents would become a matter of public record and available from the Land Registry.

44. In relation to the harm to its own economic interests, the Council argued the following:

The council believes that these provisions and agreements if released publicly would prejudice its dealings as indicating a position it would agree to take in future and different negotiations. This would weaken the council's position and its ability to secure the best consideration for disposal of assets and thereby meet its legal duties. Disclosure into the public domain of detailed clauses negotiated privately and at length would enable any other party to expect the council to accept a position at or no better than that agreed in this case for each individual aspect of the contract.

45. Elsewhere, the Council stated that:

The council also submits that the large number of property transactions it carries out each year would be adversely affected were it to become unable to deal with these on a confidential basis. Release of information would set an undesirable and damaging

precedent and the normal nature of these transactions suggests that many commercial companies would be reluctant to enter into dealings with us or with other local authorities. This effect on public bodies generally and their ability to transact business is presented as a factor in deciding the severity of the effects of disclosure potentially being directed.

46. The Commissioner considers that neither the arguments of the Council or the developer drill down to a specific link between the different types of withheld information and the nature of the prejudice being claimed. As such, the case supporting the application of the exception is weakened. The Commissioner must therefore decide whether there is sufficient evidence for him to conclude that the economic interests of either party would be harmed through disclosure.
47. To reach a determination, the Commissioner has been guided by the approach adopted by the Information Tribunal on *Christopher Waltho v The Information Commissioner* (EA/2014/0280, 9 September 2014)⁵. The circumstances of the cases differ significantly, in that the *Waltho* case concerns a request for a copy of a viability appraisal provided to a planning authority by a developer in respect of a development and the District Valuer's report, commissioned by the planning authority, in connection with the appraisal. The important point for the purposes of this decision, however, is the way that the Tribunal considered the evidence put before it should be tested:

29. [...] Whilst the evidence put forward by the Council (and through them the developer) is limited, the Tribunal is entitled to draw inferences from all the material before it (including the closed material) and to subject the evidence by the Appellant to critical scrutiny in assessing both this element and the public interest. We must be satisfied that the adverse effect would be caused by disclosure on a balance of probabilities, which is still less than a certainty.

30. We are satisfied that the reason that the withheld material was subject to confidentiality at law because there were reasonable grounds for saying its release would damage the Council's and the developer's economic interests. In so doing we are satisfied that as we are entitled to consider the documents as a whole the fact that some of the material might already repeat information in the public

⁵[http://www.informationtribunal.gov.uk/DBFiles/Decision/i1566/Waltho,%20Christopher%20EA.2014.0280%20\(16.06.15\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i1566/Waltho,%20Christopher%20EA.2014.0280%20(16.06.15).pdf)

domain or reference figures that had low economic sensitivity as argued by the Appellant does not detract from our conclusion [...] We are satisfied that there is commercial sensitivity in knowing the whole picture, the way that the scheme is structured, even the amount of detail provided will provide some insight into the robustness of the developer's proposal as well as the individual figures giving an insight into the developer's expectations, bargaining power, financial viability and the effort and expense that they are prepared to expend upon the scheme. The exemption is therefore engaged.

48. Corresponding with the *Waltho* decision, the Commissioner considers that some inferences can be drawn from the withheld information when considered alongside the arguments that have been provided. Broadly speaking, the arguments for the engagement of the exception fall into one of two camps; (a) arguments that refer to the harm specifically linked to the sale of the Tuke School site and (b) arguments that concern the effect that disclosure would have on negotiations relating to different projects. The Commissioner begins by looking at the arguments pertaining to the Tuke School site (a).
49. When considering whether a request was properly dealt with, the Commissioner must return to the circumstances as they were presented at the period in which the request was made. In the Commissioner's view, an important factor in this case pertains to the status of the sale at the date of the request. As mentioned above, at that time contracts had been entered into between the Council and the developer. The information on the contracts relating to the sale was though conditional on planning consent and other matters. As such, the sale process had not been completed and it remained a possibility that the terms of the sale could change or the sale even fall through. Consequently, the information relating to the sale could potentially retain commercial value until the sale had been completed.
50. The Commissioner considers that this point particularly applies to the arrangements around the additional receipts potentially due to the Council ("overage") if and when the buyer obtained planning permission. This relates to category 4) of the withheld information classified by the Council. The overage payment is in addition to the agreed purchase price and is usually expressed as a percentage of the increase in value of the land. The Commissioner considers that the terms of the overage could still be the subject of future negotiations and therefore disclosure would adversely affect the economic interests of the developer and, perhaps more significantly, the Council.
51. The Commissioner, on the other hand, considers there is insufficient evidence to conclude that the same would apply to the other withheld

clauses in the contract, listed as category 3) in the Council's response to the complainant. In the Commissioner's view, these sections in the main only contain generic terms and neither the Council nor the developer have effectively demonstrated that disclosure could be exploited in a way that would impede the sale process or the economic interests of the parties. The Commissioner has therefore found that this argument does not satisfy this stage of the test relating to the application of the exception. He has therefore gone on to consider whether this information would satisfy the test on the basis of the arguments referred to at (b) above.

52. In general, the Commissioner is sceptical of the Council's arguments that say the precedent set by disclosure would have an adverse effect on other property transactions carried out by the authority. There is no doubt that each property transaction will share common characteristics in terms of the way that the sale is progressed and the generic contractual requirements attached to the sale. Equally, however, the Commissioner also considers that each transaction will have individual features that will be reflected in the bidding process. This will mean that a developer will make their own assumptions on the value of the land. In the Commissioner's opinion, there is no reason that the Council should be shackled when information relevant only to another site is quoted to them by a developer on another project.
53. The Commissioner has further found that there is a lack of evidence to support the position that the release of the information would likely result in third parties becoming reluctant to enter into dealings with the Council. Ultimately, a third party seeking to do business with the Council is doing so on the basis that it will gain from the relationship. Disclosure of information relating to another project would therefore be unlikely to put off the third party. In any event, a third party entering into a business transaction with a public authority should already be aware that the authority would be subject to FOIA and the EIR.
54. For these reasons, the Commissioner has found that the part (iii) of the exception is only met in respect of the overage clauses contained in the contract (4)) and therefore the exception does not apply to the other withheld clauses (3)). As stated, the Commissioner considers that part (iv) of the engagement test will necessarily be satisfied where the three preceding stages are met. With regard to the specific overage information that engages the exception, the Commissioner has therefore gone on to consider the public interest test.

Public interest arguments in favour of disclosure

55. There will always be a significant level of public interest in a decision to sell land owned by a public authority. The reasons for this are three-fold.
56. Firstly, the public will want to be reassured that the sale is either necessary or in the best interests of the public authority and therefore the community it serves. Secondly, a public authority has a fiduciary duty to the community it serves and therefore the public will want to know that the authority is maximising value for money. Thirdly, it will be important to the public that the authority has adequate safeguards in place to ensure that the future use of the land corresponds with a wider planning policy.
57. Following broadly these lines, the complainant has similarly emphasised the importance of disclosure in this case. Reflecting on the explanations provided for withholding the requested information, he has argued that the Council's admission that its objectives are guided by not only financial but also social considerations mitigates in favour of greater transparency. The complainant goes on to say that given the high level of public interest in areas such as social and affordable housing, it is vital that contracts with private companies should be open to scrutiny.

Public interest arguments in favour of maintaining the exception

58. The Council has submitted that it is in the public interest for it to be able to function effectively in a commercial sphere. The Council has specifically argued that it must be able to deal with information in a way which, while reflecting fully the Council's the status as a public authority, enables transactions to take place in a manner compatible with the private sector.
59. The Council has acknowledged the importance of transparency relating to the sale. It contests, however, that the wider aspects of the transaction have been adequately explained to the public by information that had already been made available. This includes the open report to Cabinet regarding the proposal to sell the land. The public would also be able to access information relating to the subsequent planning consent process. In the view of the Council, the value to the public of the information would therefore suffer in comparison with the importance of ensuring that the transaction can be dealt with efficiently.

Balance of the public interest arguments

60. When considering where the balance of the public interest lies, it will be necessary to take into account the intention behind the implementation

of the EIR. The preamble to direct 2003/4, from which the EIR derives states:

Increased public access to environmental information and the dissemination of such information contributes to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.

61. The importance placed on transparency is conveyed by regulation 12(2) of the EIR, which expressly states that a public authority should apply a presumption in favour of disclosure.
62. There will often be a tension between those interests that, on the one hand, promote public participation in decisions relating to planning matters and those that, on the other, seek to ensure that a public authority is able to carry out its commercial activities effectively. In the case of truly commercially sensitive information, any disclosure that could jeopardise the sale of land from which a public authority will gain or the delivery of a project designed to benefit the local community is unlikely to be in the public interest.
63. The Commissioner considers that the Council has to an extent downplayed the strength of the public interest in disclosure and overplayed the claim that the information already in the public domain satisfied the need for transparency. Notwithstanding this, by finding that the exception is engaged the Commissioner has accepted that disclosure would harm the legitimate economic interests of the parties involved in the prospective sale of the land. Crucially, the request was made when there was still a possibility that the terms of the transaction could still change.
64. The Commissioner has found important the confirmation that the Council had undertaken a competitive bidding process, which had resulted in the developer being selected as the best available. As such, steps had been taken that would increase the chances of achieving the best deal for the site. The fact that a selection process had therefore taken place would, in the Commissioner's view, weaken significantly the need for disclosure of information that at the time of the request could risk the efficient management of the sale.
65. For this reason, the Commissioner has decided that in all the circumstances the public interest in disclosure is outweighed by the public interest in favour of maintaining the exception.

Right of appeal

66. 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@hmcts.gsi.gov.uk

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

67. 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.

68. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF