

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

**Date:** 13 August 2018

**Public Authority:** Kent County Council  
**Address:** County Hall  
Maidstone  
Kent  
ME14 1XQ

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to Kent County Council's (the council) disposal of land to Tesco in the Lowfield Street area of Dartford. The council applied regulation 12(5)(e), Regulation 12(4)(e) and Regulation 13(1) to withhold the information.
2. The Commissioner's decision is that the council has correctly applied Regulation 13(1) to the information. She has also decided that the council was correct to apply Regulation 12(5)(e) to the information, and that the public interest rests in the exception being maintained for this information. She has also decided that the council was correct to apply Regulation 12(4)(e) to withhold information, however the public interest in the disclosure of some of this information outweighs that in the exception being maintained.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - To disclose the information withheld by the council under Regulation 12(4)(e), other than the email dated 11 March 2013 sent at 11:01 and the last sentence of the third paragraph from last in the email dated 8 April 2013 sent at 14:37.

4. The public authority must take these steps 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

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5. Amongst other requests, On 5 December 2014 the complainant made the following request for information under the FOIA for:
  4. *The £350,000 (maximum sum) was for a new build shop unit to be leased to KCC for 99 years at a premium based on the actual construction costs and fees – the latest proposal is not new build – the unit is the ground floor of no. 26 Lowfield Street – an existing building ie there are no construction costs or fees involved.”*
6. In respect of this the council, at the time, clarified that it understood the complainant to be seeking information concerning the negotiations on an acquisition from Tesco by the council, and contractual obligations relating to this acquisition. This followed the disclosure of information from an earlier related decision notice FER0546440<sup>1</sup>.
7. Following the Commissioner's investigation of the council's subsequent application of the exceptions in Regulation 12(5)(e) (commercial confidentiality), and 12(4)(e) (internal communications) to withhold the information a complaint to the Commissioner resulted in decision notice FER0580869 being issued on 16 July 2015. This found that the council was correct to apply the exceptions it had cited<sup>2</sup>.
8. On 20 September 2017 the complainant made the following request:

*"The Information Commissioner's Decision Notice dated 16<sup>th</sup> July 2015*

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<sup>1</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1042603/fer\\_0546440.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1042603/fer_0546440.pdf)

<sup>2</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432130/fer\\_0580869.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432130/fer_0580869.pdf)

*upheld the Council's view i.e. not to release the information requested on the grounds of confidentiality and of possible harm to commercial*

*interests, because the Council was in on-going negotiations with Tesco at the time of the request.*

*Over two years later the negotiations should have been concluded; please let me know where the Council has published the details and outcome of the negotiations, which should answer question 4 of the FOI request."*

9. The council responded on 20 November 2017 and refused the request on the basis that Regulations 13(1), 12(5)(e) and 12(4)(e) were applicable.
10. Following an internal review the council wrote to the complainant on 16 January 2018. It provided further information but maintained its position that some information was exempt under the exceptions it had cited.

## **Scope of the case**

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11. The complainant contacted the Commissioner on 29 September 2017 to complain about the way his request for information had been handled. He argues that as Tesco's had now pulled out of the agreement and other buyers were now in place, the circumstances under which the council had refused his request of 2016 had now changed and the information should therefore be disclosed.
12. The Commissioner considers that the complaint is that the council was not correct to apply the exceptions it has to withhold the information from disclosure. The withheld information includes some information which is personal data relating to third parties, a paragraph from one document relating to the councils strategy in approaching negotiations with Tesco and a chain of internal emails withheld under Regulation 12(4)(e).

## **Reasons for decision**

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### Regulation 13(1)

13. Regulation 13(1) of the EIR states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').

Reference: FER0713831

14. The council provided its arguments in respect of the application of Regulation 13(1) in terms of the Data Protection Act 2018. However given that the request for information was received and the council exempted personal data prior to this legislation being brought into force, the correct legislation for the council to consider the application of the exception was the Data Protection Act 1998 (the DPA).
15. Nevertheless the council's submission to the Commissioner provided sufficient details of their reasoning when applying the exception, and the arguments are of such a similar nature, that the Commissioner has been able to transfer the arguments across to consider the application of the exception under the correct legislation for this case in this instance.
16. In order to rely on the exception provided by Regulation 13(1), the requested information must constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

*“personal data” means data which relate to a living individual who can be identified –*

  - (a) *from those data, or*
  - (b) *from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.”*
17. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes in this case that the council said that disclosure would breach the first data protection principle.

Is the information personal data?

18. The council has applied Regulation 13(1) to the names and identities of some individuals in correspondence between Tesco's, the council and the council's agents. It has also withheld the mobile numbers of its own staff.
19. It has also applied the exception to small amount of information which it considers to be 'special category' information under the Data Protection Act 2018 relating to one of its employees. Having considered this information the Commissioner is satisfied that the information falls within the definition of sensitive personal data defined in schedule 2(e) of the DPA 1998.

20. Based upon her consideration of the information exempted by the council under Regulation 13(1), the Commissioner is satisfied that the information is personal data for the purposes of the DPA 1998.

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

21. The council argues that a disclosure of the personal data would breach the requirements for fair, lawful and transparent processing under the DPA 2018. Effectively, for the purposes of this case, the Commissioner is able to consider these same arguments under the first data protection principle of the DPA 1998.

22. The first data protection principle states that:

*"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*

*(a) at least one of the conditions in schedule 2 is met, and*

*(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."*

23. In deciding whether disclosure of this information would be unfair, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subjects, and the consequences of disclosure on those data subjects and balanced the rights and freedoms of the data subjects with the legitimate interests in disclosure.

Nature of the information and reasonable expectations

24. The information is the identities and contact details of the council's agents and Tesco's staff, redacted from correspondence over the negotiations regarding Tesco's purchase of a property. The identities of council staff themselves have not been withheld.
25. The council argues that it has no consent to disclose the details of these individuals, and that the individuals would have no expectation that their identities would be disclosed to the public in relation to the negotiations.
26. It accepts that it is probable that if an internet search were to be carried out then some of the identities of individuals might be able to be found in association with their employment, but considers that this would not link them to the negotiations over the Tesco agreement, nor the associations with the opinions and advice they provide within the correspondence.

27. The council also argues that employees of its agents and Tesco's employees do not work for a public authority, and that they would therefore have less of an expectation that their identities would be disclosed within the context of the documents falling within the scope of this request.
28. The council disclosed the vast majority of the body of the correspondence, including opinions and advice in order to be transparent about the process it went through during the course of the negotiations. For this reason the council also argues that it is not necessary for the identities of individuals to be disclosed in order to understand the process and course of the negotiations it went through.
29. The council has also withheld mobile phone contact details relating to its own employees. The Commissioner considers that to disclose this personal contact information to the public at large would not fall within the expectations of these individuals as it would mean that they could be contacted directly by any members of the public not directly related to their current or past work with the council, even outside of working hours.
30. Having considered the information the Commissioner is satisfied that the individuals would not expect that their identities would be disclosed in the context of the disclosure of this information relating to this request.
31. Tesco's employees and agents do not work for a public authority and would have little, or no, expectation that their details might be disclosed in response to an EIR or an FOI request to a public authority with which they were undertaking negotiations or advising upon negotiations. Whilst they may expect that some information relating to the negotiations might need to be disclosed in order for the council to be transparent about its actions, this would not extend to an expectation that their identities would be disclosed along with the opinions and advice they provided during the negotiations.
32. Similarly, although council agents might have a stronger expectation that their identities might need to be disclosed where this is necessary in order to provide context or make decisions taken by the council transparent and the council accountable, this is not necessary in the context of this particular request and the information caught within its scope.
33. The Commissioner is therefore satisfied that individuals would have no expectation that their identities would be disclosed in response to this request.

### Consequences of disclosure

34. In order to assess the impact of the consequence of disclosure on whether disclosure would be fair, it is necessary to consider whether disclosure of the information would cause unwarranted damage or distress to the data subjects.
35. The Commissioner considers that the disclosure would associate advice and opinions provided during the course of the negotiations to the individuals. She considers that the main consequence of a disclosure of the identities of the individuals would therefore be a general loss of privacy for individuals who are not employees of the council.
36. As regards the disclosure of mobile phone numbers of the council employees, as information disclosed under the Act is considered to be to the whole world, the Commissioner must take into account the possibility that the disclosure would lead to an increase in them receiving unwanted calls during and after their working hours.

### Balancing the rights and freedoms of the data subjects with the legitimate interests in disclosure

37. Having considered the above, the Commissioner notes that it is not necessary for the council to disclose the identities of the individuals in order for members of the public to be able to make sense of, and understand the details of the correspondence and/or the negotiations.
38. A disclosure of the identities of the individuals would only create a negligible increase in the transparency surrounding the negotiations. This point is the most important aspect of the disclosure of the information as it allows greater transparency and scrutiny over the council's actions. This information has already been disclosed. She therefore considers that the legitimate interest of the public in the disclosure of the identities of the individuals within the information is relatively low.
39. The Commissioner therefore considers that any disclosure would be unwarranted as regards the individuals' rights and freedoms, and particularly in respect of their expectations of privacy. The Commissioner therefore considers that a disclosure of this information would not comply with the first data protection principle.
40. The Commissioner has also decided that it would not be fair to disclose the mobile phone numbers of its own employees.
41. The Commissioner's decision is therefore that the council was correct to apply Regulation 13(1) to this information.

### Sensitive personal data

42. As regards the information which falls within the definition of sensitive personal data falling within the scope of this request, the Commissioner notes that the information relates to circumstances surrounding the private life of an individual and its disclosure would have no bearing on the transparency of the negotiations.
43. Where sensitive personal data is concerned, the first data protection principle requires that processing should be fair and lawful, and that at least one of the conditions in both Schedule 2, and schedule 3 of the DPA 2018 are met.
44. The individual would have no expectation that this private information would be disclosed in the event of an FOI request. The consequence of a disclosure of this information is that sensitive personal data relating to her would be disclosed infringing on her privacy.
45. The Commissioner also considers that none of the conditions set out in Schedule 3 of the Act are applicable to allow the disclosure of this information.
46. The Commissioner's decision is therefore that the council was correct to apply Regulation 13(1) to this information.

### Regulation 5(3)

47. The council withheld a small amount of information on the basis it is personal data relating to the applicant (the complainant). It informed him that that was the case and asked him to make a subject access request for this information if he wishes the council to consider it for disclosure. The Commissioner is not aware whether he has done so or not.
48. Regulation 5(3) provides that:  
  
*"To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data."*
49. Having considered this information, the Commissioner is satisfied that it is personal data relating to the applicant for the information. The council was therefore correct to withhold the information under Regulation 5(3),

Regulation 12(5)(e)

50. The council applied Regulation 12(5)(e) to withhold one section of one document from disclosure. Regulation 12(5)(e) provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

*"the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;"*

51. The Commissioner considers that in order for this exception to be applicable, there are a number of conditions that need to be met. She has considered how each of the following conditions apply to the facts of this case:

- a. Is the information commercial or industrial in nature?
- b. Is the information subject to confidentiality provided by law?
- c. Is the confidentiality provided to protect a legitimate economic interest?
- d. Would the confidentiality be adversely affected by disclosure?

52. The Commissioner has considered whether the withheld information satisfies the conditions above.

53. The council argues that the withheld information relates to its negotiating strategy.

Is the information commercial or industrial in nature?

54. The Commissioner considers that for information to be commercial or industrial in nature, it will need to relate to a commercial activity either of the public authority concerned or a third party. The essence of commerce is trade and a commercial activity will generally involve the sale or purchase of goods or services for profit.

55. As with the previous decision notices to which this case relates, the focus of the withheld information is on the sale of the Adult Education Centre and car parks of the East side of Lowfield Street, Dartford. The withheld information relates to the strategies which the council used to ensure it could obtain the best possible outcome for it from the negotiations.

56. Having considered the council's submissions and referred to the withheld information, the Commissioner is satisfied that the withheld information relates to a commercial transaction, namely the disposal of land and contractual requirements relating to this disposal. This element of the exception is therefore satisfied.

Is the information subject to confidentiality provided by law?

57. In contrast to the section 41 exemption under FOIA, there is no need for public authorities to have obtained the information from another party. 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. The exception will protect confidentiality owed by a third party in favour of a public authority, as well as confidentiality owed by a public authority in favour of a third party.
58. The Commissioner considers that confidence can be explicit or implied, and may depend on the nature of the information itself, the relationship between the parties, and any previous or standard practice regarding the status of information.
59. For purely internal information, the question will be whether the employees of the public authority are under an obligation of confidence imposed by the common law, contract, or statute. In this case the question surrounds the application of the common law duty of confidence.
60. In common law, following the case of *Coco v Clark [1969] RPC 41*, when determining if disclosure would constitute a breach of confidence, the Commissioner considers that an authority will usually need to consider;
  - whether the information has the quality of confidence,
  - whether it was imparted in circumstances importing an obligation of confidence, and
  - whether disclosure would be an unauthorised use of the information to the detriment of the confider.
61. The council considers that the information has the necessary quality of confidence because it is not trivial and is not otherwise not in the public domain. It argues that its disclosure would reveal its negotiating tactics and strategies when addressing acquisitions or disposals of this nature, thereby providing other parties in negotiations with a commercial advantage as they would be forewarned of the strategies which the council sometimes employs to obtain the best outcome for it in relevant situations.
62. The Commissioner agrees with the council's analysis of the withheld section of information and has therefore decided that the information does have the necessary quality of confidence.

63. Secondly the Commissioner has considered whether the information has the necessary obligation of confidence. Employees of the council who were provided with, or took part in the negotiations, and those employees who are aware of the contents of the withheld section of information would be aware that a disclosure of this information without due authority would be likely to cause a significant detriment to the council in respect of its approach to negotiations.
64. The Commissioner is satisfied that employees who are aware of the information would understand therefore that their knowledge is due to their work with the council and that they could be sanctioned if they to disclose the information without due authority to do so. They would understand that they hold this information under a duty of confidence to the council. The Commissioner therefore considers that the information has the necessary obligation of confidence.

Is the confidentiality provided to protect a legitimate economic interest?

65. The Commissioner considers that to satisfy this element of the exception disclosure would have to adversely affect a legitimate economic interest of the person the confidentiality is designed to protect. In the Commissioner's view it is not enough that some harm might be caused by disclosure. The Commissioner considers that it is necessary to establish on the balance of probabilities that some harm *would* be caused by the disclosure.
66. The council has argued that disclosure of the information would result in harm to its own legitimate economic interests. It said that although the negotiations over this particular property have now ended the section of information it has withheld relates to strategies and negotiation tactics which it uses more widely than in this particular instance. It argues therefore that a disclosure of this information would provide parties it is negotiating with in the future an insight into one of its tactics when approaching such negotiations, and that this would be detrimental to its ability to conduct negotiations and achieve the best possible outcome.
67. The council says that it negotiates in many commercial transactions involving land to endeavour to obtain best value. It said that the tactics used would be utilised by the council in similar circumstances in order to achieve the best outcome when disposing of land, and if this information were to be disclosed it would lead to future negotiating parties holding the upper hand by having prior knowledge of the position or options that the council would take during the negotiations with them. It said that negotiation strategy and tactics form a critical part of its engagements in negotiations and, whilst it can be specific to a case, organisations will often employ similar principles over and over again.

68. It therefore considers that its strategies in approaching these negotiations may be used again in similar circumstances if it is appropriate to do so. It therefore argues that a disclosure in this case would provide forewarning to other parties that the council may employ similar approaches to their negotiations with them, potentially allowing these parties to prepare countering tactics to this approach.
69. Having considered the above, the Commissioner is satisfied that a disclosure of the information would highlight a tactic used by the council in these negotiations which might well be employed by it in similar circumstances, and that the circumstances which occurred here are likely to occur in the future. She is satisfied that a disclosure of this tactic may lead parties considering negotiations with the council to change their negotiation strategy when approaching the council as a result of this disclosure.
70. The Commissioner's decision is therefore that confidentiality is in place to protect the legitimate economic interests of the council.

Would the confidentiality be adversely affected by disclosure?

71. As the first three elements of the test have been established, the Commissioner is satisfied that disclosure into the public domain would adversely affect the confidential nature of that information by making it publicly available and would consequently harm the legitimate economic interests of the council. She therefore concludes that the exception at regulation 12(5)(e) is engaged in respect of the withheld information and has gone on to consider whether in all the circumstances of the case the public interest in maintaining the exception outweighs the public interest in disclosure of the requested information.
72. The test, set out in Regulation 12(1)(b), is whether in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
73. When carrying out the test there is a presumption towards the disclosure of the information as set out in Regulation 12(2).

The public interest in the information being disclosed

74. The council outlined the public interest factors it had identified in the disclosure of the information:
  - To promote transparency.
  - Accountability in spending public money, protecting the public purse.

- To create greater public awareness and understanding of environmental matters.
  - To encourage more effective public participation in environmental decision making.
75. The central public interest in the disclosure of the information relates to creating greater transparency on the way the council approached its negotiations with Tesco over the site.
76. A disclosure of the information would highlight the council's strategy when approaching the negotiations. It would allow greater scrutiny of how it approaches land deals to ensure it is placed in the best position to obtain best value in relevant situations. There is a public interest in information such as this being disclosed as it relates to the use of public money and financial decision making, and also the way in which the council may approach land deals in similar circumstances.
77. The council also identified the public interest in creating greater awareness and understanding of environmental matters and in encouraging more effective public participation in environmental decision making.

The public interest in the exception being maintained.

78. The central public interest in the exception being maintained has been identified by the council as:
- Disclosure would undermine the council's ability to commercially negotiate deals with land owners, as the land owners would have the upper hand in any deal if they already knew the tactics that the council would utilise in negotiations.
  - The inability to obtain best value deals for the public purse in negotiations.
79. The Commissioner has considered the public interest in allowing the council to approach negotiations on a level playing field. A disclosure of information which might allow its negotiating partners to identify strategies which the council may employ in specific situations would potentially allow them to take steps to undermine, or counter the council's strategy. This would ultimately have a negative effect upon the council's ability to negotiate best value in its deals.
80. This would impact upon the public purse, and the council's resources which could be otherwise used to provide other public functions or services.

Conclusion of the public interest test.

81. In balancing the above the council considered the factors in favour of disclosure and acknowledges that the public interest in people knowing what local authorities are doing in relation to the spending of public money and resources. It said that for this reason it disclosed the majority of the information in response to the request where it would not otherwise have an adverse effect upon the council's position. However it said that it was of the view that the public interest in disclosure of its negotiating strategy and internal discussions is substantially outweighed by the commercial damage which would be caused by that disclosure.
82. The Commissioner has considered the above arguments. She firstly acknowledges the council's argument that the majority of the information falling within the scope of the request has been disclosed. Through this disclosure the public are clear on the majority of the issues and actions which the council took during the course of the negotiations.
83. The Commissioner considers that this is an important point. There was a large degree of controversy over the issue of the Tesco development during both the initial planning application stages through to the point where Tesco's eventually decided it was not able to build the development after years of delay. In the interim, the land had been left largely unused and old shop fronts were covered by hoardings.
84. There remains a public interest in a disclosure of information which would allow the public to better understand the approach which the council had taken to the negotiations. It would allow the public to better understand whether the council's approach was appropriate, and interested parties may be able to identify whether a better approach may have been taken. These issues all surround the spending of public money and the use of public resources, and greater transparency over how the council approached negotiations could create greater public confidence in the council's financial decision making, and in its management of land.
85. On the counter side, the Commissioner also notes and accepts the council's argument that there is a public interest in it being able to maintain confidentiality on its negotiating tactics to prevent future negotiating partners from identifying its strategies prior to entering into negotiations with it. A disclosure of these strategies may undermine the council's ability to obtain best value, or reach the best terms for the public purse in future negotiations.

86. Having considered the above the Commissioner is satisfied that the public interest in the exception being maintained outweighs the public interest in the information being disclosed in this instance. A disclosure of the tactics used in this situation does affect the council's ability to employ the same strategy in the future in similar situations. Although the Tesco negotiations have been concluded, a disclosure of the information risks affecting the councils negotiating tactics into the future, and at worst could potentially risk a loss of public funds if the council fails to obtain best value in subsequent negotiations as a result of the disclosure.
87. The Commissioner has therefore decided that the council was correct to apply Regulation 12(5)(e) to this information.

#### Regulation 12(4)(e)

88. The council has applied Regulation 12(4)(e) to one set of documents; an email trail relating to discussions between council staff. The council said that the sole purpose of the email correspondence was to inform relevant staff members about matters and to enable them to make further decisions. It confirmed that the information was not in the public domain and that it was never intended that it should be released externally.
89. Having considered the withheld information the Commissioner is satisfied that the information is internal communications and that the exemption is therefore engaged.
90. Again Regulation 12(4)(e) is subject to a public interest test. The test, provided in Regulation 12(1)(b), is whether in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. Again Regulation 12(2) provides a presumption towards the disclosure of the information.

#### The public interest

##### The public interest in the disclosure of the information

91. Again the council again outlined the public interest factors it had identified in the disclosure of the information:
- To promote transparency.
  - Accountability in spending public money, protecting the public purse.

- To create greater public awareness and understanding of environmental matters.
- To encourage more effective public participation in environmental decision making.

The public interest in the exception being maintained

92. The council argued the following public interest arguments are relevant to the exception being maintained:

- The inability for officers to have open/frank discussions on options available without ever present risk that those options will be made public every time a request for disclosure is received.
- The council argues that it should be afforded the freedom to debate and brainstorm issues and strategies without fear of being scrutinised for each and every thought. It said that if that were the case, officers would end up not committing anything to writing, discussions will be noted and important options to be considered will not be fully explored leading to the conduct of public affairs becoming less transparent rather than more.

Conclusion of the public interest test

93. The council's point that a disclosure of the information would have an effect upon the way council internal discussions would be approached if this information were to be disclosed. This relates to the 'chilling effect' such a disclosure might cause if sensitive information contained within relevant information is disclosed. The Commissioner notes however that the arguments provided by the council are generic in nature and have not been applied specifically to the information withheld in the email chain, outlining reasons why this particular information might have the effect of curtailing discussions etc in the future.
94. The Commissioner recognises that following the implementation of the FOI Act and the EIR public employees must always bear in mind that their actions may be subject to scrutiny and their recorded conversations may be required to be disclosed if a request for that information is received and no exemptions or exceptions are applicable to withhold them.
95. In this case some information within the withheld documents is sensitive as it provides opinion, advice and discussions within the council regarding third parties actions in relation to the development. Additionally the Commissioner recognised in her previous decision notice that the information was also exempt under Regulation 12(5)(e) at that

time due to the ongoing negotiations. This is no longer the case insofar as this land is concerned.

96. The Commissioner notes that the change in circumstances surrounding the use of the land over time has reduced the public interest in the exception being maintained for this information. The Commissioner notes that Tesco no longer intends to build on the site, and it has now been sold to developers who intend to build housing. Although this is the case, the Commissioner recognises that the information still retains relevance and retains a degree of sensitivity concerning third parties.
97. Given the generic nature of the arguments provided by the council on this information the Commissioner has not been persuaded that the public interest in the exception being maintained outweighs that in the information being disclosed for the entirety of the correspondence. Part of the information discusses the options which were open to the council at that time, and there is a strong public interest in this information being disclosed in order to inform the public of the options which the council considered it had open to it. This is particularly the case given the contentious situation regarding the land which had been ongoing for a number of years at that time.
98. However she notes and accepts that one part of the document does contain information which retains its sensitivity. The Commissioner therefore considers that the council was correct to apply Regulation 12(4)(e) to the entirety of the email dated 11 March 2013 sent at 11:01.
99. Additionally, the Commissioner recognises that in requiring the disclosure of this email correspondence, one part of this correspondence contains sensitive personal data. For the reason outlined in paragraphs 39 to 42 in her analysis of section 40(2) above she accepts that section 40(2) applies to the last part of the sentence in the third from last paragraph in the email dated 8 April 2013 at 14:37.
100. In short therefore she has decided that the information withheld by the council under Regulation 12(4)(e), should be disclosed, other than an email dated 11 March 2013 sent at 11:01 and the last sentence of the third paragraph from last in an email dated 8 April 2013 sent at 14:37.

## **Right of appeal**

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101. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

102. 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.

103. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**