

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 12 May 2020

Public Authority: Hastings Borough Council
Address: Queens Square
Hastings
TN34 1TL

Decision (including any steps ordered)

1. The complainant has requested communications sent between Hastings Borough Council (the council) and the owners of a local caravan park (the site) about a '*joint cost survey*' into the stability of land which was affected by a landslide.
2. The Commissioner's decision is that the council is entitled to rely on regulation 12(5)(e) as its basis for withholding some of the requested information, and the public interest rests in favour of maintaining this exception.
3. With regards to the remaining information held relevant to the request, the Commissioner has concluded that regulation 12(5)(e) is not engaged.
4. Furthermore, the Commissioner has found that the council has breached regulation 14(2) of the EIR by failing to issue a refusal notice within 20 working days. In addition, the council has also breached regulation 11(4) of the EIR by failing to provide its internal review response within the required 40 working days.
5. The Commissioner requires the council to take the following steps to ensure compliance with the legislation:
 - Release redacted copies of the three sets of correspondence that are relevant to the request. The content which should be disclosed is set out within the Confidential Annex attached to this decision notice.

- Release a copy of the report with the exclusion of all financial information, apart from that which confirms the total cost to carry out the study.
6. The council 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

7. On 19 January 2017, the complainant wrote to the council and requested information in the following terms:

'HBC [the council] has referred on several occasions to the possibility of carrying out a further geotechnical survey of the landslip following the second Coffey investigation in early 2015.

HBS proposed that a "joint cost survey" would be done where costs would be shared between Rocklands and HBC.

This survey was mentioned in a meeting with [council officer name redacted] and in meetings with Councillors Chowney and Hodges.

The joint cost survey was mentioned in the leader of the councils reply to a question at the full council meeting (attached) of 10/02/2016:

"12. The possibility exists that any drainage system would involve impact on the Country Park. Natural England have made it clear that they require to be consulted about the impact of any management works.

If the site owners agreed to half fund the costs of a study then the Council would consider such a study. *However, in the absence of this the Council does not proposed to spend further resource, save for action if public safety issues arise for caravan park residents caused by further erosion unless a sustainable and fundable plan for access can be brought forward."*

To our best knowledge this "joint cost survey "has never been carried out. Could you please let us know the following:

- *Correspondence with Rocklands requesting a contribution to the cost of a geotechnical survey of the landslip that has affected the adjacent country park.*

- *All other correspondence between HBC and Rocklands concerning the "joint cost survey"*
 - *Whether a "joint cost survey" was carried out.*
 - *If carried out what date the "joint cost survey" was done.*
 - *If carried out all documents relating to this "joint cost survey"*
 - *If not carried out all documents relating to why this "joint cost survey" was not carried out.'*
8. On 20 November 2018 the council responded to the complainant's request. It advised that it held some information in relation to bullet points 1 and 2 of the request but that as this was '*confidential*' between the council and the site owners, it was to be withheld under regulation 12(5)(e) of the EIR. The council also confirmed that it had considered the public interest test and that it regarded the factors in favour of disclosure to be transparency and accountability, and the factors against disclosure to be as follows:
- *If the information is disclosed it could be used to seek harm on the owners commercial interests.*
 - *This correspondence contains highly sensitive and confidential information and the disclosure of this report is likely to prejudice the owners commercial interests.*
 - *Unfounded critical publicity (and defamatory) reviews and postings about their business via social media and press leading to a loss of trade by virtue of a long running campaign since 2-13.*
 - *Significant diversion of their attentions away from the efficient running of their business.*
 - *Undue upset and worry for caravan owners which has significantly affecting their health.*
 - *Constant bad publicity by SEG [Save Ecclesbourne Glen-a local campaign group] hampers the owners ability to be able to eventually sell their land and their business for a fair value.*
9. The council advised the complainant that it regarded the public interest in maintaining the exception to outweigh the public interest in disclosing the information in this instance.
10. In response to bullet point 3 of the request, the council confirmed that a '*joint cost survey*' was not carried out. It went on to say that a response to bullet points 4 and 5 was therefore not applicable.
11. In response to bullet point 6, the council advised that this information was not held.

12. On 14 December 2018 the complainant requested an internal review.
13. Following the Commissioner's intervention, the council then provided its internal response to the complainant on 3 April 2019. It advised that it had refused to provide the correspondence which it had received from GVA (the owners' agent) that was relevant to the request because it did not have the permission of GVA to release this information. It went on to say that the complainant had requested correspondence with GVA in the past and that this had been refused. It stated that it would not be disclosing the information requested '*for the reasons previously given*'.
14. The council then went on to say to the complainant that he had already been advised that '*a joint cost*' survey was not carried out for various reasons, one being that the cost to carry out the survey was too expensive, and not financially viable for either party.

Scope of the case

15. The complainant had originally contacted the Commissioner on 16 March 2019 to complain about the council's failure to respond to his request for an internal review. He then contacted the Commissioner again on 25 May 2019 to complain about the council's internal review decision, as well as its general handling of his request.
16. The complainant is unhappy about the time it took the council to deal with matters and that it has withheld the information he has requested. In addition, he does not believe that the council's internal review response was consistent with its original response, providing what he regards to be additional/different reasons for refusing his request.
17. The complainant also states that the council has not considered this request in isolation; he is concerned that the council referred to other information requests that he has made and stated that this request was being refused for the same reasons that it had '*previously given*.' Furthermore, the complainant suggests that the council's answer to bullet point 6 of his request must be wrong if it holds communications about the proposals.
18. Firstly, the Commissioner agrees with the complainant that each request, and the circumstances that relate to it, should be considered in isolation; a 'blanket' approach should not be taken when dealing with a number of requests that may be based on a similar theme. However, she does not accept that the content of the council's responses is a sufficient indicator that it has failed to consider this request on its own merit.

19. In addition, the Commissioner does not regard the explanations provided in the council's internal review response to be in conflict with its original response, or its decision to apply regulation 12(5)(e).
20. The Commissioner also does not agree with the conclusion drawn by the complainant that if communications do exist between the relevant parties about the '*joint cost survey*' then the council must hold information relevant to the terms set out in bullet point 6 of his request.
21. It is not unreasonable to assume that bullet point 6 is asking for information that is not covered by the remainder of the request and which sets out the definitive reasons why the joint cost survey did not go ahead. The Commissioner accepts the council's assertion that it does not hold recorded information that provides a specific answer to this part of the request.
22. The information which the council has provided for the Commissioner's consideration consists of three sets of correspondence sent between the council and the site owners' agents. It should be noted that the majority of the information held within two of these three sets of correspondence has been omitted from the Commissioner's consideration as she does not regard it to fall within the scope of the complainant's request.
23. The council's correspondence to the council also included a report that was created by the council's geotechnical advisors, Coffey. Given this, the Commissioner accepts that the information contained within this report would also fall under the scope of the request.
24. The Commissioner is satisfied that, on the balance of probabilities, the three sets of correspondence, and the report, comprises all the information that is held by the council which falls in with the scope of the complainant's request.
25. The Commissioner considers the scope of the investigation to be whether the council was correct to have applied regulation 12(5)(e) of the EIR to that information which has been identified as being relevant to the request. In addition, she has considered the council's compliance with the procedural aspects of the EIR, as requested by the complainant.

Reasons for decision

Is the information environmental information?

26. Information is 'environmental information', and must be considered for disclosure under the terms of the EIR, rather than the Freedom of

Information Act 2000 (FOIA), if it meets the definition set out in regulations 2(1)(a) to 2(1)(f) of the EIR.

27. Regulation 2(1)(c) of the EIR says that any information on measures such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements or factors of the environment listed in regulation 2(1)(a) and 2(1)(b) will be environmental information. One of the elements listed under 2(1)(a) is land.
28. The request is for communications between the council and the owners of a caravan site about a proposed study of the stability of an area of land which had been affected by landslips.
29. The Commissioner is satisfied that the information that has been withheld can be considered to have an effect on the land and its use, and that it fits squarely into the definition of environmental information set out within regulation 2(1) of the EIR.

Regulation 12(5)(e)-commercial confidentiality

30. Regulation 12(5)(e) of the EIR states that a public authority can refuse to disclose information, if to do so would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
31. The exception can be broken down into the four-stage test which was adopted by the Information Rights Tribunal in *Bristol City Council v Information Commissioner and Portland and Brunswick Squares Association (EA/2010/0012)*¹, 24 May 2010. All four elements are required in order for the exception to be engaged and are as follows:
 - Is the information commercial or industrial in nature?
 - Is the information subject to confidentiality provided by law?
 - Is the confidentiality required to protect a legitimate economic interest?
 - Would the confidentiality be adversely affected by disclosure?
32. For clarity, if the first three questions can all be answered in the positive, the fourth question will automatically be in the positive. This is

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[http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i392/Bristol_CC_v_IC_&PBSA_\(0012\)_Decision_24-05-2010_\(w\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i392/Bristol_CC_v_IC_&PBSA_(0012)_Decision_24-05-2010_(w).pdf)

because, if the information was disclosed under the EIR, it would cease to be confidential.

33. Whilst the Commissioner will, most often, consider the four-stage test in the order set out by the Information Rights Tribunal (as described in paragraph 31 of this decision notice), in this particular instance she has decided to firstly consider whether the withheld information is subject to confidentiality by law, before then going on to consider if it is commercial or industrial in nature. The Commissioner will then consider the final two stages of the test in the same order set out by the Information Rights Tribunal.
34. Also, the Commissioner intends to firstly consider whether the exception at regulation 12(5)(e) is engaged in relation to the three sets of correspondence sent between the relevant parties. She will then go on to consider the contents of the report separately.

Correspondence sent between the council and site owners

Is the information subject to confidentiality provided by law?

35. In relation to this element of the exception, the Commissioner has considered whether the information is subject to confidentiality provided by law, which may include confidentiality imposed under a common law duty of confidence, contractual obligation or statute.
36. The Commissioner has not been made aware of any statutory duty of confidence in this instance. She has therefore gone on to consider the common law of confidence, which has two key tests:
 - a. Does the information have the necessary quality of confidence? This involves confirming the information is not trivial and not in the public domain.
 - b. Was the obligation shared in circumstances importing an obligation of confidence? This can be explicit or implied.
37. The information contains details about a proposal to share the cost of a study of land stability following a landslip. The Commissioner therefore considers that the information, in the main, is not trivial.
38. The Commissioner notes that the details which are contained within part of the content of the council's correspondence to the site owners'

agents, and their responses, is already in the public domain.² This includes the proposal that the site owners share the cost of the study, and their response declining this. She therefore does not accept that this information can be subject to a duty of confidence to any party.

39. Given this, it is the Commissioner's decision that regulation 12(5)(e) is not engaged with regards to this particular information and that it should be released.
40. With regards to the remaining information contained within the three sets of correspondence that are relevant to the request, the Commissioner accepts that it would not have been within the site owners' expectations that such communications would be disclosed. They constitute a discussion about the council's proposal to carry out a further study of land affected by a landslide; the Commissioner is satisfied that the site owners would have had an expectation that the information that they provided on a voluntarily basis in their responses about such a proposal would be treated in confidence. This extends to any other information that may relate directly to the site and the land contained therein.
41. In addition, whilst the council has not provided such detail in support of this particular case, it has previously supplied the Commissioner with communications from the site owner's agent which state that the site owners do not want certain information which they have provided to the council in confidence to be released into the public domain.
42. The Commissioner is satisfied that the correspondence which is relevant to the complainant's request form part of those communications which the site owners have asked the council to withhold.
43. Having considered all relevant factors, the Commissioner concludes that the remaining withheld information that is being considered within this decision notice is not trivial in nature, and that it has the necessary quality of confidence. She has therefore gone on to consider whether the withheld information is commercial or industrial in nature.

Is the information commercial or industrial in nature?

44. The Commissioner considers that for information to be commercial or industrial in nature it will need to relate to a commercial activity. The

² <https://www.hastings.gov.uk/my-council/freedom-of-information/date/?id=FOI226766>

essence of commerce is trade, and a commercial activity will generally involve the sale or purchase of goods or services for a profit.

45. The council has referred to the First-tier (Information Rights) Tribunal case of Hastings Borough Council v IC, EA/2017/0084³ as being relevant to its consideration of the application of regulation 12(5)(e) to the information that it has withheld in this case.
46. The Tribunal case considered whether the council had been correct to withhold certain information in response to a request for the Coffey 2 Report. The Tribunal accepted that the withheld information could be linked to two other reports (a geotechnical report and a drainage report) that had been supplied to the council by the site owners. It went on to conclude that the site owners had provided this information to the council with the expectation that it would be treated in confidence, and that its disclosure would cause harm to their economic interests. It confirmed that the public interest lay in favour of withholding this information and upheld the council's decision.
47. In the Tribunal case the Commissioner was described as having taken a restrictive approach to the issue of whether the information that had been withheld was commercial or industrial. The Tribunal advised that it would be hard to see a more commercial piece of information than that which relates to a major asset of a business venture and stated the following:

'To a greater or lesser extent the disputed information may give indications of costs or problems which might (or might not) restrict the use which the property could be put and the expenditure which might need to be incurred to ensure the continued exploitation of the asset. It is rather hard to see a more commercial piece of information than that.'
48. The information contained within the correspondence which has been withheld in this case relates to a proposal to share the costs of a study into the stability of land following a landslip which had affected both the site and the Ecclesbourne Glen. This has a direct impact on the site, how its land might be used, and the expenditure which might be incurred by the business.

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[http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2167/Hastings%20Borough%20Council%20EA.2017.0084%20\(26.03.18\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2167/Hastings%20Borough%20Council%20EA.2017.0084%20(26.03.18).pdf)

49. Having had regard to the Tribunal's comments, the Commissioner is satisfied that the withheld information can be considered to be commercial for the purposes of the EIR.

Is the confidentiality required to protect a legitimate economic interest?

50. In the Commissioner's view, in order to satisfy this element of the test, disclosure of the confidential information would have to adversely affect a legitimate economic interest of the person (or persons) the confidentiality is designed to protect.
51. The Commissioner considers it to be necessary to establish that, on the balance of probabilities, some harm would be caused, rather than might be caused, as a result of disclosure.
52. In this instance, the Commissioner has given further consideration to the approach which was taken in the Tribunal case referred to by the council. In that case, it was regarded to have been important that two reports, which provided details about the site and the land, had been supplied to the council by the site owners on a voluntary basis. In this case, the Commissioner notes that the information, which is regarded to be about the site, and its land, was once again provided to the council by the site owners on a voluntary basis.
53. The Commissioner has considered paragraph 27 of the Tribunal case which stated the following:
- 'We must have regard to the terms of regulation 12(5)(e) and assess whether the commercial confidentiality at issue is "provided by law to protect a legitimate economic interest." There is no legitimate economic interest in running an unsafe site or a site that causes and may continue to have an adverse environmental impact. There is a legitimate economic interest in trying to reach an agreement on site regulation which meets both legitimate environmental concerns and the fair treatment of an established business.'*
54. The Tribunal's comments were in relation to a different set of information. However, the Commissioner regards the discussions between the council and the site owners which were taking place about a potential study to further investigate land stability to be directly applicable to the comments set out in paragraph 27 of the Tribunal decision. She recognises that it was important that the council was able to work with the site owners about matters that related to the land affected by the landslips, and to reach an agreement on how this was to be managed. In order to do this, the Commissioner accepts that a degree of trust and ability to, at times have a frank and free discussion

about the position of both parties, was required. If this was not possible, it would have a direct impact on the site and the running of the business and would cause harm to the economic interests of the site owners.

55. The Commissioner also views it to be the case that the information, if released, would provide an insight into the operation of parts of the business, and decisions which have been reached, which would not ordinarily be in the public domain. It is likely that this would put the site owners at a disadvantage commercially and this would, in turn, harm their ability to run their business effectively
56. In addition, the council has made reference to alleged harassment caused by a particular campaign group and the detrimental effect that this has had on the site owners and their business. The Commissioner is aware that the campaign group refutes the allegations of harassment.
57. Whilst the Commissioner does not intend to adjudicate on the validity of claims of actual harassment, she does regard the following comment by the Tribunal to be of some relevance to her consideration of the withheld information. She has highlighted in bold that part which is most pertinent to her consideration of matters:

*'While there is clear evidence of economic harm caused to the business, teasing out the contributions of the landslide (with consequent reduction in the number of pitches) and the campaigning about the landslide as the causes of that harm presents some challenges. **However, it is clearly foreseeable that further disclosure would have resulted in more adverse publicity and some economic harm would flow from that.***

58. Having taken all factors into account, the Commissioner is satisfied that there is sufficient evidence for her to conclude that disclosure of the withheld information would harm the legitimate economic interests of the site owners. In addition, despite the time that passed between the time that the communications were sent, and when the complainant submitted his request, she is satisfied that there is still a realistic possibility that the disclosure would cause harm to the site owners. Furthermore, the Commissioner accepts that the disclosure of the withheld information would also result in the '*adverse publicity*' referred to by the Tribunal and that '*some economic harm would flow from that.*'
59. The Commissioner therefore concludes that the third part of the test as set out in paragraph 31 of this decision notice is met.

Would the confidentiality be adversely affected by disclosure?

60. Although this is a necessary element of the exception, should the first three tests set out in paragraph 31 be met, the Commissioner considers

it inevitable that this element will also be satisfied. In her view, disclosure of truly confidential information into the public domain would inevitably harm the confidential nature of that information by making it publicly available and would harm the legitimate economic interests that have been identified.

The public interest test

61. As the exception under regulation 12(5)(e) is engaged, the Commissioner has gone on to consider whether the public interest in the disclosure of the requested information outweighs the public interest in maintaining the exception.
62. When carrying out the test, the Commissioner must take into account the presumption towards disclosure provided in regulation 12(2).
63. The complainant has raised concerns that the reasons for refusal are weighted towards the site owners without consideration to the local people who have also lost out because of the landslip and the closure of Ecclesbourne Glen.
64. When considering the public interest, the Commissioner has given consideration to the information which has already been made available about the proposed study. This includes confirmation that a proposal to share costs of a study into the land stability was put to the site owners, that this was declined, and that this study did not go ahead.
65. Whilst the Commissioner agrees that it is important that the public is provided with information which will increase their understanding of the causes of the landslips and any remedial action which is to be taken, this should not extend to all the information held by the council about the site and its business. The site owners' right to privacy is also an important factor for consideration.
66. The Commissioner accepts that the arguments for transparency and accountability carry some weight in support of disclosure. However, she regards the details which have already been released about the proposal to go some way in satisfying the public interest in this particular instance. She is not persuaded that any value that may be derived from the disclosure of the withheld information would outweigh the potential harm which would be caused to the site owners right to run their business with some degree of privacy.
67. Taking into account all relevant factors, the Commissioner is satisfied that the disclosure of the requested information would not be in the public interest. The harm disclosure would cause to the site owners weighs the balance heavily in favour of withholding the information in this instance. Given this, the Commissioner concludes that (aside from

that information which is referred to in paragraph 39 of this decision notice), the council was correct to have withheld the information contained within the relevant correspondence.

68. The Commissioner now intends to go on to consider the information contained within the report which was attached to the email communication sent to the site owners about the proposal to share costs of a study.

The report

Is the information subject to a duty of confidence provided by law?

69. The Commissioner has not been made aware of any statutory duty of confidence in respect of the information that is contained within the report. Given this, she has considered whether the two key tests for the common law of confidence, as set out previously in paragraph 36 of this decision notice, are applicable.
70. The information contained within the report contains details about a proposed investigation into land stability in an area affected by landslips, and the costs associated with this. The Commissioner therefore considers that the information, in the main, is not trivial.
71. The Commissioner regards decision notice FS50817223⁴ to be particularly pertinent to her consideration of whether the information contained within the report is subject to a duty of confidence. This is because the report sets out details of a revised, and reduced, cost version of the study which had been included within the Proposal Report considered within decision notice FS50817223.
72. In decision notice FS50817223, the Commissioner concluded that some of the information contained within the Proposal Report was simply an extension of that which was already in the public domain and was therefore not subject to any duty of confidence.
73. The Commissioner has decided that the information contained within the report which sets out how the technical details about how the study would be undertaken can also be regarded to be an extension of that information which is already in the public domain.

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617390/fs50817223.pdf>

74. Therefore, the Commissioner has decided that the information contained within the report which sets out the technical details of the proposal is not subject to a duty of confidentiality. As a result, she concludes that regulation 12(5)(e) is not engaged in respect of this particular information and that it should be released.
75. The Commissioner will now go on to consider the financial information that is contained within the report.
76. Given that the council had released the estimated costings of the original proposal at a meeting held on 10 February 2016⁵, the Commissioner has found some difficulty ascertaining the basis on which the 'revised' total cost contained within the report would be confidential. Given this, it is the Commissioner's decision that the total cost figure should also be released.
77. However, with regards to the breakdown of the total cost cited in the report, the Commissioner accepts that the relevant parties, and in particular Coffey, would have had an expectation that this information would be treated in confidence. This is because the information reveals details of each separate charge set by Coffey for the services that it was offering. This, in turn, provides an insight into how this particular business operates and bids for business/contracts which would not normally be available.
78. The Commissioner therefore accepts that the financial information held within the report which provides details as to how the final costing was reached is subject to a duty of confidentiality. As a result, she is satisfied that this stage of the test is met with regards to the costing figures contained within the report (aside from the total cost figure).

Is the information commercial or industrial in nature?

79. The Tribunal case referred to by the council in support of its decision in this case accepted that the information that it was considering was commercial in nature in relation to the site owners and their business. Whilst the Commissioner does not accept that the same relationship is transferable to the financial information contained within the report, she does still find that it does still relate to a commercial activity. This is because it relates to proposals for further study of the stability of the land and the costings which are associated with this study, and for

⁵ <https://www.hastings.gov.uk/my-council/freedom-of-information/date/?id=FOI226766>

which, importantly, third party companies will achieve a commercial return by way of payment from the council for their services.

80. The Commissioner is therefore satisfied that the financial information which she has already accepted is subject to a duty of confidence is also commercial in nature.

Is the confidentiality required to protect a legitimate economic interest?

81. The Commissioner believes that the disclosure of the breakdown of the individual costings would, in particular, have an effect on the legitimate economic interests of Coffey.
82. It is the Commissioner's view that the disclosure of any further breakdown of the costs charged by either party would reveal details about what Coffey charges for specific services. This would provide Coffey's competitors with an insight into the breakdown of its costings. This would affect its ability to compete for other contracts and would cause harm to its economic interests.
83. The Commissioner therefore accepts that the disclosure of the breakdown of how the final costing was attained in this particular report would have an adverse effect on the legitimate interests of the third party companies (in particular Coffey), and that this part of the test is engaged.

Would confidentiality be adversely affected by disclosure?

84. As stated previously within this decision notice, if the first three elements are established, the Commissioner considers it inevitable that this element will be satisfied.
85. As a result, the Commissioner has concluded that regulation 12(5)(e) is engaged in respect of the financial information (other than that the total cost) contained within the report. She 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 the disclosure of the information.

Public interest test

86. The council confirmed in its responses to the complainant that the public interest arguments in favour of disclosure are '*transparency and accountability*'.
87. The Commissioner is mindful that Coffey will be negotiating terms of similar contracts with other parties. Should the breakdown of its

charges, and the terms of service, be released, it could affect its position within the marketplace and put it at a disadvantage. The Commissioner believes that, in the circumstances of this case, this particular factor carries some significant weight.

88. The Commissioner has already decided that the total estimated cost included within the report should be released; this should go some in way in satisfying the public interest in respect of the financing element of the 'revised' version of the study. In addition, as far as the Commissioner is aware, the council did not proceed to instruct any company to carry out the work set out in the report, so there was no impact on the public purse, and there was no financial liability undertaken by the council that could come under further scrutiny.
89. The Commissioner has therefore had some difficulty establishing the value to the public which would be derived from releasing the full breakdown of Coffey's charges. However, she regards the harm caused to Coffey as a result of its release to be real and significant.
90. Given the above, the Commissioner has decided that, in this instance, the public interest arguments in favour of disclosure are outweighed by the public interest arguments in maintaining the exception. She is therefore satisfied that the council is entitled to withhold the breakdown of financial costings contained within the report in this instance.

Procedural matters

91. The complainant has requested that the Commissioner also consider the general handling of his request by the council.
92. Regulation 14(1) of the EIR requires a public authority that refuses a request for information to provide a refusal notice in writing and in accordance with the provisions of this regulation. Regulation 14(2) requires the refusal notice to be issued within 20 working days of receipt of the request.
93. Regulation 11(4) requires a public authority to inform a requester of the outcome of the internal review as soon as possible and not later than 40 working days after that date on which an internal review was requested.
94. The complainant made his request on 19 January 2017 and the council issued its refusal notice on 20 November 2018. The complainant then asked for an internal review on 14 December 2018, but the council did not provide its response until 16 March 2019.
95. The council has provided the Commissioner with an explanation for the delays in dealing with a number of requests that it has received that

relate to the landslips, the site and the Glen. It has described the difficulties it has faced when having to deal with a large number of requests and the burden that this has placed on its limited resources. The Commissioner is aware that it was also involved in protracted negotiations with the site owners about a site licence which was the subject of an appeal until April 2018. In addition, a Tribunal appeal in relation to another decision notice was only decided on 26 March 2018. The council has confirmed that it placed a number of information requests that it had received on hold until these two matters were concluded.

96. Whilst the Commissioner appreciates the difficulties faced by the council in the circumstances which it has described, it is not in dispute that it failed to issue a refusal notice within 20 working days of receiving the original request and that it did not respond to the request for an internal review within 40 working days. As a result, the Commissioner is satisfied that the council has breached regulations 14(2) and 11(4) of the EIR respectively.

Right of appeal

97. 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@justice.gov.uk

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

98. 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.
99. 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

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