

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 3 May 2023

**Public Authority:** Woking Borough Council  
**Address:** Civic Offices  
Gloucester Square  
Woking  
Surrey  
GU21 6YL

#### **Decision (including any steps ordered)**

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1. The complainant requested various information in respect of Victoria Square Woking Limited from Woking Borough Council (the 'Council'). The Council provided some of the information, but refused the remainder on the basis of regulation 12(5)(e) (confidentiality of commercial or industrial interests) of the Environmental Information Regulations 2004 (the 'EIR'). During the course of the Commissioner's investigation, the Council disclosed the previously withheld information to the complainant. The Commissioner's decision is that the Council's failure to provide the information to the complainant within the specified timescales (20 working days), represents a breach of regulation 5(2) of the EIR. As the information has now been disclosed, the Commissioner does not require further steps.

#### **Request and response**

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2. On 25 October 2022, the complainant wrote to the Council and requested the following information:

"Please provide copies of the following documents...

1. The shareholder agreement(s) between Woking Borough Council, Moyallen Holdings Limited (or other Moyallen companies) relating to Victoria Square Woking Limited (or its previous names).
2. The loan agreement(s) between Woking Borough Council, Moyallen Holdings Limited (or other Moyallen companies) and/or Victoria Square Woking Limited (or its previous names) relating to the Victoria Square Development.”
3. The Council responded on 2 December 2022 . It confirmed that it held relevant information, provided some information to the complainant, however stated that it was withholding the rest on the basis of section 43(2) FOIA.
4. Following an internal review the Council wrote to the complainant on 10 February 2023. It upheld its decision to refuse some aspects of the request on the basis of commercial interests, but informed the complainant that it considered that the information would fall under the provisions of the EIR and cited regulation 12(5)(e) (confidentiality of commercial or industrial information) in respect of the withheld information.

### **Scope of the case**

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5. The complainant was not satisfied with the Council’s handling of their request for information. They expressed dissatisfaction with its blanket application of the exception relied on and its procedural handling of the request.
6. Following the Council’s disclosure of the withheld information during the course of the Commissioner’s investigation, the complainant confirmed that although that they were now satisfied that they had received all relevant information falling within the scope of their request, they remained dissatisfied with the Council’s procedural handling of their request.
7. The scope of the Commissioner’s investigation is to consider the Council’s procedural handling of this request, and in particular whether it has complied with regulation 5(2) of the EIR.

## **Reasons for decision**

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8. Regulation 5 of the EIR concerns the duty of public authorities to make available environmental information on request. Regulation 5(2) sets out the required timescale for this and states:

“Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.”

9. The Commissioner notes that the Council’s original response to the complainant (2 December 2022) exceeded the deadline for response specified under regulation 5(2) of the EIR. Additionally, the Council’s failure to provide the remainder of the information until being contacted by the Commissioner also represents a breach of regulation 5(2) of the EIR.

## **Other matters**

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### **Engagement with the Commissioner**

10. The Commissioner would wish to highlight that the Council failed to engage satisfactorily with his office during the course of his investigation.
11. Not having received a response to various correspondence to the Council, the Commissioner issued an Information Notice on 5 April 2023 instructing it to provide a copy of the withheld information and a response to his letter of 14 March 2023.
12. Whilst the Council subsequently provided some of the previously withheld information to the complainant and copied the Commissioner in to this correspondence, there was no direct communication to the Commissioner. Additionally, the Commissioner was not copied into or made aware of its subsequent correspondence to the complainant providing the remainder of the withheld information.
13. The Commissioner expects public authorities to engage with him in both a timely and direct manner.

**Right of appeal**

14. 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: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

15. 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.
16. 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 .....**

**Catherine Dickenson**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**