

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

**Date:** 29 February 2024

**Public Authority:** Tees Valley Combined Authority  
**Address:** Teesside Airport Business Suite  
Teesside International Airport  
Darlington  
DL2 1NJ

**Decision (including any steps ordered)**

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1. The complainant submitted a request to Tees Valley Combined Authority (TVCA) for information relating to the sale of land on which SeAH is building its plant at Teesworks.
2. The Commissioner's decision is that the requested information is environmental information within the definition at regulation 2(1)(c) of the EIR. The request should therefore have been handled under the EIR rather than FOIA.
3. The Commissioner requires TVCA to take the following steps to ensure compliance with the legislation.
  - Reconsider the request and its scope under the provisions of the EIR and issue a fresh response.
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.

## Background

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5. Teesworks is a former steelworks site in Redcar. It is one of the largest brownfield sites in Europe and is being converted for a range of industrial and business uses.
6. The site was acquired by the public body South Tees Development Limited (STDL) but was then transferred to majority private ownership in late 2021.

## Request and response

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7. On 6 May 2023, the complainant wrote to TVCA and requested information in the following terms. For ease the Commissioner has numbered the parts of the request to align with TVCA's response:

"In response to questions concerning a report I wrote recently about land sales by South Tees Developments Ltd, mayor Ben Houchen has said repeatedly that land on which SeAH is building its plant was valued at 13m and sold for 15m.

Please let me have-

1. the valuation report(s) used to arrive at the figure of 13m
  2. details of the sale referred to above, showing the asset sold, the date of the sale, the precise price, the identity of the buyer and any other information relevant to the statement that a sale took place for £15m."
8. A response was provided on 7 June 2023, in which, in response to part one, TVCA provided the valuation of the site, but withheld the Valuation Report under sections 43(2) of FOIA. In response to question two, TVCA directed the complainant to the Land Registry for the Transfer Deed and applied section 21 of FOIA, and withheld information in relation to the Value Deed, relying on section 43(2) of FOIA.
  9. Upon receiving this response, the complainant requested an internal review on 14 June 2023, and on 8 August 2023, TVCA provided its internal review response, in which it maintained its original position.

## Scope of the case

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10. The complainant contacted the Commissioner on 24 August 2023 to complain about the way their request for information had been handled.
11. This decision notice covers whether the request for information has been correctly handled by TVCA, including whether or not the information is environmental.

## Reasons for decision

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### Regulations 2(1)-definition of environmental information

12. Regulation 2(1) of the EIR provides the following definition of environmental information:

"...any information in written, visual, aural, electronic or any other material form on-

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements..."

13. It is important to ensure that requests for information are handled under the correct access regime. This is particularly important when refusing to provide information, since the reasons why information can be withheld under FOIA (the exemptions) are different from the reasons why information can be withheld under the EIR (the exceptions). In addition, there are some procedural differences affecting how requests should be handled.

14. During the course of his investigation, the Commissioner asked TVCA to consider whether the request should have been considered under the EIR. TVCA stated that it does not believe that the request for information fits into any of the categories (a)-(f) specified in Regulation 2(1) of the EIR. TVCA further explained that "despite the report being related to land, it is a valuation report that was prepared for accounting purposes. Although there is environmental information contained within the report, the request itself pertains to valuation information and not the state of the environment."
15. TVCA provided the Commissioner with a copy of the withheld valuation report; he has considered its contents when deciding whether TVCA has considered the complainant's request under the correct access regime.
16. The Commissioner has produced guidance to assist public authorities and applicants in identifying environmental information<sup>1</sup>. The Commissioner's well-established view is that public authorities should adopt a broad interpretation of environmental information, in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.
17. In relation to the interpretation of regulation 2(1)(c) of the EIR, the Commissioner's guidance states "the regulation gives 'such as' examples of measures or administrative measures; policies, legislation, plans, programmes and environmental agreements. This covers a broad range, and includes the steps you take to ensure something happens and the methods, processes or instruments you use to implement the measure".<sup>2</sup>
18. The Commissioner's view is therefore that, although the information in the requested valuation report relates to the finance of the redevelopment project, as stated by TVCA, the whole report is nevertheless information on measures and/or activities which are likely to affect the elements and factors of the environment.
19. The information requested would therefore fall within the definition at regulation 2(1)(c) of the EIR and the request should have been considered under the EIR.

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-2-1-what-is-environmental-information/>

<sup>2</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-2-1-what-is-environmental-information/#eir8>

20. The Commissioner orders TVCA to make a fresh response to the request under the provisions of that legislation.

## Right of appeal

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21. 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)

22. 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.
23. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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