

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

Date: 23 July 2024

Public Authority: Department for Transport
Address: Great Minster House
33 Horseferry Road
London
SW1P 4DR

Decision (including any steps ordered)

1. The complainant has requested information relating to the Shrewsbury North West Relief Road. The Department for Transport (“the public authority”) disclosed information but with redactions made under regulation 12(5)(e) (commercial or industrial information).
2. The Commissioner’s decision is that the public authority has correctly withheld the information it has under regulation 12(5)(e).
3. The Commissioner does not require further steps.

Request and response

4. On 17 February 2024, the complainant wrote to the public authority and requested the following information in relation to the Shrewsbury North West Relief Road:

“Could you please make available any quarterly reports by Shropshire Council about this project for the period from 2023-24 Quarter 3 to present? Could you also please make available any correspondence during this period between Shropshire Council and the Department regarding the cost of the proposed road.”

5. The public authority responded on 8 March 2024, disclosing the quarterly report but with the financial details for quarter three redacted under regulation 12(5)(e). It also disclosed communications it had exchanged with the Council but again withheld specific correspondence under regulation 12(5)(e).
6. The complainant requested an internal review on 18 March 2024.
7. The public authority provided the outcome to its internal review on 17 April 2024, upholding its previous position.

Scope of the case

8. The complainant contacted the Commissioner on 29 April 2024, disputing the application of regulation 12(5)(e).
9. The Commissioner considers the scope of his investigation is to determine whether the public authority was entitled to withhold the information it did under regulation 12(5)(e).
10. The Commissioner is satisfied that the requested information is environmental in line with regulation 2(1)(a), (b) and (c) of the EIR, as it relates to the construction of a new road which impacts the state of the landscape and is a factor, or plan, affecting the landscape.

Reasons for decision

11. Regulation 12(5)(e) states that a public authority can refuse to disclose information if disclosure would adversely affect the confidentiality of commercial information where such confidentiality is provided by law to protect a legitimate economic interest.
12. The exception imposes a four-stage test which is:
 - Is the information commercial 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?

13. The Commissioner has seen the withheld information. It's specific cost information from the quarterly report and specific communications between the Council and the public authority. The focus of the communications in question is the cost information that's being redacted from the quarterly report. The majority of the information that falls within scope of the request has been disclosed.
14. The Commissioner's guidance on regulation 12(5)(e)¹ explicitly pinpoints planning information, as in information about development plans for land, as falling under commercial information.
15. The Commissioner considers confidentiality provided by law to include confidentiality imposed on any person by the common law duty of confidence, contractual obligation, or statute. In the public authority's refusal notice, it explained to the complainant that:

"The financial details in the quarterly report from Quarter 3 2022/23 are estimates only at this stage and were provided to DfT by the Council in confidence and as guidance only as the project develops."
16. If the quarter three financial details were provided to the public authority in confidence, any follow up communication from the Council, which further discusses and breakdowns these estimates, is likely to have been provided with an expectation of confidence.
17. Having studied the withheld information, the Commissioner is satisfied that it's not trivial and it's not already in the public domain. He's also satisfied that it was imparted in circumstances creating an obligation of confidence and therefore, the withheld information is subject to confidentiality provided by law.
18. The Commissioner will now go on to consider whether this confidentiality is required to protect a legitimate economic interest.
19. In its refusal notice to the complainant, the public authority explained:

"The Councils tender process is incomplete for the construction phase of the scheme. It would not be prudent to advertise the 'budget' for the work whilst this is ongoing. To ensure the council obtains the best price for the contracted build, we are not able to provide estimated figures as to do so would adversely affect the tendering process. The scheme

¹ [Commercial or industrial information \(regulation 12\(5\)\(e\)\) | ICO](#)

cost resulting from the tendering process will become disclosable at the time the Council completes the FBC and submits it to the Department.”

20. In this context, the Commissioner understands the FBC refers to the ‘full business case’ for the Shrewsbury North West Relief Road.
21. Looking at the information that’s being withheld, the Commissioner agrees with the public authority’s position. It’s disclosure would allow contractors to tailor their bids for work on the project, using the detailed knowledge of the Council’s budget, specifications and plans for each aspect of the project. In turn, this would adversely affect the Council’s ability to obtain value for money for the project.
22. As the public authority has indicated to the complainant, at the stage where the tendering process has been finalised, and the Council has been able to obtain its contractors fairly, the withheld information could be disclosed.
23. Therefore the Commissioner is satisfied that the withheld information engages regulation 12(5)(e), on the basis that the confidence needs to be maintained in order to protect economic interests. The Commissioner will go on to consider whether the public interest lies in disclosure or in maintaining the exception.

Public interest test

Factors in favour of disclosure

24. In its internal review outcome, the public authority acknowledged:

“There is a public interest in the information you have requested. Greater transparency makes Government more accountable to the electorate and increases trust and enables the public contribution to policy making to become more effective.”

25. The Commissioner concurs, there is always a public interest in public authorities being open and transparent about their work, especially when it involves a large sum of public funds.

26. At the time of raising their complaint with the Commissioner, the complainant noted:

“The DfT claims that this is because of commercial sensitivity at the time of a tender process. If the project had progressed to the original plan, the budget for the project would have been available to tenderers as it was widely publicised in relation to the DfT grant. I cannot see any justification why the situation now is any different. It would seem

that the reason for withholding this information now is largely due to political concerns rather than commercial sensitivity.

There is very substantial public interest in this project given that 5,500 people objected to the planning application and 106,000 people have signed a petition to save a veteran tree that will be destroyed by the proposed road.²

Factors in favour of maintaining the exception

27. In support of maintaining the exception, the public authority has reiterated the arguments in paragraphs 19 – 21.
28. To summarise, the public authority holds the withheld information under a duty of confidence and this confidence needs to be maintained to protect the legitimate economic interest of the Council and the project.
29. The Council is a public authority which is subject to the EIR. However, it's also a business and must be able to act as such to obtain the best value for money when using public funds. In order to do so, it must be able to undergo tendering processes without prejudice, and without disadvantage.

The balance of the public interest

30. In this instance, the Commissioner has determined that the balance of the public interest lies in maintaining the exception.
31. Under the EIR, there is always a presumption in favour of disclosure. There's a particular public interest in allowing the public to participate in planning matters.
32. The information that the public authority has disclosed in response to the request goes a long way to meeting the public interest in the request. It provides updates on the progress of the project, funding and why it's had to deviate from the original plan and timelines. This all addresses the complainant's concerns as outlined in paragraph 26.
33. There is undoubtedly a public interest in information about the project, which will have a significant impact on the environment. However, in this case the Commissioner is satisfied that the public authority is only withholding information that was provided in confidence, disclosure of

² [Petition · Save The Darwin Oak - United Kingdom · Change.org](#)

which would adversely affect the commercial interests of the Council and, by extension, the project.

34. The project involves a significant sum of public funds, with that comes the need for transparency. However, with that also comes the need to allow the project to continue to seek the most value for money, and not waste any public funds that have already been, or are yet to be spent.
35. The Commissioner accepts the complainant's concerns about the opposition to the project. The withheld information doesn't concern the Darwin Oak, so it wouldn't meet any public interest in this specific issue.
36. The withheld information does address the delays to the project, and the impact this has had on projected forecasts and budgets. But the information that's been disclosed also addresses these delays and has been disclosed without adversely affecting the Council's commercial interests.
37. The Commissioner acknowledges the complainant's concern that the plan for the project has changed and this information should have already been available to third parties partaking in the tendering process. However, the fact is the plan has changed, and these tendering processes haven't yet begun.
38. If the request had been made at the time that all current contracts for the project had gone out to tender, and this process had been completed, the information could be disclosed. However, this is not the case and the Commissioner has determined the public authority was correct to withhold the information it did.

Right of appeal

39. 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

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

40. 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.
41. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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