

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

Date: 25 March 2025

Public Authority: Exeter City Council
Address: Civic Centre
Paris St
Exeter
EX1 1JN

Decision (including any steps ordered)

1. The complainant requested information relating to the disposal of land. Exeter City Council (the "Council") disclosed some information and withheld other information under the exception for commercial confidentiality (regulation 12(5)(e).
2. The Commissioner's decision is that the Council correctly withheld information under regulation 12(5)(e) but that its internal review breached regulation 11(5)(a) and it failed to disclose information in time, breaching regulation 5(2).
3. The Commissioner does not require further steps.

Request and response

4. On 18 July 2024 the complainant requested the following information from the Council:

"Please supply copies of the restricted enclosures listed with the decision details published on the city council website at

<https://committees.exeter.gov.uk/ieDecisionDetails.aspx?AIId=60868>

(and attached) re. Disposal of land at Grace Road Fields for the facilitation of the Low Carbon Exeter District Heat Network.

Please supply the requested information in electronic formats which facilitate effective digital search, retrieval and interrogation of details. I would expect this to take the form of copies of individual PDF/word processing/presentation documents and/or spreadsheet/structured CSV data files in their original formats to enable the ready comparison of information within and between documents."

5. The Council responded on 12 August 2024 and confirmed that it was withholding the information under the exception for commercial confidentiality (regulation 12(5)(e)).
6. On 10 September 2024 the complainant asked the Council to carry out an internal review. The Council provided a review response on 5 November 2024. It disclosed some information and withheld the outstanding information under regulation 12(5)(e).

Scope of the case

7. On 20 November 2024 the complainant contacted the Commissioner on to complain about the way their request for information had been handled.
8. The Commissioner has considered whether the Council was entitled to withhold the outstanding information.

Reasons for decision

Is the requested information environmental?

9. Regulation 2(1) of the EIR defines environmental information as being information 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)...as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
10. In this case the withheld information relates to decisions relating to the disposal of land. The Commissioner considers that the information, therefore, relates to measures as defined by regulation 2(1)(c) and he has, therefore, assessed this case under the EIR.

Regulation 12(5)(e): commercial confidentiality

11. In their submissions to the Commissioner the complainant confirmed that they wished to challenge the Council's claim that the requested information is prohibited from disclosure under Schedule 12A of the Local Government Act 1972.
12. The Commissioner acknowledges that the Council cited this provision in its initial response to the request but that this was not its sole ground for engaging the exception in regulation 12(5)(e). He notes that the Council made no further reference to the Local Government Act 1972 in its internal review response nor in its grounds for applying the exception in its submissions to the Commissioner. He has, therefore, excluded this from his analysis of the Council's application of regulation 12(5)(e).
13. Regulation 12(5)(e) of the EIR 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.
14. The Commissioner considers that in order for this exception to be applicable, the following conditions must be met:
 - Is the information commercial or industrial in nature?
 - Is the information subject to confidentiality provided by law?
 - Is the confidentiality provided to protect a legitimate economic interest?
 - Would the confidentiality be adversely affected by disclosure?

Is the information commercial or industrial in nature?

15. The Council's website confirms:

"Following the award of £42.5m by Government to build a heat network using water source heat pumps officers are seeking authority to dispose of part of Grace Road Playing Fields, at best consideration, to the Exeter Energy Network.¹"

16. The Council has confirmed that the withheld information consists of a Valuation Report and Opinion of Best Consideration (the "Report")

¹ <https://committees.exeter.gov.uk/ieDecisionDetails.aspx?AIId=60868>

relating to this disposal of land. The Report was provided to the Council by an independent Chartered Surveyor.

17. For information to be commercial in nature, it will need to relate to a commercial activity such as the sale or purchase of goods / services, usually for profit. The withheld information relates to the disposal of Council land and the Commissioner, therefore, accepts that it is commercial in nature.

Is the information subject to confidentiality provided by law?

18. In addition to the information needing to be commercial or industrial in nature, it must also be subject to a contractual or common law duty of confidence. The information must not be trivial in nature, or already publicly available.
19. The Council has confirmed that the Report contains detailed professional advice, financial assessments and valuation conclusions that are central to its decision-making process regarding the disposal of land. The Council considers that the information is critical to its obligations to secure best consideration for the land.
20. The Council confirmed that the Report has not been disseminated to the general public and is not, therefore, in the public domain. It explained that the information has only been shared within the Council and with a limited number of individuals involved in the transaction. The Council confirmed that the Report's contents are not available through any public sources, nor is there a publicly accessible equivalent that could substitute for the Report's detailed and specific findings.
21. The Council has argued that, even if some general information about land valuations or disposal processes is publicly accessible, the specific findings, methodologies and professional opinions in this Report would require significant time, effort and expertise to replicate. Thus, the information retains its quality of confidence.
22. Taking account of the Council's arguments, the nature of the withheld information, along with the reasonable expectations of those parties involved, the Commissioner accepts that the information attracts a common law duty of confidence.

Is the confidentiality provided to protect a legitimate economic interest?

23. To satisfy this element of the test, disclosure of the withheld information would have to adversely affect the legitimate economic interest of the Council, third parties, or both. This means that the Council would need to consider the sensitivity of the information at the time of the request

and whether the confidentiality that was agreed or expected still required protecting.

24. It is not enough that disclosure might cause some harm to an economic interest; a public authority must evidence that it would be more probable than not that should the information be disclosed, it would cause some harm.
25. The Council has confirmed that the confidentiality in this case is protecting its own legitimate economic interests. It has argued that, were the Report to be disclosed, it would prejudice live commercial negotiations and there would be an adverse effect such that it would affect the Council's legitimate economic interests.
26. The Council confirmed that negotiations regarding the land are ongoing and no legal agreements have been signed to date. The valuation advice contained within the Report, therefore, is still live. The Council has argued that it needs to protect its commercial bargaining position in the context of future negotiations.
27. The Council has provided the Commissioner with its estimate of the losses that would occur if the valuation advice contained within the Report was accessible to other parties in the negotiation. In short, disclosure of the Report would provide other parties to the negotiation with details of the Council's assumptions and broader strategy. This would allow parties to change their negotiation strategy in a way which would undermine the Council and inhibit its ability to secure the best deal.
28. The Commissioner considers that the Council has identified the relevant effects of disclosure of the withheld information and has shown a causal link between disclosure and the effects cited. The withheld information was created to assist the Council in maximising the benefits to the public purse of land disposal. The Commissioner considers that, given that negotiations were ongoing at the time of the request, disclosure would expose the Council's strategy and assumptions regarding land value and in turn harm its legitimate economic interests.
29. The Commissioner's decision is, therefore, that confidentiality is in place to protect the legitimate economic interests of the Council.
30. 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. He 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.

31. 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.
32. When carrying out the test there is a presumption towards the disclosure of the information as set out in Regulation 12(2).

Public interest in disclosing the information

33. The complainant has argued that there are a number of reasons for transparency in this case, including the impact on the River Exe Valley Park, of which the land in question forms part and which is protected from development by local planning policy.
34. The complainant has also argued that disclosure would provide accountability around the sale of significant assets and a public open space in public ownership.
35. The complainant also considers that disclosure would reassure the public that elements of the Council's decision making in respect of the disposal of land that are excluded from public scrutiny (including the Report) do not contain evidence of wrongdoing.
36. The Council has acknowledged that disclosure of the information would serve the general principles of openness, transparency and accountability. It also confirmed that it had taken the general presumption in favour of disclosure into account in considering where the balance of the public interest lies.
37. The Council has also accepted that disclosure would inform public debate about a matter which is of local concern.

Public interest in withholding the information

38. The Council has confirmed that the Report relates to the disposing of part of the Council's land holding at Grace Road Fields, at best consideration, for the facilitation of the Low Carbon Exeter District Heat Network. It has stated that negotiations relating to this disposal will ensure the financial risk to the Council is minimised; it will generate best consideration for the Council's assets and will contribute to Exeter becoming a Net Zero Carbon City.
39. The Council has argued that the complainant has been provided with the relevant the committee report and other appendices which provide

adequate information to inform public debate and demonstrate openness, transparency and accountability.

40. 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.
41. This would impact upon the public purse, and the Council's resources which could be otherwise used to provide other public functions or services.

Balance of the public interest arguments

42. 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.
43. The Commissioner has considered the above arguments. He 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 has undertaken during the course of the negotiations.
44. The Commissioner considers that there remains a public interest in a disclosure of information which would allow the public to better understand the Council's approach to negotiations. It would allow the public to better understand whether the Council's approach was appropriate, and interested parties may be able 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 approaches negotiations could create greater public confidence in the Council's financial decision making, and in its management of land.

45. The Commissioner acknowledges the complainant's point that it is important for the public to be engaged with decisions which will have a significant impact on the local community and environment. A key element of engagement is that there should be trust that decisions are made in the best interests of the public and involve no wrongdoing. However, in this case the Commissioner has seen no evidence of any wrongdoing on the Council's part, and he considers that the public interest in disclosing the Report for these specific purposes does not outweigh the public interest in upholding the confidentiality of the Council's negotiation position.
46. The Commissioner, therefore, notes and accepts the Council's argument that there is a public interest in it being able to maintain confidentiality on its negotiating tactics. A disclosure of these strategies would undermine the Council's ability to obtain best value, or reach the best terms for the public purse in its ongoing negotiations.
47. 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. Disclosing the Report would inhibit the Council's ability to obtain best value for public land in its negotiations and this would not serve the public interest.
48. The Commissioner has, therefore, decided that the Council was correct to apply Regulation 12(5)(e) to this information.

Procedural matters

Regulation 5: Duty to provide environmental information

49. Regulation 5(2) requires authorities to disclose requested information "...as soon as possible and no later than 20 working days after the date of receipt of the request."
50. In this case the complainant submitted their request on 18 July 2024. The Council disclosed some of the requested information as part of its internal review, on 5 November 2024.
51. As this disclosure falls outside the time limit set the Commissioner has, therefore, recorded a breach of regulation 5(2).

Regulation 11: Internal review

52. Regulation 11 sets out the duties of public authorities in respect of the carrying out of internal reviews on the handling of requests.

53. The complainant has argued that the Council's review:

"....arrived at significantly different conclusions to its information request response despite citing the same non-disclosure refusal reasons and failed to account for the changes in its application of Regulation 12(5)(e)"

54. Regulation 11(5)(a) states:

"Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of—

(a) the failure to comply;"

55. The Commissioner notes that the Council's internal review discloses previously withheld information to the complainant but does not include a statement of its failure to comply. That is, it does not state why the information was initially determined to be subject to the exception in regulation 12(5)(e) and why its position changed at the internal review.

56. In view of the above the Commissioner finds that the Council's internal review breached regulation 11(5)(a).

57. As the Commissioner has, in any event, determined that regulation 12(5)(e) was correctly applied to the withheld information, he does not require the Council to take any steps.

Right of appeal

58. 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

59. 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.
60. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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