

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

**Date:** 25 April 2025

**Public Authority:** Gloucestershire County Council  
**Address:** Shire Hall  
Westgate Street  
Gloucester  
GL1 2TG

**Decision (including any steps ordered)**

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1. The complainant requested information relating to development of land at Chipping Campden. Gloucestershire County Council (the "Council") disclosed some information and withheld other information under the exceptions for internal communications (regulation 12(4)(e)) and commercial confidentiality (regulation 12(5)(e)).
2. The Commissioner's decision is that the Council correctly withheld information under regulation 12(4)(e) and regulation 12(5)(e) but that it should have relied on regulation 5(3) of the EIR to withhold those parts of the requested information that were the complainant's own personal information.
3. The Commissioner does not require further steps.

## Background

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4. The complainant in this case is a representative of the resident of the property identified in the request.
5. The Council has confirmed that it obtained planning consent in 2020 for seventy-six dwellings on land at this property but due to demands for additional infrastructure and access issues around Chipping Campden, its property services department have been in dialogue with Cotswold District Council (CDC), Chipping Campden Town Council, Chipping Campden School, GP Surgery and the Lead Cabinet Member to devise a potential solution. The Council confirmed that this has resulted in a proposal to apply for a new planning application for a larger development to incorporate a new access, school parking, a site for a GP surgery and housing.
6. The Council explained that it conducted a public consultation exercise in November 2021 at Chipping Campden Town Hall to seek the views of the local community on the proposed development prior to a pre-application meeting/discussion/consultation with CDC. It confirmed that additional housing to the consented seventy-six dwellings will be required to fund the significant cost of the proposed new access road, school car park and other associated infrastructure costs. The Council has stated that responses were, in general, supportive and it undertook a pre-application consultation on the plan for the Proposed Development.
7. The Council has confirmed that it is the freeholder of the land required for the development scheme, subject to an agricultural tenancy agreement. It explained that the terms of the tenancy only allow it to take possession of the land required for the development or have access for the necessary surveys via negotiation with the agent and legal advisor appointed by the tenant. The Council confirmed that, the other option, due to the significant benefits of the scheme to Chipping Campden, is for the Council to exercise its power to compulsorily acquire the tenant's interest in the land to facilitate the proposed development if negotiations for surrender of that land are unsuccessful.
8. The Council confirmed that settlement negotiations with the tenant are ongoing.

## **Request and response**

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9. On 31 May 2024, the complainant wrote to the Council and requested the following information:

"1.) All information (to include all internal documents) relating to the proposed development scheme of land at Ashton Road, Chipping Campden (which involves the development, re-development or improvement on or in relation to [redacted]) specifically relating to the considerations of the need to and the subsequent decision(s) to:

(a) Prepare a detailed traffic assessment relating to the traffic congestion issues around Chipping Campden School and the centre of Chipping Campden.

(b) Produce an updated infrastructure plan and costings associated with the proposed new access road serving Chipping Campden school and the development of a new car park for Chipping Campden School.

(c) Produce a new viability report including all infrastructure requirements for the proposed development scheme."

10. The Council responded on 26 July 2024. It confirmed that it was withholding the requested information under the exceptions for internal communications (regulation 12(4)(e)) and commercial confidentiality (regulation 12(5)(e)). The Council also directed the complainant to related information published on its website.
11. Following an internal review Council wrote to the complainant on 21 October 2024. It stated that it was maintaining its position.

## **Scope of the case**

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12. On 20 November 2024 the complainant contacted the Commissioner on to complain about the way their request for information had been handled.
13. On 21 March 2025, during the Commissioner's investigation, the Council provided the complainant with a further response which directed them to additional information relating to their request.
14. The Commissioner has considered whether the Council was entitled to withhold the requested information.

## Reasons for decision

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### Is the requested information environmental?

15. 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);
16. In this case the request relates to the use of land and the Commissioner, therefore it relates to measures as defined in regulation 2(1)(c). He has, therefore, assessed this case under the EIR.

### Regulation 5(3) – personal data of the requester

17. Regulation 5(3) of the EIR allows a public authority to withhold information that is the personal information of the person requesting it.

18. Within the information being withheld are various references to the complainant's client. The client is identifiable, either by name or by reference to their address.
19. The Commissioner therefore considers this information to be the complainant's own personal information. He applies this exception himself to prevent disclosure of this information under the EIR.

### **Regulation 12(4)(e) – internal communications**

20. Regulation 12(4)(e) provides that information is exempt from disclosure if it involves 'the disclosure of internal communications'. It is a class-based exception, meaning there is no need to consider the sensitivity of the information in order to engage the exception. Rather, as long as the requested information constitutes an internal communication then it will fall under the exception.
21. The withheld information in this case consists of correspondence between Council officers relating to decisions regarding the matters referred to in the request.
22. The Commissioner is satisfied that the information constitutes internal communications and that the exception is, therefore, engaged.

### **Public interest test**

23. When Regulation 12(4)(e) is engaged, the public authority must carry out a public interest test. Under Regulation 12(1)(b) of the EIR, the public authority can only withhold the information if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. Furthermore, under Regulation 12(2), it must apply a presumption in favour of disclosure.
24. The Commissioner's guidance for public authorities confirms that public interest arguments should focus on the protection of internal deliberation and decision-making processes<sup>1</sup>. This reflects the underlying rationale for the exception which is to protect a public authority's need for a 'private thinking space'. This needs to be weighed against the competing public interest factors in favour of disclosure. The Commissioner has considered the relevant factors below.

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-12-4-e-internal-communications/>

### **Public interest in disclosing the information**

25. The Council has acknowledged that disclosure would promote transparency and accountability. It has noted that there is a public interest in openness as this can contribute to a greater public awareness and understanding of environmental matters.
26. The complainant has argued that, as the Council's tenant, their client has been living under the identified CPO (compulsory purchase order) threat for several years now which inevitably impacts on them and their family's well-being. It has argued that the matter has had a significant impact on their client's ability to plan and invest for the future of their business.
27. The complainant has further argued that safe space arguments should not be applied in a wholesale manner, particularly where historic internal communications are identified.

### **Public interest in maintaining the exception**

28. The Council has argued that discussions are ongoing regarding the proposed development and potential CPO. Disclosure of internal communications at this time would, in the Council's view, be detrimental to such discussions and impair the Council's decision-making processes.
29. The Council has cited the need for a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction. It has referred to the Commissioner's guidance which suggests that the underlying rationale behind the exception is that public authorities should be afforded the necessary space to think in private.
30. The Council considers that, notwithstanding the complainant's own interest in the matter, this is outweighed by the public interest in maintaining high quality decision-making, which would be impaired by the release of internal communications at this time.

### **Balance of the public interest**

31. The Commissioner recognises that there is a public interest in the openness and transparency of the decision making process, particularly where they relate to significant, proposed developments. He also recognises that there is a public interest in the accountability of local government regarding such decisions.
32. The Commissioner acknowledges that the complainant has a specific personal interest in accessing the information as it relates to decisions which will have an impact on their home and business. However, the

public interest in the context of the EIR relates to the broader public interest rather than individual interests. Whilst there may be situations where these interests converge he does not consider this to be such an example.

33. In this case, the Commissioner considers that the broader public interest is better served by the Council being able to make effective decisions in relation to the use of land in the wider interests of the community.
34. In the circumstances of this case the Commissioner accepts that at the time of the request and at the time of the internal review, matters concerning the land in question were ongoing and are still ongoing at the time of this decision notice. Furthermore, the Commissioner is satisfied that the issues covered in the withheld information are ones that relate to the outstanding matters concerning the land. The Commissioner is also conscious that the withheld information contains detailed and frank internal discussions about a complex and contentious matter. In light of the above compelling arguments, in the Commissioner's view, significant weight should be attributed to the safe space arguments in this particular case.
35. Whilst he accepts that the arguments in favour of disclosure in this case carry some weight the Commissioner does not consider that they match the weight of the arguments in favour of withholding the information. The Commissioner's conclusion is, therefore, that the public interest in the maintenance of the exception outweighs the public interest in favour of disclosure of the requested information.
36. The Council is therefore entitled to rely on regulation 12(4)(e) to withhold the requested internal communications.

### **Regulation 12(5)(e) – Commercial confidentiality**

37. The Commissioner's published guidance explains that, in order for this exception to be applicable, there are a number of conditions that need to be met. These are:
  - 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?**

38. The withheld information sets out the Council's approach to negotiations on the matters set out under "Background" above and considers options for housing development. It includes details of land values, travel surveys and other factors, including information relating to services provided by third party contractors.
39. In short, the information relates directly to advice on strategy for commercial negotiations relating to the disposal of land and associated contractual arrangements.
40. The Commissioner accepts that the information relates to a commercial operation. It relates to the costs, budgets and prospective terms of commercial agreements which are currently under negotiation. As such he considers that the information is commercial in nature.

**Is the information subject to confidentiality provided by law?**

41. The Commissioner considers this to include to confidentiality imposed on any person by the common law duty of confidence, contractual obligation, or statute.
42. The Council has confirmed that employees working with this information are aware of the confidentiality of the information as this is standard practice for their work and specifically this type of negotiation. It confirmed that the information has been strictly limited to specific officers involved in the negotiations.
43. The Council has explained that the information relates to negotiating tactics and strategies and its disclosure would provide other parties to similar negotiations with a commercial advantage. It confirmed that the information has not been shared more widely nor placed in the public domain.
44. The Commissioner therefore accepts that the Council and the other parties would expect a duty of confidence to be in place.
45. The Commissioner notes that the information is not trivial and is not otherwise in the public domain. The information, therefore, also has the necessary quality of confidence.
46. The Commissioner is satisfied that, insofar as the withheld information is concerned, the information has the necessary obligation and quality of confidence, and the Council therefore holds the information under a duty of confidence under common law



**Is the confidentiality provided to protect a legitimate economic interest?**

47. The Council has argued that the confidentiality in this case relates to its own legitimate economic interests. In the Council's view, disclosing the information would mean it would not be able to achieve the best outcome for the future of the land, impacting on its ability to achieve the best financial result to provide essential funding for the delivery of public services.
48. The Council has confirmed that negotiations with the existing tenant on its land are still ongoing, both at the time of the request and at the time of the Commissioner's investigation. The Council has argued that it needs to protect its commercial bargaining position in the context of these negotiations.
49. The Council has highlighted that, for example, disclosing information on costings of the land and specifically the amount of funds it could gain from the development, would provide competitors and other interested parties with insights into its strategy and assumptions. The Council considers that this would undermine the effectiveness of its negotiations.
50. The Commissioner accepts, given the arguments above, that a disclosure of the withheld information would put the Council in a position where it would be more difficult to negotiate and finalise deals, and it would be less likely to obtain best value for the contracts within those deals.
51. Finally, the Commissioner is satisfied that the confidentiality would inevitably be affected if the council disclosed this information.
52. The Commissioner has decided that Regulation 12(5)(e) of the EIR is engaged by the information which the council is withholding. He has, therefore, gone on to consider the associated public interest test.
53. The test is whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. Regulation 12(2) also provides that a public authority shall apply a presumption in favour of disclosure.

**The public interest in disclosing the information**

54. The Commissioner has already noted the complainant's personal interest in accessing the information (see paragraph 26 above).

55. The Council has acknowledged the importance of transparency, which includes the release of information and the general presumption in favour of disclosure.
56. The Council has also noted the importance of disclosure for accountability and to facilitate public engagement with decisions. In the context of the request, the Council has accepted that disclosure would help residents and council taxpayers to assess on an informed basis whether their representatives are spending wisely the money given to them in trust and ensuring the best interests of residents.

### **The public interest in the exception being maintained**

57. The Council has argued that releasing the information at this time would damage its commercial bargaining position and impair its ability to ensure value for money and achieve the best income return. The Council considers that disclosure would provide the requester and other third parties with an unfair advantage in the ongoing negotiations.
58. The Council has argued that, if it is not able to undertake effective commercial negotiations, achieving the best income return, this will reduce capital receipts (generation of funding) and impact on its ability to deliver wider services.
59. The Council has further argued that disclosing the commercial options open to the council, including the specific amount that the Council could gain from the development, will allow the interested parties to inflate their offer to gain maximum money, to the detriment of public resources. In the Council's view, releasing the information ahead of agreeing terms would be premature and detrimental to its negotiating position.

### **The Commissioner's conclusions**

60. On the available evidence and arguments, the Commissioner has decided that the public interest in the exception being maintained outweighs the public interest in the information being disclosed in this instance.
61. Whilst there is a public interest in the Council being transparent, a disclosure of the redacted information at the time of the request would undermine its ability to achieve best value, or could even threaten the viability of the prospective development. In practical terms, the public interest in the exception being maintained may, therefore, temporarily outweigh that in disclosure until such time as the circumstances allow for the information to be disclosed without those negative effects occurring.

62. The Commissioner acknowledges the complainant's personal interest in accessing the information. However, the broader public interest in this matter relates to the Council's ability to negotiate effectively and utilise public resources in a way which benefits the broader community. This is not to dismiss the complainant's concerns or to adjudicate on the rights and wrongs of the Council's strategy; these are matters which fall outside the scope of the Commissioner's remit as regulator.
63. Whilst there are circumstances where the public interest in disclosure justifies the disclosure of information, even with the risks outlined above, the Commissioner does not consider that this is such a case.
64. There is a public interest in protecting information relating to ongoing negotiations and procurements from disclosure. A disclosure of the information would ultimately make it harder for the Council to obtain land and services at best value to tax payers. It could make negotiations take longer, and provide opportunities for competitors or interested parties to seek to undermine negotiations by refusing to sell relevant land.
65. Regulation 12(2) of the EIR states that a public authority shall apply a presumption in favour of disclosure, and the Commissioner has borne this in mind when reaching his decision. However, the above demonstrates that the Commissioner's view is that the public interest in the exception being maintained clearly outweighs that in the information being disclosed at the time that the request was initially responded to. Therefore, the Commissioner's decision is that the presumption in favour of disclosure required by Regulation 12(2) does not change the outcome of his decision that the exception was correctly applied by the Council in this case.
66. The Commissioner has, therefore, decided that the Council was correct to apply Regulation 12(5)(e) to withhold the information from disclosure.

## Right of appeal

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67. 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)

68. 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.
69. 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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