

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

**Decision notice**

**Date:** 19 February 2025

**Public Authority:** Thanet District Council  
**Address:** Cecil St  
Margate  
CT9 1AY

**Decision (including any steps ordered)**

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1. The Commissioner's decision is that Thanet District Council (the Council) is entitled to withhold the requested information associated with the Berth 4/5 project at Ramsgate Port under regulation 12(4)(d) - material in the course of completion, unfinished documents, and incomplete data of the EIR as it relates to material in the course of completion. It is not necessary for the Council to take any steps as a result of this decision.

## Request and response

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2. The complainant made the following information request to the Council on 31 March 2024:

"Please tell me as of the date of the receipt of this request:-

1) the full amount of money spent by the Council on the berth 4/5 project at Ramsgate Port. This to include all related expenditure such as compensation paid to Brett Aggregates for being without a berth for a long period of time, any other compensations paid to Brett or any other individual or organization related to the Berth 4/5 project. The payment of any professional and legal fees etc.

2) the information requested above to be set out in an MS Excel spread sheet on an item-by-item basis including total costs for each item and a grand total to the date indicated above.

Please also tell me if the council is liable to pay any more money for the completion of the Berth 4/5 project. If so, please set out estimations of these costs in an MS Excel spread sheet as described above.

I draw your attention to the East Audit Partnership's investigation into the management of the Berth 4/5 project which drew attention to the lack of transparency surrounding this major publicly funded development and the need for the Council to be more open and accountable."

3. Having initially considered the request under FOIA, the Council's final position was to withhold the requested information under regulation 12(4)(d) of the EIR.

## Reasons for decision

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4. The request concerns information about the completion of a Berth project within the Port of Ramsgate and, as such, is environmental information that is covered by the EIR. The Council correctly applied the EIR to the information when it reconsidered the request during the Commissioners investigation.
5. This reasoning covers the Council's application of regulation 12(4)(d) to information within scope of the complainant's request. The withheld information is for the full amount of money spent by the Council on the Berth 4/5 project at the Port of Ramsgate, it argues that as the information is still in the course of completion at this time, the

information is not currently finalised but is intended to be published once fully collated and available to the Council.

**Regulation 12(4)(d) - Material in the course of completion, unfinished documents, and incomplete data**

6. Regulation 12(4)(d) of the EIR states that a public authority may refuse to disclose information to the extent that the request relates to material, which is still in the course of completion, to unfinished documents or to incomplete data.
7. Regulation 12(4)(d) is class-based, which means that it is engaged if the information in question falls within its scope. If the information falls into one of the three categories, then the exception is engaged. It is not necessary to show that disclosure would have any particular adverse effect in order to engage the exception. However, regulation 12(4)(d) is subject to the public interest test.
8. In its submission to the Commissioner, the Council has explained that it is relying on regulation 12(4)(d) for the following reasons:
  - We do not hold the full amount of money spent at the moment as this is still being collated. We therefore are not able to disclose all information within the scope of the request until this has been finalised and approved by Cabinet as it is subject to change.
  - We maintain the information meets the definition of being incomplete data as we are still collecting the financial information; that is; working with suppliers to agree what our costs are. It is data in the respect that it presents the spend of a particular project and describes the financial state of the activity.
  - This use of the term "collecting" refers to working with our supplier to agree final cost figures for the council's expenditure on the works undertaken for the Berth 4/5 replacement programme. As we are still under contract with the supplier, we are not yet clear as to what the final amount of money has been spent as the project delivery.
  - We considered the Decision Notice [FS50163282](#) concerning a request to Queen's University Belfast for data from tree-ring research. We draw attention to the difference between the university's research information and our own. We make clear that the information we intend to disclose is not of a research nature, but the important distinction is that we still have not completed the collection of the information, rather that the university had collected the raw data but had not completed its analysis. We have not completed either.

- We have also considered the Decision Notice [FER0321779](#) and are clear that the information requested does not relate to estimated figures. Our intention is to publish precise costings once we hold this information. At present, the information held is not complete and subject to change.
9. The Commissioner is satisfied that, at the point of the request, the requested information could be categorised as information relating to material in the course of completion; that “material” being the full and final costings for the project on completion. As such, the Commissioner has decided that the Council was entitled to apply regulation 12(4)(d) of the EIR to the information it is withholding. He has gone on to consider the associated public interest test.

### **Public interest test**

10. In its correspondence to the complainant, the Council identified the following public interest factors for disclosure:
- We recognise that there has been interest in the activities of the Port and its finances. Some have raised concerns about the Berth 4/5 project, relating to its project management and unforeseen expenditure.
  - There is a general public interest in public bodies’ work being transparent and open to scrutiny.
  - By disclosing the requested information, it provides transparency and accountability around a commercial project, particularly with regards to non-statutory functions such as running a municipal port. The Council has already shown significant commitment to transparency and accountability as evidenced by our web page dedicated to informing the public about the Berth 4/5 replacement project tender and additional updates.  
  
<https://www.thanet.gov.uk/info-pages/berth-replacement-tender/>
  - Whilst the Port is run as a commercial operation, the Council is still a local authority, and we have a duty to the taxpayer to obtain value for money in all our endeavours. We acknowledge that the Port has had a financial deficit, but we are trying to rectify this.
11. The Council identified the following public interest factors against disclosure:
- The Council considers that disclosure of the withheld information would not assist public understanding of the costs as an early inaccurate disclosure of the information would mislead the public

as to the spend on the Berth 4/5 project when we are due to publish the requested information within the next few months.

- This would give rise to a contradictory set of figures that would cause confusion in the public domain. Whilst the onus is on the Council to explain that the first disclosure of spend is preliminary and subject to change, it would be necessary to give some indication as to why the full figures are not yet available and would generate unhelpful speculation. By placing the context of this into the public domain it would in itself undermine the relationship between the Council and its supplier when it is not yet clear if additional works would be covered by the existing contract agreement or if additional charges would be raised.
- We are certain that releasing the information when it is incomplete and inaccurate will undermine our ability to maximise our income as it will damage our relationship with our suppliers if we knowingly publish information that is likely to misrepresent the Berth 4/5 costs associated with named suppliers when we are still in the midst of agreeing costs with them. This would weaken our relationships with the suppliers and undermine our position with any future tenders.
- This is particularly so when the request asks for item by item including total costs for each item and a grand total when we are not clear what items should be included and what should not. This also undermines our negotiating position as if we publish a particular item cost that we are arguing is not for the Council to pay, by publishing the amount, it rather creates an acknowledgement in the public formation that we will be paying it when this is still subject to agreement.
- We intend to publish full accurate information, regardless of how it might represent the Port's financial health, in order for the Port to be fairly judged based on complete and accurate financial information.
- We are therefore deeply concerned that prematurely placing commercially sensitive information into the public domain will not only compromise the Council's position with suppliers but also with our future trade partners looking to work with the Council and a new port operator.
- Given that the suppliers in which we work with at the Port provide specialist services and goods, it is essential that we maintain excellent relationships with them in order to continue to work with them in the future. It is such that in some niche markets, there

are a limited number of suppliers and there is great concern that publishing costings that are inaccurate, incomplete or missing will misrepresent the trade partnership with the suppliers and would discourage them from working with us in the future.

12. The Commissioner acknowledges that there is always a general public interest in disclosing environmental information. In determining where the balance of the public interest lies the Commissioner has therefore given due weight to the presumption in favour of disclosure under regulation 12(2) of the EIR. He has also taken account of the specific public interest in transparency and accountability about decisions that may have widespread effects on communities and the environment. Infrastructure projects of the scale being undertaken by the Berth 4/5 project will concern people because of those effects.
13. However, while they have an interest in the related information they have requested, the complainant has not raised concerns that are unusual or of special significance.
14. In the absence of any extraordinary concerns about the information in scope of the request, the Commissioner considers that the timing of the request is key here. At the time of the request, the Bert 4/5 project costings, which the requested information will inform, was still 'live' and remains live to date.
15. The Commissioner considers there was greater public interest in the Council having the 'safe space' needed to discuss and reach decisions associated with the Bert 4/5 project away from public scrutiny and distraction. The information in the scope of the request was "a work in progress" and does not reflect a final or agreed position or decision. The Commissioner agrees with the Council that it is not in the public interest to disclose information that does not present a final position as it might mislead the public. It could also cause the Council to be distracted by having to field questions from the public about the information. There is greater public interest, in the Commissioner's view, in the Council being able to focus on their remit.
16. The Commissioner is satisfied that the public interest in transparency is met to an adequate degree by the information that is already in the public domain, and the information which the Council intends to publish in the coming months. The Commissioner therefore finds that, on balance, there is greater public interest in maintaining the regulation 12(4)(d) exception on this occasion.

## **Right of appeal**

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17. 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)

18. 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.
19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Deirdre Collins**  
**Senior Case Officer`**  
**Information Commissioner's Office**  
**Wycliffe House**  
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