

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

**Decision notice**

**Date:** 13 January 2016

**Public Authority:** London Borough of Lambeth  
**Address:** Olive Morris House  
18 Brixton Hill  
London  
SW2 1RD

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to the Council's 'Your New Town Hall' project, in particular the value the council intends to achieve from the sale of Council property.
2. The Commissioner's decision is that the Council has acted appropriately by refusing to disclose the remaining withheld information under regulation 12(5)(e) of the EIR. He therefore does not require any further action to be taken.

**Request and response**

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3. On 19 March 2015, the complainant wrote to the Council and requested information in the following terms:

"I would be grateful for an answer to the following request:-

Revenue and Capital Budgets for 2015/16

1) Using the comparable basis employed in the Annual Statement of Accounts, what is the projected long term debt (PWLB and other LT debt) for 2014/15, 2015/16, 2016/17?

2) Using the comparable basis employed in the Annual Statement of Accounts, what is the projected cost of interest charges for 2014/15, 2015/16, 2016/17?

- 3) What are the interest charges and fees for each of the council's PFI projects for 2014/15?
  - 4) What would be the estimated full year effect on interest charges for all long term debt and for PFI projects during 2015/16 should there be an increase in base rate of 0.5%?
  - 5) What would be the Tax Freeze Grant payable if the council decided not to increase council tax in 2015/16?
  - 6) What council properties have been sold or leased during 2014/15 and what income was realised per property?
  - 7) What has or will be the value of council properties sold or transferred as part of the "Your New Town Hall" project?"
4. The Council responded on 16 April 2015, providing a response to questions one to five. In relation to question six, it disclosed some information but refused to disclose the remainder citing section 43 of the FOIA. With regard to question seven, it refused to disclose the requested information again citing section 43 of the FOIA.
  5. The complainant requested an internal review on 19 May 2015. In relation to questions one and two, the complainant requested further clarification. With regard to questions six and seven, the complainant confirmed that he was dissatisfied with the Council's application of section 43 of the FOIA. In relation to questions three, four and five no complaint was made.
  6. The Council carried out an internal review and notified the complainant of its findings on 14 July 2015. It provided further clarification in relation to questions one and two and accepted that section 43 of the FOIA was incorrectly applied to the remaining withheld information in relation to question six. The Council therefore provided the complainant with this outstanding information. Regarding question seven, the council provided the forecasted annual revenue savings but refused to disclose the remaining information, again citing section 43 of the FOIA.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 5 August 2015 to complain about the way his request for information had been handled. Specifically, the complainant disputed the Council's assertion that

section 43 of the FOIA applied to the remaining withheld information and felt that the public interest rested in disclosure.

8. During the Commissioner's investigation it was established that the complainant has no concerns with the Council's overall handling of questions one to six of his request. Further information was also disclosed to the complainant. The Commissioner's investigation has therefore focussed on question seven and the remaining withheld information at the time of writing this notice, which consists of the valuations placed on the following four sites:

Phoenix House

Olive Morris House

Hambrook House

Ivor House

9. It was also established that the request should have been considered under the EIR rather than the FOIA. The request relates to the 'Your New Town Hall' project in the heart of Brixton. The project is a major development of a 2.5 acre site. It will involve the restoration of the current Town Hall and improved services and the construction of 194 new homes. The stated aim of this project is that it will pay for itself by extracting the value of sites the Council already owns through the development of essential housing. The four sites listed above form part of this development and it is the intention of the Council to sell these to the developer in due course.
10. The sale and redevelopment of existing Council sites for essential housing is clearly a plan or measure (regulation 2(1)(c) of the EIR) which will affect the elements of the environment such as land, soil, landscape and so on (regulation 2(1)(a) of the EIR). It is therefore environmental information and the request should have been considered under the EIR from the outset.
11. As stated above, the Council accepts this and has confirmed that it wishes to rely on regulation 12(5)(e) of the EIR.

## **Reasons for decision**

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12. Regulation 12(5)(e) of the EIR states 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.

13. For the Commissioner to agree that the withheld information is exempt from disclosure by virtue of regulation 12(5)(e) of the EIR, the Council must demonstrate that:
  - the information is commercial or industrial in nature;
  - the information is subject to confidentiality provided by law;
  - the confidentiality provided is required to protect a legitimate economic interest; and
  - that the confidentiality would be adversely affected by disclosure.
14. This exception is also subject to the public interest test. In addition to demonstrating that this exception is engaged, the Council must also explain how it considered the public interest for and against disclosure and how it reached the view that the public interest in favour of disclosure is outweighed by the public interest in maintaining this exception.
15. The Council confirmed that the requested information is clearly commercial in nature; it relates to the sale of four Council properties to a developer in relation to the 'Your New Town Hall' project. The Commissioner is satisfied that the first element of this exception is met. The sale of Council assets to a developer clearly constitutes a commercial activity, as per the Commissioner's guidance, as it is a commercial transaction between the Council and a third party.
16. In relation to the second element of this exception, the Commissioner considers that "provided by law" includes confidentiality imposed on any person under the common law of confidence, contractual obligation, or statute.
17. The Commissioner considers that the information is not of a trivial nature and is not otherwise publicly available and so has the necessary quality of confidence.
18. Turning now to the third and fourth element of this exception, the Council argued that disclosure would adversely affect its own commercial interests. It stated that the four properties are to be sold as part of the 'Your New Town Hall' project and at the time of the request it had carried out valuations of these properties to enable it to enter into commercial negotiations with a developer when the time arose. At the time of the request only the valuations had been carried out; no

commercial negotiations had been entered into or contracts entered into.

19. The Council explained that, if the remaining withheld information was disclosed, it would adversely affect its ability to compete fairly with prospective developers and therefore to secure the best possible price for its public assets. If prospective developers knew up front exactly what value the Council had placed on these properties, the developers would have a good indication, prior to any negotiations commencing, of what the Council is hoping to achieve. This would stifle true competition and the Council's ability to secure the best deal.
20. The Commissioner considers that disclosure of the remaining withheld information would adversely affect the commercial interests of the Council as a result of the circumstances at the time of the request. The Council has confirmed that at the time of the request it had obtained valuations for the four properties but had not entered into any commercial negotiations with prospective bidders. If prospective bidders knew up front the valuations that the Council had obtained for the properties in question they would know what the council hoped to realise from the transaction and tailor their bids accordingly. This would hinder true competition and the process of fair negotiation and prevent the Council from securing the best possible deal for its public assets.
21. For the above reasons the Commissioner is satisfied that regulation 12(5)(e) of the EIR is engaged in this case. He will therefore now go on to consider the public interest test.
22. The Council acknowledged that there is a general public interest in transparency in relation to the manner in which the Council disposes of its assets and the spending of public money to redevelop the site. It stated that it also accepted that disclosure of this information would enable the residents of Lambeth to understand more fully the decision making process behind the 'Your New Town Hall' project and how it is being funded.
23. Additionally, the Council stated that providing detailed information held by public authorities is in keeping with the government's transparency agenda and promotes accountability and greater public participation.
24. However, in this case, the Council considers that the public interest in favour of disclosure is outweighed by the public interest in maintaining the exception. It argued that it is not in the public interest to prejudice the commercial interests of the Council. It stated that this is particularly important when the Council is striving to achieve the best value for money for its constituents. Conversely, the Council argued that it is in the public interest to ensure that it achieves best value for money to

enable it to provide 194 new homes, new employment opportunities and overall savings of 4.5 million per annum for its constituents.

25. Disclosure of the remaining withheld information would hinder the Council's ability to negotiate and achieve the best possible price for its public assets and such consequences are not in the interests of the general public. The Council confirmed that it is committed to publishing the remaining withheld information once negotiations have ended and sales have been agreed.
26. The Commissioner is of the opinion that there is a public interest in openness and transparency, in particular where the request relates to the potential sale of public assets and the use of public funds. He accepts that information should be disclosed to the public to enable them to scrutinise decision making and evaluate whether resources are being utilised most effectively.
27. He also accepts that the remaining withheld information relates to the redevelopment of a 2.5 acre site in the heart of Brixton. The aim is to redevelop the existing town hall and then sell off some council properties for much needed housing. He accepts that such a project will attract local interest and may be of particular concern to some of the Council's constituents.
28. The Commissioner also notes that the complainant himself is concerned about the project and whether it is truly going to deliver the savings the council has been advertising for some time. He accepts that the complainant, like other locals, will wish to ensure that public assets are sold fairly and competitively and that the best possible deal is obtained.
29. However, in this case, due to the circumstances at the time of the request, the Commissioner considers there are stronger arguments in favour of maintaining this exception.
30. The Commissioner acknowledges that the Council had not entered into any commercial negotiations with prospective developers at the time of the request for the four properties listed in paragraph 8 above. The Council had obtained valuations for these properties but it had not entered into any formal negotiations or indeed reached an agreement with a developer(s) over the sale of these properties.
31. The Commissioner has already accepted that disclosure would adversely affect the Council's ability to negotiate fairly when negotiations do indeed take place and would hinder the council's ability to secure the best possible deal it can for its constituents. Although there are arguments in favour of disclosure, the Commissioner considers these are outweighed by the commercial damage which would occur as a result of

disclosure. If the Council was hindered from obtaining the best price this would in turn prejudice the project going forward and result in less public funds being available to meet its objectives and such consequences are not in the public interest.

32. The Commissioner notes that the Council is committed to disclosing the information once sales have been agreed and he would encourage this. But based on the circumstances at the time of the request, the Commissioner is satisfied that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exception.

## Right of appeal

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33. 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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

34. 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.
35. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Mrs Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**