

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

**Date:** 21 January 2025

**Public Authority:** Bristol City Council  
**Address:** City Hall  
PO Box 3399  
Bristol  
BS1 9NE X

**Decision (including any steps ordered)**

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1. The complainant requested information about the YTL Arena Project. Bristol City Council (the "Council") disclosed some information and withheld other information under the exceptions for personal information (regulation 13) and commercial confidentiality (regulation 12(5)(e)). The complainant disputes the Council's application of regulation 12(5)(e).
2. The Commissioner's decision is that the Council was correct to apply Regulation 12(5)(e) to withhold the information but that it failed to respond to the request in time and breached regulation 5(2).
3. The Commissioner does not require the Council to take any steps.

## Background

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4. The request relates to plans to develop Bristol Arena by YTL Developments (the "Arena Project"). The arena is being planned on the site of the former Brabazon Hangars, the home of Concorde and thousands of homes are also planned on the former airfield, as well as a new train station<sup>1</sup>.
5. The Council has stated that the Arena Project is a large complex scheme to deliver both a 19,000 capacity indoor arena and improvements to local infrastructure required for the venue to successfully operate.

## Request and response

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6. On 1 May 2024, the complainant wrote to the Council and requested the following information:

"....any project update, progress and monitoring reports/presentations/briefings etc. relating to the YTL arena project from past 8 months held by the following persons:

Chief Executive – Steven Peacock

Interim Executive Director of the Growth and Regeneration Directorate – [redacted]

Major Projects Consultant [redacted]

The Head of Transport Management"

7. The Council responded on 9 August 2024 and disclosed some information. It withheld other information under the exceptions for personal information (regulation 13) and commercial confidentiality (regulation 12(5)(e)).
8. Following an internal review the Council wrote to the complainant on 13 September 2024 and confirmed that it was maintaining its position.

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<sup>1</sup>See: <https://www.bbc.co.uk/news/articles/cv2x5e7ewdvo>

## Scope of the case

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9. On 16 September 2024 the complainant contacted the Commissioner to complain about the way their request for information had been handled. The complainant specifically complained about the Council's application of the exception in regulation 12(5)(e).
10. The Commissioner has considered whether the Council was entitled to withhold information under regulation 12(5)(e).

## Reasons for decision

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### Is the requested information environmental?

11. 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);

12. Having viewed the information, the Commissioner is satisfied that it relates to proposals for a large development and falls within the category of "measures" in regulation 2(1)(c). For procedural reasons, he has therefore assessed this case under the EIR.

**Regulation 12(5)(e)- confidentiality of commercial or industrial information**

13. The following decision notice analyses whether the Council was correct to withhold the information under regulation 12(5)(e).
14. Regulation 12(5)(e) applies to information where 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.
15. The Commissioner has considered the four tests which he normally considers when deciding whether the exception should be maintained or not.

**Is the information commercial or industrial in nature?**

16. The Council has confirmed that the information relates to negotiations in respect of the construction of an arena and associated contributions to local infrastructure between Bristol City Council and YTL Developments (YTL). The procurement and provision of services in a competitive environment is a commercial issue. The Commissioner is, therefore, satisfied that the information is commercial in nature.

**Is the information subject to a duty of confidence provided by law?**

17. The Council has explained that the terms of the commercial arrangement for construction of an arena and associated contributions to local infrastructure were discussed on the understanding that they would remain confidential and the agreement was made between the parties on this basis.
18. The circumstances in which the information is held, and the Council's reason for holding it would, in the Commissioner's view, be sufficient to impose an obligation of confidence upon the Council and its employees. Council employees who had access to the information would understand that that information was to be held in confidence until such time as the necessary agreements were achieved. Some information may even need to remain in confidence beyond this point. The information therefore has the necessary quality of confidence.

**Does the confidentiality is protecting a legitimate economic interest?**

19. The Council has stated that the confidentiality in this case is protecting its own economic interests and those of YTL. The Council considers that its negotiating position with YTL and any other future S106 negotiations with any other party would be adversely affected by disclosure.
20. The Council has explained that, as a local authority, it strives to offer best value for money to residents. It considers that, if the requested information was released into the public domain, other developers and contractors the Council may wish to engage with would use this information to attempt to negotiate more favourable terms for themselves, rather than provide best value for money for the Council.
21. 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 associated with the Arena Project, and it would be less likely to obtain best value for the contracts within those deals if the redacted information had been disclosed at the time that it initially responded to the request.
22. The Commissioner's conclusions here accord with a number of previous decision notices he has issued which relate to equivalent scenarios, namely, where negotiations are ongoing and disclosure would result in adverse effects to this process and, ultimately, inhibit legitimate economic interests<sup>2</sup>.
23. Finally, the Commissioner is satisfied that the confidentiality would inevitably be affected if the Council disclosed this information.
24. The Commissioner has decided that regulation 12(5)(e) of the EIR is engaged by the information which the Council is withholding. He has gone on to consider the associated public interest test.

**The public interest test**

25. 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.

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<sup>2</sup> See, for example: <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4023493/ic-160446-w4z2.pdf>

26. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions.

### **The public interest in disclosure**

27. The complainant has argued that, if the Council has entered into agreements and paid significant sums to enable the Arena Project, it, and all the parties involved, should be transparent about this process.
28. The complainant has also raised concerns that the Council has entered into confidentiality agreements with YTL that inhibit it from disclosing information, regardless of the sensitivity of the information.
29. The Council has acknowledged that there is a general public interest in promoting transparency and accountability in relation to how it agrees and operates commercial partnerships.
30. The Council has also noted that disclosure of the requested information would also allow the public to understand how finances are spent.
31. The Council has acknowledged that there is significant public interest in how monitors the delivery of major capital projects.

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

32. The Council has argued that there is a wider public interest in it being able to maintain robust commercial positions without the risk of harm caused by the disclosure of the withheld information.
33. The Council considers that it would not be in the public interest to weaken the commercial advantages and trading positions of the Council to the extent that it would either add extra costs on to the Council as a public body or negatively impact on potential income. The Council has argued that disclosure would disrupt the timeline and completion of a major capital project that would incur financial loss to the Council and impact on residents and the wider city economy.
34. The Council considers that disclosing the information would result in the undermining of partnerships and arrangements to the point where a third-party partner would disengage from contractual agreements due to disclosure of confidential commercial information.
35. More broadly, the Council considers that disclosure of the requested information would discourage developers and contractors from engaging with the Council in relation to future developments, therefore limiting the number of parties the Council could negotiate with and therefore

reducing the opportunity to achieve value for money for the residents of Bristol.

### **The balance of the public interest**

36. The Commissioner recognises that there is a legitimate public interest in transparency and accountability around decisions made which will have a significant impact on the local environment and community. The Arena Project is a large undertaking and the Commissioner considers that there is, therefore, a need for the public to be informed about it and given the opportunity to engage with decisions relating to it.
37. However, the Commissioner has accepted that a disclosure of the redacted information at the time of the request, when negotiations were in train, would undermine the ability of the Council to achieve best value, or could even threaten the viability of the project. In practical terms, the public interest in the exception being maintained may, therefore, outweigh that in disclosure until such time as the circumstances allow for the information to be disclosed without those negative effects occurring.
38. The Council has also provided the Commissioner with details of measures it has taken to ensure that the Arena Project has been subject to due scrutiny. It confirmed that the matter has been openly discussed in the public domain through the Council's Committee Process and the Planning process and stated that engagement has been focussed on the following themes:

**"Project Progress and Updates:** Information about construction status, funding, or timeline adjustments.

**Public Consultation Results:** Feedback from residents and stakeholders on the arena's design, location, and potential impact on the community.

**Economic Impact Discussions:** Evaluations of how the arena could affect local businesses, tourism, and job creation.

**Environmental Concerns:** Debates on sustainability measures and the environmental footprint of the project.

**Financing and Budgeting:** Discussions on costs, funding sources, and any potential financial challenges or changes in project funding.

**Community Benefits:** Talk around the benefits to local communities, including access to cultural events and leisure activities."

39. The Council confirmed that details of the relevant committee meetings regarding these matters are published on its website along with opportunities for public consultation.
40. The Council has further explained that public engagement has also been facilitated via the planning process. It confirmed that a full planning application was made in November 2019, with permission being granted in April 2021. The Council explained that further applications have been made in relation to reserved matters and for material changes to the scheme and these were advertised in accordance with the relevant regulations and gave the public an opportunity to engage through the planning process.
41. In the Commissioner's view the public interest in transparency and accountability in this matter has, to an extent, been served by the steps already taken by the Council. He recognises that there is a valid public interest in accessing information which would assist an understanding of the Council's negotiating strategy and options under consideration. However, having considered the content of the information and the fact that the process of deliberation is ongoing, he does not believe disclosure is necessary or beneficial in this case. Moreover, the Commissioner considers that disclosure would undermine the public interest in the Council obtaining best value for the community, which is the essence of factors which the exception is designed to protect.
42. 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.
43. 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.
44. The Commissioner has therefore decided that the Council was correct to apply Regulation 12(5)(e) to withhold the information from disclosure.



## **Procedural matters**

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### **Regulation 5(2) – time for compliance**

45. Regulation 5(1) states:

“Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.”

46. Regulation 5(2) states:

“Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.”

47. In this case the complainant made their request on 1 May 2024 and the Council issued its response on 9 August 2024.

48. The Commissioner finds that the Council failed to respond to the request within 20 working days by some margin and breached regulation 5(2). He does not require the Council to take any steps.

## Right of appeal

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49. 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)

50. 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.
51. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Christopher Williams**  
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**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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