

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

Decision notice

Date: 24 April 2025

Public Authority: Department for Communities
Address: Causeway Exchange
1-7 Bedford Street
Belfast
BT2 7EG

Decision (including any steps ordered)

1. The complainant has requested communications between the Department for Communities and the UK Government regarding the redevelopment of Casement Park. The Department disclosed some information but withheld the remainder, citing regulation 12(4)(d) (material in the course of completion), regulation 12(5)(e) (confidentiality of commercial information) and regulation 13 (personal data).
2. The Commissioner's decision is that the exceptions are engaged in respect of some of the withheld information, but not all of it. The Commissioner also finds that the Department failed to comply with regulation 14 in issuing an inadequate refusal notice.
3. The Commissioner requires the Department to take the following steps to ensure compliance with the legislation.
 - Disclose the information set out in the annex at the end of this decision notice.
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. The request in this case relates to the redevelopment of Casement Park, a Gaelic football stadium in Belfast. The redevelopment project has been under way since 2011, and has been subject to extensive delays. In October 2023 UEFA announced that the UK and Republic of Ireland would jointly host the 2028 European Championship (Euro 28). It was envisaged that Casement Park would host Euro 28 matches, but this was subject to the successful completion of the redevelopment project.¹ In September 2024 the Secretaries of State for Northern Ireland, and Culture, Media and Sport, advised the Northern Ireland Minister for Communities that the UK Government would not provide funding to enable Casement Park to be built in time for Euro 28.²
6. On 20 June 2024 the complainant requested the following information from the Department:

"All communications (telephonic, emails or otherwise) between the DfC [Department for Communities] minister and/or departmental officials and the NIO [Northern Ireland Office]/UK Government in relation to Casement Park from 1 May 2024 to the latest date possible in June 2024."
7. On 19 August 2024 the Department provided some of the requested information and issued a refusal notice citing regulations 12(4)(d) (material in the course of completion), 12(5)(e) (confidentiality of commercial information), 12(5)(f) (interests of the person who provided the information) and 12(3) (third party personal data) of the EIR.
8. The complainant requested an internal review on 26 August 2024 and the Department provided them with the outcome of that review on 18 October 2024. Following the review the Department maintained its original refusal.

Scope of the case

9. The complainant contacted the Commissioner on 22 October 2024 to complain about the way their request for information had been handled. They did not explicitly dispute that the exceptions were engaged, but
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¹ <https://www.bbc.co.uk/news/uk-northern-ireland-67060870>

² <https://www.gov.uk/government/publications/letter-from-the-secretaries-of-state-for-northern-ireland-and-dcms-concerning-casement-park>

argued that there was a strong public interest in disclosing the withheld information.

10. It is not disputed by either party that the EIR is the correct access regime.
11. During the course of the Commissioner's investigation the Department withdrew reliance on the exception at regulation 12(5)(f). Therefore the scope of the Commissioner's investigation was the Department's reliance on the remaining exceptions claimed: regulations 12(4)(d), 12(5)(e) and 12(3).
12. The requested information comprises 19 documents, of which two were disclosed in full. Of the remaining 17 documents, 10 were disclosed with redactions and seven were withheld in full.

Reasons for decision

Regulation 12(4)(d): material in the course of completion

13. Regulation 12(4)(d) of the EIR provides 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;
 - unfinished documents; or
 - incomplete data.
14. The fact that the exception refers to both material in the course of completion and unfinished documents implies that these terms are not necessarily synonymous. While a particular document may itself be finished, it may be part of material which is still in the course of completion.
15. Regulation 12(4)(d) provides a class-based exception, which means that it is engaged if the information in question falls within its scope. If the information in question 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.
16. The Commissioner noted that the Department had not explained to the complainant, either in the refusal notice or internal review outcome, how the exception was engaged with regard to the requested information. The Department clarified to the Commissioner that it "relied on the advice published on the ICO website at the time the request was received to inform its decisions". The Commissioner does not consider

this adequate, and has commented on the matter further in his consideration of the Department's compliance with regulation 14 below.

17. The Department explained to the Commissioner that the withheld information related to the ongoing development of a number of documents, including the Casement Park Full Business Case, tender documents and various strategies.
18. The Commissioner has examined the information withheld under regulation 12(4)(d). He accepts that it relates to the development of the documents specified by the Department, therefore he is satisfied that the exception is engaged.

Public interest in favour of disclosure

19. The Department stated that it had taken into account the "explicit weight in favour of disclosure contained within the EIR". The Commissioner interprets this as a reference to the presumption in favour of disclosure set out at regulation 12(2) of the EIR.
20. The Department also recognised the "considerable" public interest in the redevelopment of Casement Park. It acknowledged that transparency and accountability are important considerations where public money is spent.
21. The Department accepted that disclosure of the withheld information would allow more effective public understanding of its decision making. It suggested that disclosure would also ensure that the Department appropriately addressed its responsibility to achieve value for money and make the best use of resources.
22. The complainant indicated that there had been widespread media coverage of this issue, which he considered meant it was of significant public interest. He pointed to the fact that the redevelopment project potentially involved a large amount of public money.
23. The complainant also argued that questions had been raised "about whether this project is discriminating against one section of the community in Northern Ireland."
24. The complainant pointed out that a decision had since been made that Casement Park would not be redeveloped in time for Euro 2028. Therefore, he argued that the public has a right to know what was being discussed and how much money was being proposed. The complainant maintained that information regarding the redevelopment project had been "aired publicly" so the public should now be informed as to the reason for delays, and what ultimately informed the decision to refuse to move the project forward.

Public interest in favour of maintaining the exception

25. The Department set out that the timing of the request was a significant factor. At the time of the request the possibility of using Casement Park as a venue for Euro 2028 was still a live issue, impacting on both the design of the stadium and the ongoing development of the procurement strategy. This had not been envisaged at the time of the initial proposal for redevelopment of the stadium and was a relatively new option leading to a fundamental reconsideration of relevant documents.
26. The Department explained that the withheld information demonstrated consideration of two different requirements: the Gaelic Athletic Association's (GAA) long term strategic need, and the shorter term goal of making the stadium UEFA compliant for inclusion as a Euro 2028 venue. However, a decision had not been made as to whether the funding for both options could be assured. The Department maintained that disclosure of the withheld information at the time of the request would have risked misinforming the public.
27. The Department argued that disclosure of the withheld information at the time the request was received would have misled the public about the design of the stadium as detailed in the developing Full Business Case. It also said that disclosure of information related to the ongoing Procurement Strategy material would lead to additional queries to the Department. The Department considered that such queries would distract officials working on the Casement Park project from its primary service delivery, as the relative cost of the stadium had consistently been a controversial issue.
28. The Department also maintained that disclosure of information recording discussions related to development of the Full Business Case, the Procurement Strategy and the other materials in the course of completion would damage the Department's relationship with its partners. The Department stated that "Good decision making requires the exchange of free and frank advice to ensure materials are completed in an effective manner." It further suggested that any disclosures which resulted in a breakdown of the Department's relationships with its partners would result in poor decision making, whereas ensuring the free flow of information was critical to the Department's delivery of the redevelopment project.
29. The Department concluded that the public interest was best served by allowing the project team to continue to develop the materials, free from distraction, so that they could be disclosed at a point where they are completed having been properly costed and having taken advantage of expert advice from all sectors.

The Commissioner's findings

30. The Commissioner notes that he has issued a number of decision notices since 2015 regarding various requests for information on the redevelopment of Casement Park. He acknowledges that the project is of significant interest to the public, and has been widely perceived as controversial. It has been the subject of extensive scrutiny by the media and other interested parties. It has also been the subject of extensive legal challenge, including judicial reviews. However, the Commissioner is mindful that what is of interest to the public – or to the media – is not necessarily the same as what is in the public interest.
31. The Commissioner agrees with the Department and the complainant that there is considerable public interest in informing the public about the redevelopment of Casement Park. This is enhanced by the proposal to use Casement Park as a venue for Euro 28. The complainant specifically asked the Commissioner to bear in mind the Aarhus Convention,³ and “its overall purposes of promoting the right of access to environmental information”. The Commissioner recognises that access rights under the EIR are designed to support the three pillars of the Aarhus Convention: public access to environmental information, public participation in decision making and access to justice.
32. The Commissioner has carefully considered the arguments put forward by the Department in support of maintaining the exception. He is minded to attach significant weight to the argument about the timing of the request. The Commissioner notes that, while the redevelopment project has been ongoing for many years, the proposal of Casement Park as a venue for Euro 28 is a relatively recent consideration which was very much live at the time of the complainant's request.
33. In the Commissioner's opinion matters are more likely to be sensitive while they are under active consideration, whereas sensitivity is likely to decline after a decision is made. In this case it is clear that the redevelopment of Casement Park was very much under active consideration. A decision regarding additional funding had not been taken and the Department for Communities was in discussion with the Department for Culture, Media and Sport (DCMS).
34. The Commissioner is less persuaded by the Department's argument that disclosure would have misled the public and distract officials. The

³ The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, adopted on 25 June 1998. The full text can be accessed at: <http://ec.europa.eu/environment/aarhus/>

Commissioner fully appreciates that the redevelopment project has been controversial in several respects, and there is clearly a legitimate appetite for public debate. However he has found in previous cases that generic arguments relating to distraction should not be afforded significant weight.⁴

35. The Commissioner is also assisted by his published guidance on regulation 12(4)(d).⁵ This sets out that it should generally be possible for a public authority to "mitigate or minimise distraction by providing an explanation of any deficiencies or differences". Although the Department has assured the Commissioner that it has considered his guidance, it has not provided any evidence that it has considered whether such distraction could be countered in this case. Furthermore the Commissioner is of the opinion that the public should be able to expect Departmental officials to deliver public services while managing reasonable public scrutiny. Therefore the Commissioner does not accept the possibility of distraction as a weighty public interest argument in favour of maintaining the exception.

36. The Commissioner takes a similar approach to the Department's arguments regarding the risk of misleading the public. Again the Commissioner would draw the Department's attention to his specific guidance on this point:

"Public authorities argue that the information would be misleading, eg if it consists of notes reflecting only part of a discussion or if it is inaccurate or out of date. However, public interest arguments must be inherent in the exception claimed, rather than just general arguments against disclosure. In any case, you should be able to put the information into context when releasing it. It may also be in the public interest to show the information that you based your decision on, even if that information was incorrect."⁶

37. The Commissioner acknowledges that public authorities cannot completely control how information is received and interpreted once it is in the public domain. However, as a Northern Ireland government department the Department has substantial experience in dealing with requests for information regarding the redevelopment of Casement Park,

⁴ For example, https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432918/fer_0569788.pdf

⁵ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-124d-eir/#whatifdisclosing>

⁶ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/how-exceptions-and-the-public-interest-test-work-in-the-environmental-information-regulations/#a8>

both under the EIR and as part of the normal course of business. The Commissioner is therefore of the view that the Department ought to be able to put the requested information into context with the aim of assisting the public's understanding of the situation.

38. In conclusion the Commissioner is satisfied that the public interest in maintaining the exception at regulation 12(4)(d) outweighs the public interest in disclosure in respect of some of the withheld information. However, he finds that some information should be disclosed, in order to balance the public interest in maximum transparency around decision making, with the need to ensure safe space to make properly informed and considered decisions.
39. The Commissioner welcomes the fact that the Department disclosed some of the requested information in response to the request. However he is not persuaded that the Department has identified the information which truly required protection at the time of the request, particularly in light of the presumption in favour of disclosure. The Commissioner has set out the information to be disclosed in an annex at the end of this decision notice.
40. Since the Commissioner has found that the Department was entitled to rely on regulation 12(4)(d) in respect of most of the withheld information, he is not required to consider the exception at regulation 12(5)(e) in respect of this information. The Commissioner has considered whether the Department is entitled to rely on regulation 12(5)(e) in respect of the remaining information which he has found cannot be withheld under regulation 12(4)(d).

Regulation 12(5)(e): confidentiality of commercial information

41. Regulation 12(5)(e) of the EIR provides an exception to the extent that disclosure of the information in question would adversely affect

"the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest".
42. The wording of the exception thus sets out a number of tests or conditions that must be met before the exception can be engaged, and the Commissioner has considered each in turn below.

Is the withheld information commercial or industrial in nature?

43. The Commissioner considers that for information to be commercial or industrial in nature, it will need to relate to a commercial activity either of the public authority concerned or of a third party. In this case the

Department maintained that the withheld information is commercial rather than industrial in nature, since it relates to the development of both a Procurement Strategy, tender documents and plans to redevelop land in the form of the current site of Casement Park.

44. The Commissioner accepts that most of the information withheld under regulation 12(5)(e) comprises commercial information. However he finds that some of it is not commercial or industrial information, and cannot therefore be withheld under regulation 12(5)(e). This information is detailed in the annex at the end of this notice.

Is the withheld information subject to confidentiality provided by law?

45. The Commissioner considers that “provided by law” will include confidentiality imposed on any person under the common law of confidence, contractual obligation, or statute. The Department set out that the information was subject to the common law of confidence since it had the necessary quality of confidence, and was created in conjunction with the GAA.
46. The Department again maintained that, “Based on the Department’s consideration of advice published by the ICO it is content that all the exceptions were properly engaged”.
47. The Commissioner does not consider this to be a wholly satisfactory explanation of the Department’s decision making. The guidance published by the Commissioner is designed to assist public authorities in making decisions as to the application of exceptions and the public interest test. Public authorities must apply the principles set out in the guidance to the circumstances of the particular case.
48. In this case the Department has failed explicitly to explain how the information withheld under regulation 12(5)(e) has the necessary quality of confidence. However, it has indicated that the information includes

“developing cost details which is information that would be used by construction firms during the procurement process to gain a commercial advantage”.

49. The Commissioner is prepared to accept that information comprising cost details will have the necessary quality of confidence, to the extent that it was not in the public domain at the time of the request. The Commissioner therefore accepts that the test is met with regard to this information.

Is this confidentiality provided to protect a legitimate economic interest?

50. It is not enough that disclosure might cause some harm to an economic interest. A public authority needs to establish (on the balance of probabilities – ie more probable than not) that disclosure would cause some harm.
51. The Department set out that disclosure of the information withheld under regulation 12(5)(e) “would directly affect the Department’s ability to achieve value for money”. The Commissioner agrees that the disclosure of the cost information in this case would be more likely than not to have a detrimental effect on the Department’s interests in this regard.

Public interest in disclosure

52. The Department considered that the same public interest factors in favour of disclosure applied to all of the withheld information regardless of the exception applied. The Commissioner agrees that this is a reasonable approach in the circumstances of this case.
53. Accordingly the Commissioner has considered the public interest arguments in favour of disclosure as set out at paragraphs 19-24 above.

Public interest in favour of maintaining the exception

54. The Department reiterated its position that the withheld information has the necessary quality of confidence and was created in a manner which imposed a duty of confidence between the partners in the project team. It explained that disclosure of information subject to a duty of confidence would damage the Department’s relationship with those partners.
55. The Department also reiterated its argument about the timing of the request being a significant factor. It elaborated that the Full Business Case and Procurement Strategy were subject to rapid ongoing change as the issue of UEFA compliance was under consideration, and necessarily contained a large amount of changing budgetary information depending on the outcome of the considerations.
56. The Department highlighted that the withheld information contained developing cost details, information that would be used by construction firms during the procurement process to gain a commercial advantage. The Department considered the public interest to be best served by the small pool of potential construction companies receiving procurement information at the same time to ensure that the project receives bids which are as competitive as possible rather than being influenced by disclosure of the available financial resources.

57. The Department set out that disclosure of the withheld information would have resulted in out-of-date information being released to the world at large and would have resulted in additional requests to the Department as the cost of the stadium has been a particularly controversial matter.
58. Finally, the Department reiterated that the Procurement Strategy being developed would eventually invite companies to tender for the project. This necessarily required the exchange of commercially sensitive information, and the Department maintained that it was essential that the parties involved could continue to do this with confidence that sensitive information will not be disclosed. The Department explained that the public interest favoured withholding the information to allow an effective Procurement Strategy to be brought forward when all issues have been fully developed.

The Commissioner's findings

59. The Commissioner is mindful that there is some crossover with the Department's public interest arguments for regulation 12(4)(d). However he recognises that regulation 12(5)(e) specifically exists to protect the confidentiality of commercial information, and the Commissioner has set out above that some information does not fall within the scope of the exception.
60. The Commissioner has borne in mind the considerable public interest in informing the public about the redevelopment of Casement Park, as well as the proposal to use Casement Park as a venue for Euro 28. He understands that both elements involve significant amounts of public money, but must also take into account the opportunities presented by the successful redevelopment of Casement Park. The Commissioner notes that at the time of the request it was possible that Casement Park would have been considered viable as a venue for Euro 28, and it is the time of the refusal that is the material consideration, rather than the time of issuing the decision notice.
61. Again the Commissioner attaches appropriate weight to the timing of the request. The Commissioner accepts the Department's argument about cost information that was not in the public domain at the time of the request being deserving of protection from disclosure. This is especially pertinent because of the ongoing funding discussions at the time of the request.
62. For the reasons set out with regard to regulation 12(4)(d), the Commissioner is again not persuaded by the Department's argument that disclosure would have misled the public and distracted officials. The Commissioner does not accept the possibility of distraction, or

misleading the public, as weighty public interest arguments in favour of maintaining the exception in the circumstances of this case.

63. The Commissioner is satisfied that the public interest in maintaining the exception at regulation 12(5)(e) outweighs the public interest in disclosure in respect of some of the withheld information. As set out above he notes the disclosure of some of the requested information in response to the request. However the Commissioner is similarly not persuaded that the Department has adequately separated out the information which truly required protection at the time of the request, particularly in light of the presumption in favour of disclosure.
64. Consequently, as with regulation 12(4)(d) he finds that some information should be disclosed, in order to balance the public interest in maximum transparency around decision making, with the need to ensure a safe space to make properly informed and considered decisions. The Commissioner has set out the information to be disclosed in the annex at the end of this decision notice.

Regulations 12(3) and 13: personal data of third parties

65. Regulation 12(3) of the EIR provides that personal data of third parties (ie a person or persons other than the requester) shall not be disclosed except in accordance with regulation 13. Regulation 13(1) provides that information is exempt from disclosure if it is third party personal data and if its disclosure would otherwise breach any of the data protection principles.
66. In this case, the relevant condition is contained in regulation 13(2A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data (the DP principles), as set out in Article 5 of the UK General Data Protection Regulation (UK GDPR).
67. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 (the DPA). If it is not personal data, then regulation 13 of the EIR cannot apply.
68. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

69. Section 3(2) of the DPA defines personal data as:

“any information relating to an identified or identifiable living individual”.

70. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
71. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of the individual.
72. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
73. The Department confirmed that it had disclosed the names of senior staff within the Department but had withheld a small amount of personal data comprising mainly names, telephone numbers and e-mail addresses. The individuals concerned included junior staff within the Department and individuals from outside of the Department.
74. The Commissioner is satisfied that the information in question is third party personal data, since it identifies the individuals in question but does not relate to the complainant. The Commissioner has gone on to consider whether the Department is entitled to rely on regulation 13 in respect of this information. The fact that information constitutes third party personal data does not automatically exclude it from disclosure under the EIR. The public authority is required to determine whether disclosure would contravene any of the DP principles.
75. The most relevant DP principle in this case is principle (a). Article 5(1)(a) of the UK GDPR states that:
- “Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.
76. In the case of an EIR request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair, and transparent.
77. The Department argued that it did not have a lawful basis to disclose the third party personal data.

78. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing, ie disclosure of the personal data into the public domain. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the UK GDPR

79. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that “processing shall be lawful only if and to the extent that at least one of the” lawful bases for processing listed in the Article applies.

80. The Commissioner considers that the lawful basis most applicable is Article 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”⁷.

81. Accordingly, in considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under the EIR, it is necessary to consider the following three-part test:

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;

⁷ Article 6(1) goes on to state that:

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) of FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UKGDPR would be contravened by the disclosure of information, Article 6(1) of the UKGDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

iv) The Commissioner further considers that these tests should be considered in sequential order, ie if the legitimate interest is not met then there is no need to go on to consider the necessity test, and so on.

Legitimate interests

82. In considering any legitimate interest(s) in the disclosure of the requested information under the EIR, the Commissioner recognises that a wide range of interests may be legitimate interests.
83. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
84. The Department accepted that there is a legitimate interest in the public being informed about the redevelopment of Casement Park. It has been a long running issue which affects a large number of people and involves large amounts of public money.

Is disclosure of personal data necessary?

85. Having identified a legitimate interest, the next step is to consider whether disclosure of the personal data in question is actually necessary to meet that legitimate interest. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the EIR must therefore be the least intrusive means of achieving the legitimate aim in question.
86. The Department argued that it was not necessary to disclose the withheld personal data in order to meet the legitimate interest of informing the public about the redevelopment project. The Department set out that the information already available to the public provided sufficient information to inform the public. It argued that disclosing personal data relating to individuals would not improve the public's understanding of the issues. Nor would it enhance transparency regarding responsibility for decision making, since the names of senior officials had already been disclosed.
87. The Commissioner is mindful of his findings above that some of the information withheld under regulations 12(4)(d) and 12(5)(e) ought to

have been disclosed in order to inform the public. However, with specific regard to the personal data concerned, the Commissioner is satisfied that the Department has appropriately applied the legitimate interest assessment in terms of distinguishing between senior officials and more junior individuals. This is important in terms of ensuring accountability while balancing expectations of privacy. The Commissioner has seen no evidence to suggest that it is necessary for the Department to disclose the withheld personal data. He therefore finds that the necessity test is not met, and the Department would not be able to rely on Article 6(1)(f) as a lawful basis for processing the personal data in question.

88. It follows that disclosure of this information would not be lawful, and would contravene principle (a). For this reason the Commissioner finds that the Department was entitled to rely on the exception at regulation 13 of the EIR in respect of the withheld personal data.

Procedural matters

Regulation 14: refusal notice

89. Regulation 14 of the EIR requires a public authority, relying on any EIR exception, to issue a refusal notice which states the exception being relied upon and explains why that exception applies to the information requested. The refusal notice must be issued within 20 working days.
90. As set out at paragraph 17 above, the Commissioner observes that the Department had not explained to the complainant, either in the refusal notice or internal review outcome, how the exceptions were engaged with regard to the requested information. The Department clarified to the Commissioner that it “relied on the advice published on the ICO website at the time the request was received to inform its decisions”.
91. The Commissioner’s published guidance⁸ sets out his view that public authorities need to provide requesters with a clear explanation as to the basis for refusing any part of a request:

“If you are relying on any of the exceptions in regulation 12(4), you need to explain why you believe that the request meets the description within the exception.

⁸ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/refusing-a-request-under-the-eir/#whatshouldwe>

If you are relying on any of the exceptions listed in regulation 12(5), then you usually need to explain the adverse effect you believe would result from disclosure, and exactly why disclosing the requested information would result in that adverse effect.”

92. The Commissioner acknowledges that the Department, like many public authorities, is managing several competing priorities. However, effective communication with the public is an important part of any public authority's business and is not optional. Requesters are more likely to request an internal review, or complain to the Commissioner if a public authority fails to provide a clear explanation as to why a request is being refused. The failure to communicate effectively therefore often results in additional, unnecessary work for all parties. That said, the Commissioner recognises that in this case he has found that some of the withheld information ought to be disclosed, which would not have been affected by the quality of the refusal notice or internal review.
93. In light of the above the Commissioner finds that the Department failed to comply with regulation 14(3)b) of the EIR.

Other matters

94. Although it does not form part of the decision in this case, the Commissioner wishes to comment that better explanation of the decision making process in correspondence with the complainant would have provided a better basis for dealing with the subsequent complaint to the Commissioner.
95. In the context of less than satisfactory correspondence with the complainant, the Commissioner is especially disappointed at the brevity and general nature of the submissions provided to him by the Department. The Commissioner would remind the Department, as with any public authority, that his decisions are made on the basis of the information provided by each party. It is for the public authority to satisfy the Commissioner that a request has been handled in accordance with the legislation. Where the authority fails to do so, the Commissioner is more likely to order disclosure of withheld information.

Right of appeal

96. 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

97. 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.
98. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Sarah O'Cathain
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex: schedule of information

Document	EIR Exception(s) applied (if applicable)	Decision
1	Redacted in full 12(4)(d) and 12(5)(e)	Disclose, except that names may be redacted under regulation 12(3).
2	Redacted in full 12(4)(d) and 12(5)(e)	Disclose document with names redacted and the contents of each section redacted. Section headings 1.0, 2.0, etc should remain to inform the public as to the broad nature of the issues under discussion. Annexes may be withheld.
3	Disclosed with redactions 12(3)	No action required.
4	Disclosed with redactions 12(3) and 12(4)(d)	Withhold names under regulation 12(3) but remainder should be disclosed in order to inform the public as to the broad nature of the issues under discussion.
5	Redacted in full 12(4)(d) and 12(5)(e)	Redact names and contents as per item 2, but disclose section titles 1.0, 1.1, 1.2, etc.
6	Redacted in full 12(4)(d) and 12(5)(e)	Redact names and contents as per item 2, but disclose section titles 1.0, 2.0, etc.
7	Redacted in full 12(4)(d)	Redact financial information but disclose remainder.
8	Redacted in full 12(5)(e) and 12(4)(d)	Redact names and contents as per item 2, but disclose section titles 1.0, 2.0, etc.
9	Redacted in full 12(4)(d) and 12(5)(e)	Redact names and contents as per item 2, but disclose section titles 1.0, 2.0, etc.
10	Disclosed with redactions 12(4)(d)	Disclose redacted information (titles of agenda items).
11	Disclosed with redactions 12(3) and 12(5)(e)	Redact names but remainder should be disclosed.

12	Disclosed with redactions 12(3)	No action required.
13	Disclosed with redactions 12(4)(d) and 12(5)(e)	Redact names but remainder should be disclosed.
14	Disclosed with redactions 12(3)	No action required.
15	Disclosed with redactions 12(3) and 12(4)(d)	Disclose second, fourth and fifth bullet points.
16	Disclosed with redactions 12(3)	No action required.
17	Disclosed in full	No action required.
18	Disclosed in full	No action required.
19	Disclosed with redactions 12(3)	No action required.