



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference:EA/2017/0026

**Decided without a hearing
On 1 October 2018**

Before

JUDGE CHRIS HUGHES

TRIBUNAL MEMBERS

MIKE JONES & PIETER DE WAAL

Between

WILLIAM GUTHRIE/GREATEST EXPECTATIONS LIMITED

Appellant

and

INFORMATION COMMISSIONER

Respondent

and

MIDDLESBOROUGH BOROUGH COUNCIL

Second Respondent

DECISION AND REASONS

1. The decision notice FER0632224 issued on 27 January 2017 by the First Respondent ('the IC') is in accordance with the law and the appeal is dismissed.

2. The Appellant company director wrote to the Freedom of Information Officer of the Second Respondent ('the Council') on 7 December 2015 in the following terms:-

"Please provide me with a copy of all information within Middlesbrough Council's communication systems (including letters, emails, file records and internal memos) relating to my business interests – namely the development and land/property interests of Greater Expectations Limited extending back over the last 5 years, from December 8th 2010 to December 7th 2015. These should if possible include all identifiable reference to myself, William Guthrie and/or my business by name, "Greater Expectations' also known as G E. Limited' of Grange Road Middlesbrough. I can advise that I have no wish to see documents or emails or other material that relates solely and exclusively to planning matters. This may serve to significantly reduce the amount of information potentially requested. I am particularly concerned to know of any information and references made to parking provision, leasing, property/land valuations, the alternative use or prospective acquisition of land owned or controlled by Middlesbrough Council at the rear of my business location at Grange Road Middlesbrough i.e. land at Monkland Close and to the rear of 36, Grange Road.

I am happy to provide an appropriate fee for administration (please advise) and documentary evidence to confirm that I am rightly entitled to hold information that may be commercially sensitive or otherwise in respect of Greater Expectations and any actual or proposed dealings with Middlesbrough Council and to confirm my role as a Director of this particular company."

3. The Council dealt with the request under the Environmental Information Regulations. It provided some information but withheld other information ('the disputed information') relying on various provisions of the Regulations:-

"Exceptions to the duty to disclose environmental information

12. – (1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

(a) an exception to disclosure applies under paragraphs (4) or (5); and

(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

(2) A public authority shall apply a presumption in favour of disclosure.

(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

....

(e) the request involves the disclosure of internal communications.

(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

.....

(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;

(f) the interests of the person who provided the information where that person –

(i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;

(ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and

(iii) has not consented to its disclosure; ...

Personal data

13. – (1) To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data. ...”

4. The Appellant was dissatisfied and complained to the IC. Following an investigation the IC upheld the Council’s decision to withhold the information finding that Regulations 12(4)(e) and 12(5)(f) applied to certain of the disputed information and that the balance of public interest lay in not disclosing the information protected by these exemptions (on her analysis it was unnecessary to consider Regulations 12(5)(e)) and Regulation 13(1) applied to the balance of the disputed information which had been supplied by a third party).
5. The Appellant challenged the decision of the IC. In summary he argued:-
 - FOIA and not EIR was the relevant legal framework with which to analyse the request. He argued that the information did not include “planning, protection of the environment...or anything affecting or likely to affect the elements of the environment. Parking provision from an environmental perspective was not at any time a consideration within matters discussed by GE, Gentoo [a developer] or officers of the Council”, his request was “merely an attempt to clarify who might park where, what communication there had been in relation to the parking consents, followed by the developer involving the council”.
 - the presumption in favour of disclosure was not properly applied and the balance of public interest was for disclosure. The information was essentially minor and the analysis of the IC was to seriously exaggerate the issues.
 - the Council’s internal review of the information request had not been independent of the original decision-maker who made the initial decision on disclosure.
 - he suspected maladministration by the Council which buttressed the public interest in disclosure. The Council had wrongly disclosed information to Gentoo and some years ago the Council had failed to

properly “stop up” a road on the land and had subsequently charged him for its use.

- the interests of Gentoo were no longer relevant as their development had now been completed and they had left the site.

6. The IC resisted the appeal arguing:-

- EIR was the correct regime and the exemptions were properly applied,
- She had properly taken account of the presumption in Regulation 12(2) in favour of disclosure but the public interest in maintaining the confidentiality of the information protected by Regulations 12(4)(e) and 12(5)(f) outweighed the limited public interest in disclosure, noting that the Appellant had explicitly argued the unimportance of the issue – the small scale of the land and the minor disagreement between the parties. This emphasised the lack of public interest in the disclosure – it was only of interest to the appellant. In contrast the interests protected by these two exceptions were of general public importance- the ability of a public authority to consider issues in private and for third parties to be able to communicate in confidence with public authorities and of significant weight in this case.
- The third ground was a complaint against the Council’s procedure, which was not contrary to the Regulations.
- The IC had not been asked to consider any question of maladministration and the disputed information did not suggest any.
- The time of weighing public interest in disclosure is at the time the request is made. At that time Gentoo still had an interest in the land which in any event subsequently passed to a third party. There was therefore no impact on the IC’s analysis of the public interest.

7. The Council supported the IC’s stance and provided supplementary submissions in Particular with respect to grounds 1 and 4 of the appeal:-

- It argued that “Information about parking provision and leasing” included the terms of any lease, the number of designated parking spaces. A variation made to the lease affecting parking would make changes to the frequency of parking on the land and the number of vehicles involved, any agreement on stopping up the road would affect land use. Therefore the purchase of land for parking would affect the environment. “Alternative use or prospective acquisition of land owned or controlled by Middlesborough Borough Council” would include information relating the Gentoo development project – this was an activity affecting land. EIR was therefore the correct legal framework.
- The Council denied any malpractice or maladministration, there had been no findings on the issues and the ground was not relevant to the appeal.

8. In reply the Appellant argued that it was unreasonable to use EIR for consideration of issues about the lease. The Council was trying to inflate the importance of the exchanges about land in the disputed information which was not important. He accepted that the internal procedures of the Council (ground 3) should no longer be a matter of appeal. With respect to ground 4 he argued that he had been paying rent for land which the Council did not own and that therefore there was maladministration. Gentoo's involvement in the land had been transient and therefore not of substance.

Consideration

9. The first substantive issue is whether the IC's decision was properly founded on EIR. The relevant provision of the Regulations is contained in 2(1):-

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form 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) and (b) as well as measures or activities designed to protect those elements; "*

10. While the request excluded information which related "solely and exclusively to planning matters" it was wide in scope seeking as it did information concerning parking provision and alternative uses of land. This information of necessity falls within (c) as being "*plans, .. activities affecting or likely to affect the land*". It is clear that this head of appeal fails.

11. The second head relates to the balance of public interest. The Appellant emphasised the unimportance of the land but the issue of the land is important to him. In essence he has a private interest which is of little public importance when weighed against the clear value to good public administration of the issues protected by Regulations 12(4)(e) and 12(5)(f). This ground fails.

12. The fourth head of appeal is the Appellant's claim of malpractice. The IC was unable to see any evidence within the disputed material that suggested malpractice. The Council denies any malpractice and points to the lack of any proceedings establishing such malpractice. The Tribunal has difficulty in seeing how the Council's actions or inactions with respect to formal "stopping up" of a road amount to malpractice and is unconvinced by the Appellant's assertions

of malpractice or maladministration. Nor is it apparent how disclosing the information sought would establish such malpractice or maladministration. This ground of appeal lacks substance.

13. At the time of the request the developer was still active and had an interest in the land. That is the time relevant to assessing the application of exemptions and the balance of public interest. This ground also lacks merit.
14. The tribunal is satisfied that the IC's decision is correct in law and dismisses the appeal.

Signed Judge C Hughes

Judge of the First-tier Tribunal

Date: 13 October 2018

Promulgation