

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

**Date:** 16 January 2014

**Public Authority:** Wiltshire Council  
**Address:** County Hall  
Bythesea Road  
Trowbridge  
Wiltshire  
BA14 8JN

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to the exercise of Wiltshire Councils powers to grant planning and conservation area consent in relation to a specific property and information relating to the demolition of that property. The Commissioner's decision is that Wiltshire Council has corrected applied the exceptions at regulations 12(4)(b), 12(5)(b) and 13 of the EIR. He does not require any steps to be taken.

**Request and response**

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2. On 18 July 2012, the complainant wrote to Wiltshire Council ('the council') and requested information in the following terms:
  - a) "All information held by the Council relating to [complainant] in my capacity as an objector to the applications to demolish Copsewood Cottage as set out above which does not constitute personal data within the meaning of the Data Protection Act from the date of the Extension Application Ref K/57240/F in July 2007 to current date.
  - b) All information held by the Council relating to [named individual] and/or other supporters of the demolition which concerns

[complainant] in his capacity as an objector to the demolition of Copsewood Cottage from July 2007 to current date.

- c) All information held by the Council relating to the exercise of its powers to grant planning and conservation area consent in relation to Copsewood Cottage from July 2007 to current date. To include background to the hearings of the applications on 28 May 2009 and 14 January 2010.

To minimise the work involved I am happy to inspect the files or view emails at the Council Offices at Shurnhold / Browfort or the location where held rather than to request hardcopy.

In addition to minimise the work involved in relation to the Planning and Conservation Area applications please do not supply any data which was posted on the Wiltshire Council planning website open to the public. Furthermore no copies are needed of correspondence between Wiltshire Council and Messrs Richard Buxton.

To the extent that you consider the request falls under the Environmental Information Regulations please treat this as a request under those provisions including 5(1). Any documents which are withheld on the grounds of legal privilege should be identified [sic] by date, subject and addressees."

3. The letter containing the above request also contained a subject access request. The complainant contacted the Commissioner on 24 October 2012 regarding the lack of response to the subject access request which prompted the council to respond to the information request which is being considered in this decision notice.
4. The council responded on 4 January 2013. It refused to provide the requested information citing the exceptions at Regulation 13, 12(5)(b) and 12(4)(e), and 12(4)(b).
5. On 18 February 2013, the council wrote to the complainant stating that it was also withholding some information under the exception at regulation 12(5)(f).
6. The complainant wrote to the council on 12 February 2013 expressing his dissatisfaction with its response, particularly in relation to legal professional privilege. The council responded to this letter on 8 March 2013 providing an explanation of why legal professional privilege applies in this case.

## Scope of the case

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7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He said he is unable to judge whether the application of legal professional privilege is correct without the addresses of the documents and questioned whether the EIR was the correct legislation.
8. In its response to the request dated 4 January 2013, the council stated that some of the documents could be categorised as follows:
  - "Correspondence between Legal and [complainants] solicitors, which you have stated you do not need
  - Correspondence between Legal and the Court, which was copied to your solicitors
  - Documents used in the Court proceedings, which you will have, or have access to via your own solicitors".

Such documents are not considered in this decision notice because the complainant stated, in his information request, that 'no copies are needed of correspondence between Wiltshire Council and Messrs Richard Buxton'. The complainant and the council both confirmed that Messrs Richard Buxton were the solicitors acting for the complainant and the council confirmed that all such documents were supplied to the solicitors.

9. The subject access request referred to in paragraph 3 has been dealt with in case references RFA0474095 and RFA0479736 and is not within the scope of this decision notice.
10. In correspondence with the Commissioner the council retracted its reliance on regulation 12(5)(f). It confirmed that it had also applied regulation 13 to the documents withheld under regulation 12(5)(f) and wished to maintain reliance on regulation 13 only in respect of those documents.
11. During the investigation, the council discovered documents falling within the scope of part c) of the request which constitute personal data of third parties and stated to the Commissioner that it wished to apply the exception at regulation 13 to such documents.
12. The Commissioner has therefore considered the following:

The application of regulation 13 to the information requested at part b) of the request and some of the information within the scope of part c) of the request.

The application of regulation 12(5)(b) to some of the information falling within the scope of part c) of the request.

The application of regulation 12(4)(b) to the request for 'Any documents which are withheld on the grounds of legal privilege should be identified [sic] by date, subject and addressees'.

13. As the Commissioner has found that regulation 12(5)(b) applies, he has not considered the application of regulation 12(4)(e) to some of the information falling within the scope of part c) of the request as the council applied both exceptions to the same information.

## **Reasons for decision**

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### **Environmental Information**

14. Regulation 2(1) of the EIR defines 'environmental information' as having the same meaning as in Article 2(1) of Council Directive 2003/4/EC:

'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;

(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)'.

15. In the Commissioner's view, the use of the word 'on' indicates a wide application and will extend to any information about, concerning, or relating to the various definitions of environmental information.
16. The Commissioner's view is that the requested information is environmental by virtue of regulation 2(1)(c) as it is information on a measure, namely planning and demolition, affecting or likely to affect the land which is an element of the environment referred to under regulation 2(1)(a).

### **Regulation 13(1) – Third party personal data**

17. This exception provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 ("the DPA").

#### **Is the withheld information personal data?**

18. Personal data is defined by the DPA as any information relating to a living and identifiable individual. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
19. The information withheld from part b) of the request consists of three email chains between the council and a party with an interest in the Court of Appeal decision on regarding the specific property. The Commissioner is satisfied that such information is personal data as defined in the DPA.
20. The majority of the information withheld as personal data from part c) of the request consists of correspondence to and from third parties relating to their complaint about the council's handling of the planning matter. A small amount of the information relates to the aforementioned correspondence. Again, the Commissioner is satisfied that such information is personal data as defined in the DPA.

#### **Would disclosure breach the Data Protection Principles?**

21. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The

Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subject, the potential consequences of disclosure and balanced the rights and freedoms of the data subject with the legitimate public interest in disclosing the information.

### **Nature of the information and reasonable expectations**

22. In relation to the information withheld under part b), the council has said that there is no significant information within the three emails that is not already known to the complainant and the withheld information would add very little to the subject matter. Having viewed the information, the Commissioner considers that it is not particularly sensitive and, although he is not making a judgement as to whether the complainant is already aware of the content of the information, is likely to be readily available to the parties to the litigation in this case.

### **Consent**

23. Whether or not the disclosure of information was within the reasonable expectations of a party is not merely about consent although seeking the views of the party concerned will often be a reliable indicator of what was expected, which is a useful starting point. In its response to the Commissioner's enquiries, the council stated that the party has not expected the information to be disclosed and had explicitly refused consent to disclosure. The next step is to consider whether or not it was reasonable to expect that the information would not be disclosed in these circumstances.
24. The council has not provided any detail as to what it told the party about what would happen to their personal data or as to any established custom or practice within the council. However, the Commissioner considers that there would not have been an assumption that disclosure would be made to the wider world. He therefore considers that the party would have had a reasonable expectation that the correspondence in this matter would not enter the public domain.

### **Consequences of disclosure**

25. The council said that disclosure would cause the party distress because of the history of the planning matter in this case.
26. Having viewed the withheld information, the Commissioner considers that disclosure would amount to a loss of privacy which has the potential to cause damage and distress.

### **Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure**

27. In considering 'legitimate interests in disclosure', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
28. No specific legitimate interests have been put forward in this case and the Commissioner does not consider it necessary to release personal data that could cause distress in order to meet the general principles of accountability and transparency.

### **Conclusion on analysis of fairness**

29. Taking all of the above into account, the Commissioner concludes that it would be unfair to the party concerned to release their personal data to the world at large as is the case for disclosures under the FOIA. Disclosure would not have been within the reasonable expectations of the individuals and the loss of privacy could cause unwarranted distress. He does not consider that any legitimate interests in disclosure outweigh the reasonable expectations of the party and the right to privacy.
30. As the Commissioner has decided that the disclosure of this information would be unfair, and therefore in breach of the first principle of the DPA, he has not gone on to consider whether there is a Schedule 2 condition for processing the information in question. The Commissioner has therefore decided that the council was entitled to withhold the information under the exception at regulation 13(1).

### **Regulation 12(5)(b)**

31. Regulation 12(5)(b) applies to information where disclosure would have an adverse effect on the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.
32. The council said that the request sought disclosure of information relating to judicial review proceedings brought by the complainant against the council and therefore the principles of litigation privilege apply. It said that the documents fall within the following categories which are all legally privileged:
  - Correspondence between members of the Legal Unit and Planning.
  - Correspondence between Legal Unit and its instructed barrister.
  - Correspondence between Legal and the solicitors acting for the owners of the property.

33. Legal professional privilege protects the confidentiality of communications between a lawyer and a client. It has been described by the Tribunal, in the case of *Bellamy v the Information Commissioner and the DTI*<sup>1</sup> as;
- “a set of rules or principles which are designed to protect the confidentiality of legal or legally related communications and exchanges between the client and his, her or its lawyers, as well as exchanges which contain or refer to legal advice which might be imparted to the client, and even exchanges between the clients and their parties if such communication or exchanges come into being for the purpose of preparing for litigation.” (paragraph 9)
34. There is no specific exception within the EIR referring to information which is subject to legal professional privilege, however both the Commissioner and the Tribunal have previously decided that regulation 12(5)(b) encompasses such information.
35. In the case of *Kirkaldie v ICO & Thanet District Council*<sup>2</sup> the Tribunal stated that,
- “The purpose of this exception is reasonably clear. It exists in part to ensure that there should be no disruption to the administration of justice, including the operation of the courts and no prejudice to the right of individuals or organisations to a fair trial. In order to achieve this it covers legal professional privilege, particularly where a public authority is or is likely to be involved in litigation”. (paragraph 21)
36. Therefore the Commissioner considers that legal professional privilege is a key element in the administration of justice and a key part of the activities that will be encompassed by the phrase ‘course of justice’.
37. In order to reach a view as to whether the exception is engaged the Commissioner must firstly consider whether the information is subject to legal professional privilege and then decide whether a disclosure of that information would have an adverse effect on the course of justice.
38. There are two types of privilege – litigation privilege and legal advice privilege. Litigation privilege is available in connection with confidential communications made for the purpose of providing or obtaining legal

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<sup>1</sup> Appeal no. EA/2005/0023

<sup>2</sup> Appeal no. EA/2006/0001



advice in relation to proposed or contemplated litigation. Advice privilege will apply where no litigation is in progress or being contemplated. In both cases, the communications must be confidential, made between a client and professional legal adviser acting in their professional capacity, and made for the sole or dominant purpose of obtaining legal advice.

39. The withheld information consists of documents held by the Legal Team who only became involved in the matter when a letter before action was issued by the complainant's solicitors in respect of his first judicial review claim in relation to the council's decision to grant conservation area consent for the demolition of Copsewood. The Legal Team remained involved until the determination of the complainants second judicial review claim which resulted in a full contested hearing in the High Court.
40. Having viewed the withheld information, the Commissioner is satisfied that it records the communications to or from the council's Legal Team made for the purpose of providing or obtaining legal advice in relation to litigation and is therefore subject to legal professional privilege.
41. Information will only be privileged so long as it is held confidentially. The council has confirmed that none of the information has been made public or otherwise disclosed without restriction to any third party so there has been no waiver of privilege.
42. The Commissioner has therefore gone on to consider whether the disclosure of the withheld information would have an adverse effect on the course of justice.
43. In *Archer v ICO & Salisbury District Council*<sup>3</sup> the Tribunal highlighted the requirement needed for the exception to be engaged. It explained that it is not enough that disclosure would simply affect the course of justice, the effect must be "adverse" and refusal to disclose is only permitted to the extent of that adverse effect. It stated that it was also necessary to show that disclosure "would" have an adverse effect and that any statement that it could or might have such an effect was insufficient.
44. In reaching a decision on whether disclosure would have an adverse effect it is also necessary to consider the interpretation of the word "would". It is the Commissioner's view that the Tribunal's comments in

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<sup>3</sup> Appeal no. EA/2006/0037

the case of Hogan v ICO & Oxford City Council<sup>4</sup> in relation to the wording of "would prejudice" are transferable to the interpretation of the word "would" when considering whether disclosure would have an adverse effect. The Tribunal stated that when considering the term "would prejudice" that it may not be possible to prove that prejudice would occur beyond any doubt whatsoever. However, it confirmed that the prejudice must at least be more probable than not.

45. The Commissioner notes that legal professional privilege is an established principle which allows parties to take advice, discuss legal interpretation or discuss matters of litigation freely and frankly in the knowledge that such information will be retained in confidence.
46. The Commissioner accepts that a disclosure of information which is subject to legal professional privilege will have an adverse effect on the course of justice simply through a weakening of the doctrine if information subject to privilege is disclosed on a regular basis under the FOIA or the EIR. Clients and their advisers' confidence that their discussions will remain private will become weaker and their discussions may therefore become inhibited.
47. The Commissioner has therefore borne in mind the fact that ordering a disclosure of this information is likely to have an indirect adverse effect upon the course of justice purely because it is information covered by legal professional privilege. However the Commissioner must also consider the specific information caught by the request when making his decision in this case.
48. The council submitted that disclosure would adversely affect the course of justice as a matter of principle. It quoted the case of Woodford v Information Commissioner<sup>5</sup> which confirmed that the test of 'would adversely affect' for this exception would be met by the general harm that would be caused to the principle of legal professional privilege, without needing to demonstrate that specific harm would be caused in relation to the matter covered by the information.
49. The Commissioner has seen the withheld information and considered the council's argument and is satisfied that disclosure would more likely than not adversely affect the course of justice. This is because it would involve public access to privileged information and would provide an

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<sup>4</sup> Appeal no's. EA/2005/0026 & EA/2005/0030

<sup>5</sup> Appeal no. EA/2009/0098

indication of the arguments, strengths or weaknesses which the council might have had, unbalancing the level playing field under which adversarial proceedings are meant to be carried out. The Commissioner has therefore concluded that regulation 12(5)(b) is engaged.

50. Regulation 12(1)(b) requires that where the exception in regulation 12(5)(b) is engaged then a public interest test should be carried out to ascertain whether the public interest in maintaining the exception outweighs the public interest in disclosing the information. The Commissioner notes that regulation 12(2) states that in dealing with a request for environmental information a public authority shall apply a presumption in favour of disclosure.

### **Public interest arguments in favour of disclosing the requested information**

51. The council said that disclosing the requested information would increase openness, indicate the council's direction and allow the applicant to see that justice is being done.
52. The Commissioner agrees with the council's submission in favour of disclosing the information as its release would promote accountability and transparency and allow the public to better understand the basis of the council's decision and its legal justification for a particular course of action.

### **Public interest arguments in favour of maintaining the exemption**

53. The council said that withholding the information would protect the council's processes as it would allow for only disclosing information required by court as and when called for within the legal process. It also said that clients should be able to seek and be given legal advice without those communications being disclosed.
54. The Commissioner and the Tribunal have expressed in a number of previous decisions that disclosure of information that is subject to legal advice privilege would have an adverse effect on the course of justice through a weakening of the general principle behind legal professional privilege. In the Bellamy case, the Tribunal described legal professional privilege as, "a fundamental condition on which the administration of justice as a whole rests".
55. It is very important that public authorities should be able to consult with their lawyers in confidence to obtain legal advice. Any fear of doing so resulting from a disclosure could affect the free and frank nature of future legal exchanges or it may deter them from seeking legal advice.

56. In light of the above, there will always be a strong argument in favour of maintaining legal professional privilege because of its very nature and the importance attached to it as a long-standing fundamental principle of English law. The Tribunal recognised this in the Bellamy case when it stated that:

“...there is a strong element of public interest inbuilt into privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt interest...It is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case...”

57. The above does not mean that the counter arguments favouring public disclosure need to be exceptional, but they must be at least as strong as the interest that privilege is designed to protect as described above.

### **Balance of the public interest arguments**

58. The Commissioner appreciates that in general there is a public interest in public authorities being as transparent and accountable as possible and that those involved in dealings with the public authorities may feel they have better understood the process if they know how the public authority reached its decisions and its legal justification for a course of action. However, having regard to the circumstances of this case, it is not the Commissioner's view that the public interest in disclosure equals or outweighs the strong public interest in maintaining the council's right to consult with its lawyers in confidence.

59. The Commissioner notes that the public interest in maintaining this exemption is a particularly strong one and to equal or outweigh that inherently strong public interest usually involves factors such as circumstances where substantial amounts of money are involved, where a decision will affect a large amount of people or evidence of misrepresentation, unlawful activity or a significant lack of appropriate transparency. Following his inspection of the information, the Commissioner could see no sign of unlawful activity, evidence that the council had misrepresented any legal advice it had received or evidence of a significant lack of transparency where it would have been appropriate.

60. The Commissioner is satisfied that in this case the inherent public interest in protecting the established convention of legal professional privilege is not countered by at least equally strong arguments in favour of disclosure. He has therefore concluded that the public interest in maintaining the exception at regulation 12(5)(b) outweighs the public interest in disclosure of the information.

### **Regulation 12(4)(b) – manifestly unreasonable**

61. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
62. The Council cited this exception in relation to the request for a list of documents identified date, subject and addressees, that were withheld from the wider request on the grounds of legal privilege on the basis that it would be extremely time consuming and 'well in excess of the 18 hours'.
63. The EIR differ from the FOIA in that no specific limit is set on the amount of work required by an authority to respond to a request as provided by section 12 of the FOIA. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations) which apply in relation to section 12 of the FOIA are not directly relevant to the EIR - the cost limit and hourly rate set by the fees regulations do not apply in relation to environmental information. However, the Commissioner accepts that the fees regulations provide a useful starting point where the reason for citing regulation 12(4)(b) is the time and cost of a request but they are not a determining factor in assessing whether the exception applies.
64. The Commissioner is satisfied that Regulation 12(4)(b) sets a fairly robust test for an authority to pass before it is no longer under a duty to respond. The test set by the EIR is that the request is 'manifestly' unreasonable, rather than simply being 'unreasonable' per se. The Commissioner considers that the term 'manifestly' means that there must be an obvious or clear quality to the identified unreasonableness.
65. It should also be noted that public authorities may be required to accept a greater burden in providing environmental information than other information. This was confirmed by the Information Tribunal in the DBERR case<sup>6</sup> where the tribunal considered the relevance of regulation 7(1) and commented as follows (paragraph 39):

"We surmise from this that Parliament intended to treat environmental information differently and to require its disclosure in circumstances where information may not have to be disclosed under FOIA. This is evident also in the fact that the EIR contains an express presumption

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<sup>6</sup> Department for Business Enterprise and Regulatory reform v The Information Commissioner and Platform. Appeal no. EA/2008/0097

in favour of disclosure, which FOIA does not. It may be that the public policy imperative underpinning the EIR is regarded as justifying a greater deployment of resources. We note that recital 9 of the Directive calls for disclosure of environmental information to be "to the widest extent possible". Whatever the reasons may be, the effect is that public authorities may be required to accept a greater burden in providing environmental information than other information."

66. Therefore, in assessing whether the cost or burden of dealing with a request is clearly or obviously unreasonable, the Commissioner will take the following factors into account:
- Proportionality of the burden on the public authority's workload, taking into consideration the size of the public authority and the resources available to it, including the extent to which the public authority would be distracted from delivering other services.
  - The nature of the request and any wider value in the requested information being made publicly available.
  - The importance of any underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue.
  - The context in which the request is made, which may include the burden of responding to other requests on the same subject from the same requester.
  - The presumption in favour of disclosure under regulation 12(2);
  - The requirement to interpret the exceptions restrictively.
67. The council said that a list detailing the documents being withheld, identified by date, subject and addressees, does not already exist and to create such a list would mean trawling through four large files containing hundreds of documents and extracting the data to create a schedule. It said that the information would only be retrievable from the documents themselves, it is not held on a separate database in any electronically searchable format.
68. The council said that at a conservative estimate of one minute per document to locate, open, identify the data required and cut and paste or type into a new document, would be well in excess of the 18 hours. Each section of an email string would have to be treated separately and this could be thousands of separate emails and would also include many duplicates. It said that some documents are electronic and some are only in hard copy and where documents have been scanned or saved as pdf, they would have to be converted via Optical Character Recognition

('OCR') before the text could be cut and pasted which would add more time to collating the requested data.

69. The council provided the Commissioner with a 4 discs containing the withheld information and said that although it can be seen from the disks how many documents have been withheld, it cannot state how many individual documents there are within the email strings, and it cannot give an accurate estimate of the time it would take but it is clear that it is not achievable within the 18 hours. It said that this would be very costly for the council and an unreasonable diversion of the councils already stretched resources and would have a significant impact on the normal running of the legal support unit.
70. In addition to the time and cost of collating the requested list, the council said that creating a list of the documents withheld would not provide any useful information and it could not see the purpose or value of providing such information. It said that the names of the parties involved are well known to all, as is the time period that is covered and the majority of the subject titles will be [complainant] v Wiltshire Council, or some mention of the specific property. It explained that some of the emails have been truncated within the email string and the time the email was created cannot be seen and it cannot be seen if any other details have been removed before it was forwarded to the next recipient and therefore the creation of a list would not provide a complete record of the email conversations.
71. It logged three sample emails from the beginning of the first disk and provided the collated information from those documents to the Commissioner. The Commissioner notes that there were 10 list entries in total for just three email strings.
72. The Commissioner notes that within the discs there are 2274 pages of documents. Using an estimate of one minute per page to collate the requested information, this would take 37.9 hours if only one entry was necessary for each page. The Commissioner notes that some of the documents are duplicated but appreciates that it would take time to identify such duplications in order to ensure they weren't repeated in the requested list. The Commissioner accepts that providing the requested information would be a distraction from the council's usual duties.
73. The Commissioner understands that the request for a list of documents withheld for reasons of legal professional privilege was part of a wider request for information relating to a planning issue on a specific property in the village where the complainant lives. He notes that the objection to the planning application appears to be an individual issue and has not been alerted to any wider underlying issue, such as any unlawful practice by the council in its role as the planning authority.

Therefore, in assessing whether the request for a list of withheld documents is manifestly unreasonable, he has placed little weight on the importance of the underlying issue.

74. The complainant has said that he requires the list of documents so that he can judge whether the application of legal professional privilege is correct. The Commissioner notes that the request is not for the information contained within the documents but merely for a list of the withheld documents. He has considered the council's argument regarding the value of such information and does not consider that responding to the request would illuminate the wider issue the request relates to. Neither does he see wider value or benefit in the list of withheld documents being made public. It is not for the complainant to judge whether the information has been correctly withheld under the EIR. The regulatory body with responsibility for that judgement is the Commissioner and such a decision has been made in this case within this very decision notice.
75. The Commissioner has taken into account the presumption in favour of disclosure and the requirement to interpret the exceptions restrictively and accepts that when an exception from the EIR is cited, the arguments in favour of the citing of that exception must be sufficiently compelling to outweigh these factors. However, in the particular circumstances of this case, the Commissioner has found that the time and cost of dealing with the request would impose a disproportionate burden upon the council when weighed against the value of the requested information being made public and the extent to which responding to the request would illuminate the underlying issue.
76. As the Commissioner's decision is that the exception is engaged, he has therefore gone on to consider the public interest test inherent in this exception.

### **Public interest test**

77. All exceptions in the EIR are subject to the public interest test. Therefore, in deciding whether the information should be withheld the Commissioner has had to balance the public interest in maintaining the exception against the public interest in disclosure.
78. In relation to the public interest in disclosure, the council said that it would increase openness and may give some indication of the council's direction. The Commissioner has taken into account the general public interest in transparency and accountability. He is also mindful of the presumption in favour of disclosure and the need to read exceptions restrictively.



79. In relation to the public interest in maintaining the exception, the council said that public money would be diverted from usual tasks and responding to the request would have a significant impact on the normal running of the legal support unit. The Commissioner has taken into account the burden and distraction that would be imposed on the council and the wider public interest in protecting the integrity of the EIR and ensuring that they are used responsibly.
80. On balance the Commissioner finds that the public interest favours maintaining the exception as there is little wider value in this specific aspects of the complainant's request. The Commissioner's view is that the complainant's request is a means of pursuing the planning dispute with the council rather than a wider environmental issue.
81. Therefore, in all the circumstances of the case the Commissioner finds that the public interest in maintaining the exception in regulation 12(4)(b) outweighs the public interest in disclosure.

## Right of appeal

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82. 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: 0116 249 4253

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)

83. 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.
84. 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 .....**

**Andrew White**  
**Group Manager – Complaints Resolution**  
**Information Commissioner's Office**  
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**Wilmslow**  
**Cheshire**  
**SK9 5AF**