

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

**Date:** 23 June 2014

**Public Authority:** Walsall Metropolitan Borough Council  
**Address:** Civic Centre  
Walsall  
West Midlands  
WS1 1TP

**Decision (including any steps ordered)**

---

1. The complainant has requested a copy of a cabinet report dated 24 April 2013 relating to the Phoenix 10 project.
2. The Commissioner's decision is that the council has correctly applied Regulation 12(4)(e) and 12(4)(b). As regards Regulation 12(5)(d) he has decided that the exception applies to the majority of the information to which it was applied, however it does not apply to a small section of information which should therefore be disclosed. The Commissioner has also decided that the council breached Regulation 5(2) in that it did not provide a substantial response to the complainant within 20 working days.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - To disclose the small sections of information which the Commissioner considers do not fall within the scope of Regulation 12(5)(d) outlined in paragraph 63 below.
4. The public authority must take these steps within 35 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 the Act and may be dealt with as a contempt of court.

## Request and response

---

5. On 26 June 2013 the complainant wrote to the council and requested information in the following terms:

*"I believe that on 24th April this year, Walsall Cabinet discussed the cost to the public of the reclamation and redevelopment of the Phoenix 10 project, in closed session.*

*I am requesting the council provides a copy of this document to me under the freedom of information act."*

6. On 30 July 2013, having not received a response from the council the complainant wrote to it and asked it to carry out an internal review.
7. The council responded by telephone to the complainant indicating that it was carrying out a review. It finally responded fully on 13 September 2013. It provided some information in the form of a redacted report to cabinet. It withheld other parts of the document under Regulations 12(4)(e) (internal communications) and 12(5)(d) (confidentiality of proceedings) and/or 12(5)(b) (the course of justice and inquiries).
8. Following a further request for internal review the council said that it had carried out an internal review already. It said that as there has already been significant delays it had carried out a full analysis of the withheld information outlined in its substantive response of 13 September 2013 and therefore had decided it was appropriate for the Commissioner to now consider its response without it responding further. It confirmed this in writing to the Commissioner.

## Scope of the case

---

9. The complainant contacted the Commissioner on 14 August 2013 to complaint about the way his request for information had been handled.
10. The Commissioner considers that the complainant wishes the Commissioner to consider the application of the exceptions by the council, as well as the delay which occurred before the council responded to his initial request.

## Reasons for decision

---

### Regulation 12(4)(e)

11. Regulation 12(4)(e) of the EIR states that a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications.

### Is the information internal communications?

12. The Commissioner is satisfied that the withheld information is a communication for the purposes of the exception in this instance. It is background paper prepared by council officers for the purposes of informing cabinet of the issues upon which they will be called to make a decision.
13. There is no definition of what is meant by 'internal' contained in the EIR. Consequently, in the absence of one, a judgment on what is an internal communication must be made by considering the relationship between a sender and recipient, the particular circumstances of the case and the nature of the information in question. Typically, however, communications sent between officials within a single organisation are the clearest example of records that will be covered by the exception.
14. The report was a report to cabinet to discuss options available to it as regards the regeneration of the site. The report was prepared by 2 senior council officers and provided to cabinet on 24 April 2013. The Commissioner is therefore satisfied that the information was an internal communication. The is exception in Regulation 12(4)(e) is therefore engaged.
15. As the exception in Regulation 12(4)(e) is engaged the Commissioner must carry out a public interest test as required by Regulation 12(1)(b). The test is whether *"in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information."*

### The public interest test

#### The public interest in maintaining the exception

16. The council argues that the excluded information in general terms broadly outlines different scenarios that may or may not materialise and the differing plans of action the council may or may not be required to take. It said that these are based on broad assumptions and worst case scenarios. The information also includes possible costs of the project

that may or may not be attributed to the council in relation to each scenario, dependant on the level of involvement by the authority, again based on loose assumptions.

17. It argues that the disclosure of such information would result in the council not being able to maintain a preserved "safe space" in which it is able to discuss issues in an open and frank manner, develop ideas, debate live issues, and reach decisions away from external interference and distraction and to protect the integrity of the deliberation process.
18. The council acknowledges there has been a significant passage of time since this report was presented to cabinet. It argues however that the information still relates to a live ongoing complex project where firm decisions have not been made. The council therefore considers that the passage of time has not diminished the sensitivity of this information.
19. The council says that it is in the public interest to maintain and protect internal deliberation and decision making processes within the council in this case. Given the nature and content of the issue and that it is currently a sensitive matter for Walsall residents and businesses alike the Council does not consider that it would be in the public interest to cause or create further uncertainty at this time.
20. It added that the withheld information is uncertain and in particular the figures relating to potential costs are by no means definitive. It therefore considers that disclosing the information would place a range of uncertain information in the public domain, when there is still little clarity on the proposed plans for the site. It says that this would be likely to cause unnecessary confusion or even harm to the public and in particular potentially affected locations or businesses.
21. The council is satisfied that as the project progresses more robust details will become available, and it considers that the public interest in disclosure would be better served at that point. It argues that there is little evidence to suggest that the release of this information, at this time, would actually inform constructive and useful public debate.
22. It says that this argument was established further *in DBERR v Information Commissioner and Friends of the Earth (EA/2007/0072)* where the Tribunal commented in relation to the need for a private "thinking" space: *"This public interest is strongest at the early stages of policy formulation and development. The weight of this interest will diminish over time as policy becomes more certain and a decision as to policy is made public"*.

23. In this case the Council also consider that the disclosure of internal discussions would inhibit 'free and frank' discussions in the future, and that the loss of frankness and candour would damage the quality of advice provided and received and lead to poorer decision making causing a 'chilling effect'. Again this would not be in the public interest.
24. The Commissioner is satisfied that if the information in question would provide details future negotiations and financial information surrounding that then it is likely that its disclosure would adversely affect future negotiations which the figures address. At the least they would provide details of the estimated budgets which the council is working to, which contractors might use to frame their bids to carry out work.
25. The Commissioner notes that the council has already placed a great deal of information into the public domain about the project. The council argues that the information which the public need in order to understand the projects goals is already in the public domain.

#### The public interest in the information being disclosed

26. The Commissioner has considered the countering arguments. The project in question is controversial and is a large scale redevelopment of currently contaminated ground. It is suggested that the development will ultimately provide land to a number of businesses and create up to 4000 jobs as a result. It will therefore regenerate not only the land, but the local economy of the area as a whole.
27. The council has outlined to the public that it has a number of options available to it. The Commissioner notes that the intention is that the costs will be paid back through future business rate uplift anticipated to be generated in the Black Country Enterprise Zone. Clearly however there is a degree of uncertainty to this and there may be a potential for a loss to the public purse if things do not go to plan. This is one aspect of the complainant's arguments.
28. There is a public interest in the taxpayers being made aware of any risks involved in the project and of the options open to the council in order that they can better scrutinise and understand the council's decision making and its financial decision making.
29. A previous plan to regenerate the area failed when negotiations with a private contractor who was intended to carry out the work broke down. This may raise concerns as to the use of public money at a time where cost cutting and austerity measures are being implemented across local authorities. The Commissioner is aware however that the plans have been outlined in fairly clear detail via the disclosure and the central

redactions relate to smaller matters overall such as the estimated costs and profits of the various options and the legal liabilities of the options available. The council has outlined that the costs are simply estimates rather than factual figures and that it will disclose further information when it has more definite figures to provide.

30. Whilst the Commissioner recognises that it could easily provide an explanation with the figures to inform the public that the figures are loose assumptions only the disclosure of the costs or any risks associated with it is likely to draw media and public attention to the project. This is likely to generate further work defending the council's decision at a time when none of the estimates are certain. However there is also a strong argument that the public should be aware of the information which the council has available in order that it can participate in the decisions, or at the least, voice their concerns or their preferred choice on issues and decisions which are ultimately likely to affect all living within the local and surrounding areas. The Commissioner recognises however that some of these concerns will be addressed through any planning application which is submitted in the future, and the public will have the ability to comment on the applications themselves at that point.
31. The Commissioner also notes that the decisions will also affect the council financially and therefore there is a public interest in allowing access to the choices available to the council to determine whether their financial decisions, (and decisions which will also ultimately affect the state of the environment) will be available as soon as possible.
32. Although the financial figures which have been redacted are assumptions only they are the figures which the council has used as a base to its decisions. There is a public interest in that information being disclosed in order that the public can understand the full details which the council had before it when it made its decisions, and the likely or potential risks or debt which the council has then put the public purse to.

### Conclusions

33. The Commissioner has considered the above and borne in mind the presumption towards disclosure provided by Regulation 12(2). He recognises the council's concerns that as major steps in the development had not yet been completed at the time of the request, details such as the overall budget of the council may, if disclosed, allow contractors to frame their prices around the budget and therefore ultimately cost the tax payer more. At the least it would put contractors at an advantage when negotiating with the council as regards the

project as they would be aware of the overall budget which the council has to deliver the development.

34. Taking this into account, he has decided that the council was correct to apply the exception and that the public interest rests in the exception being maintained at the current time.

#### Regulation 12(5)(d)

35. The council has applied Regulation 12(5)(d) to part of the information. However the complainant argues that due to the application of Regulation 12(9) this exception cannot be applied.

#### Is Regulation 12(9) applicable?

36. Regulation 12(9) states: *"To the extent that the environmental information to be disclosed relates to information on emissions, a public authority shall not be entitled to refuse to disclose that information under an exception referred to in paragraphs (5)(d) to (g)."*
37. The complainant argues that this negates the ability of the council to apply Regulation 12(5)(d) to the information as it relates to emissions. He says that part of the project is the reclamation of contaminated and therefore that it relates to emissions.
38. The Commissioner has considered the information which has been withheld under Regulation 12(5)(d). The exception has only been applied to information held in the Appendix.
39. He considers that the information which has been redacted relates only indirectly to emissions and is therefore satisfied that Regulation 12(9) is not applicable.

#### Is Regulation 12(5)(d) engaged?

40. Regulation 12(5)(d) allows a public authority to refuse a request if disclosing the information would adversely affect the confidentiality of the proceedings of that public authority, or any other public authority, where that confidentiality is provided by law.
41. There is only a small section of the report which has been withheld under this exception, an appendix to the report entitled 'Head of Terms'. Sections of this page have been excluded under this exception. The council has also applied this in addition to the application of Regulation 12(5)(b) to other sections of the report, however the Commissioner has not needed to consider the application of Regulation 12(5)(d) to this information.

42. The term 'proceedings' is not defined within the EIR but the Commissioner considers that an activity has to have a degree of formality to qualify as such.
43. It is not sufficient that the information relates to formal proceedings for it to be exempt under regulation 12(5)(d). Those proceedings also have to be confidential under UK law. This means that the information has to be protected by either a statutory duty of confidence or the common law duty of confidence.

Was the meeting a 'proceeding' for the purposes of the exception

44. The council considers that both Tribunal decisions and the Commissioner's previous decision notices have outlined that 'proceedings' could include, for example, the consideration of a planning application by a planning authority, or an internal disciplinary hearing in a public authority; both of these have a degree of formality.
45. The council argues that in this case the process is the development of a major strategic project that has the potential to create many jobs and generate significant investment in the borough. At this stage the Council is engaged in the first phase of the project relating to establishing an appropriate delivery mechanism.
46. It argues that the decision of the Information Tribunal in *Benjamin Archer v the Information Commissioner and Salisbury District Council (EA/2006/0037)* confirms that such matters fall clearly with the definition of 'proceedings'.
47. As regards whether the proceedings are confidential the council said that it considers that the proceedings, not the information itself, are protected in law under Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972. Paragraph 3 of Part 1 of Schedule 12A states that:

*"(2)The public shall be excluded from a meeting of a principal council during an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that, if members of the public were present during that item, confidential information would be disclosed to them in breach of the obligation of confidence; and nothing in this Part shall be taken to authorise or require the disclosure of confidential information in breach of the obligation of confidence.*



*(3) For the purposes of subsection (2) above, "confidential information" means—*

*(a) information furnished to the council by a Government department upon terms (however expressed) which forbid the disclosure of the information to the public; and*

*(b) information the disclosure of which to the public is prohibited by or under any enactment or by the order of a court;*

*and, in either case, the reference to the obligation of confidence is to be construed accordingly."*

48. The council argues that for these purposes, 'confidential information' is defined in LGA 1972 section 100A(3), and the categories of 'exempt information' are defined in LGA 1972 Schedule 12A Part 1.
49. The Commissioner disagrees that that is the case. Information under Section 100(2) allows the authority to exclude the public from meetings where confidential information is being discussed. The definition of confidential information for the purposes of section 100(2) is contained in paragraph 100(3) (above), not in Schedule 12(A). The council has not provided evidence that these criteria apply in this case.
50. However the Commissioner is satisfied that its argument that the information falls within the definition of exempt information as defined in Schedule 12A is correct. Regulation 100(4) allows local authorities to exclude the public from meetings where exempt information is discussed.
51. Para 100(4) states:

*"A principal council may by resolution exclude the public from a meeting during an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during that item there would be disclosure to them of exempt information, as defined in section 100I below."*

*(5) A resolution under subsection (4) above shall—*

*(a) identify the proceedings, or the part of the proceedings, to which it applies, and*

*(b) state the description, in terms of Schedule 12A to this Act, of the exempt information giving rise to the exclusion of the public,*

52. Amongst other things, paragraph 100I defines exempt information as information described in Schedule 12A. The council clarified that in this

case as the information is potential costs to the Council it is in Schedule 12A paragraph 3; *'Information relating to the financial or business affairs of any particular person (including the authority holding that information'*. This therefore justifies the council's ability to exclude the public from this section of the meeting.

53. The next question is whether the voluntary exclusion of the public under this section qualifies the proceedings as confidential for the purposes of the exception. The section is clear that the information is 'exempt' rather than 'confidential'.
54. In the case of *Chichester District Council v the Information Commissioner and Lynne Friel* 2012 UKUT 491 AAC (23 August 2012) the Upper Tribunal considered whether meetings closed under Schedule 2 of the LGA 1972 were proceedings for the purposes It concluded that:
- "Section 100A(4) of the Local Government Act 1972 is not concerned with the withholding of information but with the confidentiality of the proceedings in which the relevant recorded information was discussed."* (paragraph 18)
55. The Upper Tribunal considered that section 100(4) provided that such meetings were proceedings where the public were excluded under this section. The tribunal also refer to the '*confidentiality*' of the proceedings under section 100(4). The Commissioner is therefore satisfied that the meeting was 'proceedings' for the purposes of the exception, and that those proceedings have the necessary confidentiality for the exception to apply.
56. The Commissioner is therefore satisfied that the information was exempt information under the LGA and that it formed part of "proceedings". He must therefore consider whether a disclosure of the information would have an adverse effect on the confidentiality of the proceedings.

#### Adverse effect on the confidentiality of the proceedings

57. The information which has been withheld under Regulation 12(5)(d) is held within the Appendix to the main report. The information which has been redacted is fairly limited in scope. The council said that a formal procurement process for a reclamation contractor is expected to take place in the near future. Should the estimated costs of reclamation enter the public domain then this procurement process would be prejudiced since potential bidders would frame their costs in relation to the publicly known figure and the ability of the council and suppliers to operate in a fair market and secure value for money would be compromised.

58. Furthermore, discussions had not been concluded and therefore it would not be appropriate for these matters to be released into the public domain at this stage as this would prejudice the negotiations and the process itself.
59. Given the level of public and political interest and perceived potential risks associated with this type of activity the Council says that it is satisfied that it is highly likely that an adverse effect would occur if this information was disclosed. It said that at the time of the request there was a degree of uncertainty as regards the development.
60. The Council also considers that there would be adverse effect on the proceedings of the current land owners and holders of the current liabilities.
61. The Commissioner is satisfied that some of the information is sensitive. It would provide information which would affect future negotiations and may ultimately lead to the project costing the taxpayer more – these were the reasons for excluding the public from this part of the meeting in the first instance.
62. However the Commissioner notes that some limited sections the information is in fact already available but has been redacted from Appendix A. This information cannot be held in confidence as it is has been disclosed already within the report or is otherwise in the public domain. It cannot therefore have an adverse effect on the confidentiality of the proceedings to disclose that information as that information is already available to the public.
63. Accordingly the Commissioner considers that from the appendix information under the following headings should be disclosed:
  - Parties
  - Land
  - Last word on line beginning "Subject to final agreement by..."
64. The Commissioner is satisfied however that Regulation 12(5)(d) is engaged for the remaining information. He has therefore considered the public interest test as outlined above as regards this exception.

#### The public interest

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

65. In relation to the public interest in protecting the confidentiality of the proceedings, the council argued that the fact that the confidentiality is protected by law provides a strong indication that there is an inherent

public interest in maintaining the exception. Breaching an obligation of confidence undermines the relationship of trust between confider and confidant, regardless of whether the obligation is based on statute or common law. In this case that argument is weakened as the interests being protected by exempting the relevant information are that of the council.

66. The Commissioner however considers that there is a public interest in allowing proceedings of this sort to be held in closed sessions in order for full and frank discussions, including the risks and the potential pitfalls of projects to be fully discussed by members. In this way their cabinet decisions are made from a fully informed position.
67. The disclosure of this sort of information whilst matters are still live would undermine the confidentiality of the proceedings as the relevant background information will generally be raised within the relevant documents given to members during or before the discussion. A disclosure of the information would effectively provide a degree of detail on the issues being discussed within the closed session, and thereby adversely affect the confidentiality of the proceedings. The council may then find that it needs to exclude some information from future reports of this nature in case that information is subsequently disclosed whilst the information remains sensitive. This is called the chilling effect.
68. Again therefore there is an element of the timeliness of the request when considering whether a disclosure of the information would have an adverse effect if disclosed. Once a decision has been made then in some cases the sensitivity of that information would become less over time. In cases such as this that is likely to be as further information becomes available to the public as the project develops.
69. However in this case the Commissioner notes that not all of the negotiations which needed to take place had been concluded at the time of the request. The council's argument is that releasing that information would damage its ability to obtain the best value for money in the negotiations. The information was therefore still 'live' and sensitive at the time that the request was received. The Commissioner recognises that transparency might therefore result in greater cost to the taxpayer. It is in the public interest to allow the council to carry out its negotiations on a level playing field to ensure that it can obtain best value from agreements.

The public interest in the information being disclosed

70. The council also considered how far the release of this further information would add to public understanding and/or increase the council's abilities to be transparent and accountable.
71. It said that in this case the public interest is served by the amount of information which has been released into the public domain to provide a reasonable level of public understanding and confidence in the project. Reports had previously been presented to the Council's Cabinet at meetings on 23 January 2013 and 13 March 2013 which provided information on progress of the project. Furthermore a public information event was held on 16 October 2013 to provide the local community with more detail on the project and to allow them to question council officers about specific aspects (the material from this event has subsequently been made available for wider viewing on the Council's website). At the event it was stated that a Community Liaison and Engagement Group will be established in due course formed of key local representatives and ward Councillors and supported by Council officers and project consultants, to meet on a regular basis to input and steer project delivery. Given this stated intention to transparency and to provide the public with a right to have a say in the decisions which are taken the council considers that at this time that the arguments in favour of the disclosure in the public interest do not outweigh the obligation to maintain the exception.
72. The Commissioner has considered this further. He has also taken into account the relevant public interest factors outlined in the section relating to Regulation 12(4)(e).
73. The Commissioner's decision is however that at the time of the request the public interest in the information being disclosed is outweighed by the public interest in the exception being maintained in this instance.

Regulation 12(5)(b)

74. Regulation 12(5)(b) provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect 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.
75. It has been established by the First-tier Tribunal that the regulation 12(5)(b) can be used to prevent the disclosure of documents that are subject to legal professional privilege if it can be demonstrated that a disclosure of that information would have an adverse effect upon the course of justice.

76. In brief, legal professional privilege is the principle that clients should be able to seek advice from their legal advisers and that to do so they must be able to speak freely and frankly with that adviser. It is therefore important that the communications between a client and a legal adviser remains confidential.
77. The First-tier Tribunal has accepted that to disclose documents covered by privilege may erode this concept and therefore have the potential to adversely affect the course of justice by undermining individuals' ability to obtain the best legal advice.
78. Legal professional privilege can only protect communications made between a client and their legal adviser for the dominant purpose of obtaining legal advice.
79. In this case the information relates to legal advice provided to the council regarding the project. The advice which was received is conveyed to members in the relevant document. The Council therefore argues these paragraphs are subject to legal professional privilege and exempt under Regulation 12(5)(b).
80. The Commissioner has considered the withheld information and the arguments and background information submitted by the council. He is satisfied that the advice was received from professional legal advisers and that the dominant purpose of the communication was to provide legal advice. Council officers have repeated the advice to members in the report.
81. The Commissioner therefore considers that the exception in Regulation 12(5)(b) is engaged.
82. As the exemption is engaged the Commissioner has carried out a public interest test as required by Regulation 12(1).

### The Public Interest

83. Regulation 12(5)(b) subject to a public interest test. The test is whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information. However the Tribunal have clarified that there is a strong, but not insurmountable, public interest in legal professional privilege being maintained.

Public interest arguments in favour of maintaining the exemption

84. The Commissioner and the First-tier Tribunal have expressed in a number of previous decisions that disclosure of information that is subject to legal professional privilege would have an adverse effect on the course of justice through a weakening of the general principle behind legal professional privilege. In the case of *Bellamy v Information Commissioner and Secretary of State for Trade and Industry* (EA/2005/0023) the Information Tribunal described legal professional privilege as, "a fundamental condition on which the administration of justice as a whole rests".
85. The Commissioner recognises the importance of allowing public authorities be able to consult with their lawyers in confidence in order to obtain legal advice. Any concerns about seeking advice resulting from previous disclosures could affect the free and frank nature of legal exchanges and may deter the authorities from seeking legal advice in the first instance.
86. It is also important that if an authority is faced with a legal challenge to its position, it can defend its position properly and fairly without being disadvantaged by its adversaries having access to the legal advice it is relying upon.
87. There will therefore always be a strong argument in favour of maintaining legal professional privilege. The Information Tribunal recognised this in the *Bellamy* case when it stated that:

*"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..."*
88. There will therefore be an initial weighting in favour of the information being withheld and the confidentiality of information, subject to legal professional privilege being maintained. The Commissioner recognises however that there will be circumstances where the public interest will still favour the information being disclosed.

The public interest in the information being disclosed

89. The Commissioner has considered the public interest in the information being disclosed.
90. The Commissioner considers the likelihood and severity of the harm that would be suffered if the advice were disclosed by reference to the following criteria:

- how recent the advice is
  - whether the advice is still live.
  - whether there has been a lack of transparency
  - the degree of public money and/or how many people will be affected by the advice.
91. With regard to the age of the advice the Commissioner accepts the argument advanced on a number of occasions by the Tribunal that as time passes the weight accorded to the principle of legal professional privilege diminishes. This is based on the concept that if advice is recently obtained it is likely to be used in a variety of decision making processes and that these processes are likely to be harmed by disclosure. However, the older the advice the more likely it is to have served its purpose and the less likely it is to be used as part of any future decision making process.
92. In many cases the age of the advice is closely linked to whether the advice is still live. Advice is said to be live if it is still being implemented or relied upon and therefore may continue to give rise to legal challenges by those unhappy with a course of action adopted on the basis of the advice.
93. In this case the advice is still relevant and decisions and policies being taken by the council in light of the advice are still being maintained. The advice is therefore still 'live' and relevant. The issues raised in the advice are still contemporary and the council were relying upon the advice at the time of the request. This is evidenced by the fact that they were reporting the advice to members at that time in order to facilitate their decisions.
94. There is a strong public interest in the general principles of achieving accountability and transparency in the actions of public authorities. This can help to increase public understanding, trust and participation in decisions made by public bodies.
95. The public interest in transparency is stronger where the advice effects a lot of people or if it involves large amounts of public money. It will also be stronger where the transparency of an authority over an issue has not been appropriate, for instance if the advice has been in any way misrepresented by the authority holding it in order to achieve a specific aim. In this case the advice is not generally known to the public and confidentiality of the information has been maintained. The council has however been transparent about its aims and objectives with the project, and the Commissioner has found no evidence that it has misrepresented the advice to the public.



96. The Commissioner is satisfied that the advice, and the project as a whole, is intended to affect a large number of people. Clearly the aim of the project is to create new business opportunities and jobs within the area. The council has said that the project may result in the creation of over 4000 jobs. The Commissioner recognises that this is the case, however he considers that this has not created a strong public interest in the advice in this instance being disclosed.
97. The Commissioner also notes that the project's aim is to reclaim land which is currently contaminated. Again this is likely to affect the neighbourhood surrounding the land, and is therefore likely to benefit relatively large numbers of people.
98. Having considered the nature of the withheld information however the Commissioner is satisfied that a disclosure of the advice would not greatly affect the public interest in this occurring to any great degree.
99. The Commissioner is therefore satisfied that the public interest rests with the exception being maintained in this instance.

#### Regulation 5(2)

100. Regulation 5(2) provides that (2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.
101. The complainant made his request to the council on 26 June 2013. He received and acknowledgement on the same date. He requested a review from the council on 30 July 2013 after failing to receive any further response from it. On 30 August 2013 the council wrote and apologised for the delay. On 21 August it wrote saying that it was considering his appeal and had 40 days to do so from the date on which it received his request for review on 30 July 2013. He finally received the council's full response on 13 September 2013.
102. The Commissioner's decision is therefore that the council breached the requirements of Regulation 5(2) in that it did not provide a response to the complainant's request within 20 working days.

## Right of appeal

---

103. 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)

104. 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.

105. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**