

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 27 August 2019

**Public Authority:** Ryedale District Council  
**Address:** Ryedale House  
Old Malton Road  
Malton  
North Yorkshire  
YO17 7HH

#### **Decision (including any steps ordered)**

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1. The complainant has requested a copy of a report to councillors regarding the extension of contract dated 2015. The council applied Regulation 12(4)(e) (internal communications) and Regulation 12(5)(b) (course of justice) to withhold the information.
2. The Commissioner's decision is that the council was not correct to apply Regulation 12(5)(b) and Regulation 12(4)(e) to withhold the information. She has also decided that the council did not comply with the requirements of Regulation 11(4).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - To disclose the withheld information to the complainant.
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**

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5. On 6 July 2018, the complainant wrote to council and requested information in the following terms:
  - "1. Report to councillors by RDC Chief Executive, dated 16 April 2015, entitled "Land at Wentworth Street – Request for a contract extension.*
  - 2. Fee paid to CBRE (a commercial real estate services and investment firm) for advice specifically referred to in the Executive Summary of the above report."*
6. The council responded on 1 August 2018. It refused the request on the basis that the exemptions at section 36, 41, 42 and 43 applied. It provided the information falling within the scope of part 2 of the request however.
7. On 2 August 2018 the complainant requested that the council carry out a review of its decision. The council then wrote in response on 25 September 2018 indicating that it had now realised that the request was for environmental information and that it would therefore respond accordingly in due course.
8. Following an internal review the council wrote to the complainant on 22 November 2018. It had reconsidered the request and applied Regulation 12(4)(e) and Regulation 12(5)(b) to withhold the information.

## **Scope of the case**

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9. The complainant initially contacted the Commissioner on 23 October 2018 to complain about the way her request for information had been handled. Her initial concern was that the council had failed to respond to her request for internal review.
10. Following the council's review response of 22 November 2018 the complainant believes that the council is not correct to withhold the information falling within part 1 of the request under the Regulations it has cited.

## Reasons for decision

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### Background to the decision

11. The request relates to the sale of a car park on Wentworth Street in Malton for use as a supermarket. The decision to use the site at Wentworth Street led the council to enter into a contract with a company named GMI Holbeck. The issue was particularly contentious over a long period of time<sup>1</sup>, and there were significant public objections to the development. A planning inquiry<sup>2</sup> and litigation also took place over the issue and the council's planning decisions were also overturned on a number of occasions.
12. A judicial review taken by another company, Fitzwilliam Estates Ltd in July 2015 led to the planning decision being overturned<sup>3</sup> due to the process applied by the council to reach the planning decision.
13. In October 2015 the council took a decision not to terminate the contract<sup>4</sup>, effectively confirming its decision to continue with the proposed development. The complainant has however provided a copy of an email from one councillor to other councillors relating to the requested briefing report (the withheld information). The councillor argues that the briefing report was biased and one sided in nature. He suggested that some councillors may have been 'whipped' into agreeing the proposal not to terminate the contract.
14. In spite of the decision not to terminate the contract at that time, another council meeting was called to reconsider the decision in January 2016. The Yorkshire Post reported that "*...some members criticised the way the vote was carried out and successfully campaigned for the decision to be reviewed at an extraordinary council meeting on Thursday night*"<sup>5</sup>. At that point the council's leader said that they had reconsidered

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<sup>1</sup> <https://www.yorkpress.co.uk/news/ryedale/11172046.ryedale-district-council-approves-application-to-build-supermarket-on-maltons-wentworth-street-car-park/>

<sup>2</sup> <https://www.yorkpress.co.uk/news/ryedale/9950431.councils-decision-on-wentworth-street-car-park-flawed/>

<sup>3</sup> <https://www.bbc.co.uk/news/uk-england-york-north-yorkshire-33481747>

<sup>4</sup> <https://www.gazetteherald.co.uk/news/13844367.ryedale-district-council-vote-to-extend-wentworth-street-car-park-developers-contract-is-challenged/>

<sup>5</sup> <https://www.yorkshirepost.co.uk/our-region/north-yorkshire-moors-and-coast/hope-of-end-to-malton-supermarket-saga-1-7670950>

the decision to go ahead with the development and that they now considered that it was time to drop the proposal altogether<sup>6</sup>. The development subsequently never went ahead.

15. The complainant argues that, due to the prior work on the proposal, together with the litigation which occurred over the scheme, effectively hundreds of thousands of pounds of tax-payers money had been spent on issues surrounding the proposed development which had all ended in naught.

Regulation 12(5)(b)

16. Section 12(5)(b) of the EIR 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. The Commissioner accepts that the exception is designed to encompass information that would be covered by legal professional privilege, however the scope of the exception is wider than information subject to legal professional privilege.
17. In the decision of *Archer v Information Commissioner and Salisbury District Council* (EA/2006/0037) the First-tier Tribunal (Information Rights) ("the Tribunal") highlighted the requirement needed for this exception to be engaged. It has explained that there must be an 'adverse' effect resulting from disclosure of the information, as indicated by the wording of the exception. In accordance with the Tribunal decision of *Hogan and Oxford City Council v Information Commissioner* (EA/2005/0026 and EA/2005/030), the interpretation of the word 'would' is 'more probable than not'.
18. In the case of *Bellamy v Information Commissioner and Secretary of State for Trade and Industry* (EA/2005/0023), the Tribunal described legal professional privilege as 'a fundamental condition on which the administration of justice as a whole rests'. The Commissioner accepts that disclosure of legal advice would undermine the important common law principle of legal professional privilege. This would in turn undermine a lawyer's capacity to give full and frank legal advice and would discourage people from seeking legal advice.
19. There are two types of privilege; 'litigation privilege' and 'legal advice privilege'. In this case the council argues that the information is subject to advice privilege.

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<sup>6</sup> <https://www.bbc.co.uk/news/uk-england-york-north-yorkshire-35293689>

20. In both these 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. Communications made between adviser and client in a relevant legal context will therefore attract privilege.
21. It should be noted that, whether or not the advice is subject to advice privilege. The exemption will be engaged if a disclosure of the information would prejudice the factors outlined in Regulation 12(5)(b).

Is the exception engaged?

22. The council argues that although the report states that it was authored by the Chief Executive, it is essentially legal advice which was provided to the Chief Executive by external legal advisers. It argues that a private company of solicitors provided legal advice about the council's options on whether to terminate the contract and the potential consequences of those options. It said that the Chief Executive wrote the report based upon this advice in order to brief councillors. It argues that the document was then substantially reviewed and amended further by a QC before being issued. It therefore argues that the information is subject to advice privilege.
23. The council has provided the Commissioner with evidence that the report was amended by external professional legal advisors.
24. In its initial response to the complainant's request the council stated that 'some parts' of the information were subject to legal professional privilege but did not state that all of the document falls within the scope of the exemption. However in response to the Commissioner's further questions regarding this the council stated that:

*"As stated above, the initial draft of the report was written by the Chief Executive and the Head of Economy, however that content derived from and reflected the initial legal advice from [redacted by ICO] Solicitors and the Council's internal legal team. In any case that content was substantially amended by and on the advice of [name of individual redacted by ICO] QC, however where any of the final content of the report that was written by the Chief Executive or the Head of Economy survived, it was based on the legal advice provided and would betray the trend of the advice if disclosed."*

25. The Commissioner asked the council to provide her with a copy of the legal advice it had received. The council did so. It also provided the Commissioner with a copy of the report as amended by the QC. The latter advice is provided in the form of amendments to the draft document, however the Commissioner considers that the amendments

are essentially the advice of the QC in formulating the briefing to councillors and they are integral to the finished document. The report was then redrafted again, taking into account the amendments suggested by the QC, before being issued.

26. In *Edwardian Group Ltd* [\[2017\] EWHC 2805 \(Ch\)](#) the High Court decided that information which would disclose the substance or the trend of legal advice can also fall within the scope of advice privilege. The council argues that the initial advice it received, together with the amendments made by the QC effectively result in the briefing note being subject to privilege as its disclosure would provide the substance and trend of the legal advice which it received.
27. Based upon the evidence provided the Commissioner is therefore satisfied that the advice was provided by professional legal advisers. The advice was drafted for the dominant purposes of obtaining legal advice and would be subject to advice privilege.
28. She is also satisfied that the briefing note contains the substance of the advice from the QC's amendments. In essence therefore the Commissioner is satisfied that a disclosure of the document would provide the substance of legal advice received by the council and that this is subject to legal professional privilege.

*Has privilege been lost?*

29. The briefing report states on the opening page that the some of the information contained within the briefing note is provided to cabinet under local government arrangements under Part VA and Schedule 12A of the Local Government Act 1972. This allows the discussions to be take place in private, without the public being present.
30. The minutes for the relevant meeting show that in fact the issue was not discussed in April 2015 due to issues which had arisen shortly before it was due to be considered. The decision to extend the contract was made at a later date, in October 2015.
31. The Commissioner is satisfied that no disclosure of the information has taken place outside of the council. The Chief Executive, as the client of the QC, has not disclosed the advice (in the form of the briefing note) outside of the council provision of the Local Government Act cited above.

32. The Commissioner's guidance on legal professional privilege<sup>7</sup>, at paragraph 34, states, as regards a restricted disclosure of privileged information, that:

*"This means a disclosure of information to a limited audience, with restrictions on the further use of the information; for example, a disclosure made on a confidential basis. The information would therefore remain confidential from the world at large, thus retaining its legally privileged status. As above, a restricted disclosure may be made inside or outside the litigation context."*

33. The Commissioner is therefore satisfied that sections of the briefing note was subject to advice privilege and that this privilege was not lost by the report being sent to councillors in the form of the briefing note.
34. The council was therefore correct in that Regulation 12(5)(b) is engaged. As Regulation 12(5)(b) is subject to a public interest test the Commissioner has gone on to consider whether the public interest in maintaining the exception outweighs the public interest in disclosure.

#### *The Public Interest Test*

#### *Arguments in favour of disclosing the requested information*

35. The council confirmed that, in considering the balance of the public interest in this case, it had taken into account the presumption in favour of disclosure provided by Regulation 12(2).
36. The public interest in the disclosure of the information revolves around creating greater transparency over circumstances which led to the council deciding not to terminate the contract at the time in question when other circumstances surrounding the development ultimately led to the council losing appeals, paying significant costs as a result of this and ultimately deciding to withdraw from the contract shortly afterwards.

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<sup>7</sup> [https://ico.org.uk/media/for-organisations/documents/1208/legal\\_professional\\_privilege\\_exemption\\_s42.pdf](https://ico.org.uk/media/for-organisations/documents/1208/legal_professional_privilege_exemption_s42.pdf)

37. The judicial review of the planning decision was particularly critical about the process which the council took when the case was sent back for a further planning decision to be made following a planning inspector's decision. Insofar as the overall issue is concerned, this creates a strong public interest in the information being disclosed in order for the public to assure itself that the decision regarding the contract was appropriate for the circumstances at that time.

*The public interest in the information being withheld.*

38. The council acknowledged that there is a strong inbuilt public interest in it not being discouraged from obtaining appropriate legal advice to enable it to make sound, well-reasoned and balanced decisions.
39. The council noted that the proposal in question was of interest to the local community at the time, however, it argues that the proposal did not proceed and, therefore, no disposal of assets took place nor was any development undertaken.
40. The council argues that although the direct purpose of the advice is no longer live, the advice contained within would still be relevant should another project of a similar nature be proposed for the site.

Balancing the public interest

41. The Commissioner recognises the general principle that clients should be able to receive free and frank legal advice from their lawyers. The Commissioner considers that there will always be a strong argument in favour of maintaining legal professional privilege. The Information Tribunal affirmed this in the Bellamy case when it said:

*"...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..."*

42. The Commissioner accepts there will always be an initial weighting in terms of maintaining the exemption, because of the public interest in the maintenance of legal professional privilege. However, the Commissioner recognises that there are circumstances where the public interest will favour disclosure.

43. The Commissioner considers that factors which might suggest equally strong countervailing arguments include 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.
44. Following her inspection of the information, the Commissioner could see no sign of unlawful activity, evidence that the council has misrepresented any legal advice it has received or evidence of a significant lack of transparency as regards that advice. As the council has argued previously, the fact that planning decisions have been reversed and decisions have been amended or changed does not of itself provide any evidence of any unlawful activity or misrepresentation.
45. The Commissioner has noted that the reviews which followed the planning decision, which included both a planning inquiry and a subsequent judicial review, did bring to light issues with the process which had been undertaken as regards planning approval for the site. These included criticism of an officer's report to the planning committee. The judge in the High Court considered this misled the committee as to the planning inspector's findings when the decision was put back to the committee for approval for the site. Ultimately the judicial review was successful and the High Court quashed the planning decision. These factors relate to the planning issues rather than to the decisions being taken as regards the briefing note, which relates to contractual issues.
46. She has also taken into account the councillor's email and the reasons outlined for this within this correspondence.
47. The Commissioner notes that, overall, the course of the decisions taken over the site does include circumstances where substantial amounts of money were involved, and given the impact upon the town and the council's finances, a large amount of people were affected to some degree, both by the direct impact of the planning decisions and the council's withdrawal from the contract and the subsequent, and significant, loss of public funds. The Office of National Statistics marks the population of Ryedale as 54,311 in 2017. These would have been affected by the loss of public funds as well as the direct issue of whether, and where, new retail developments should take place within the town.

48. With the decision to terminate the contract in 2016 this particular issue is no longer live. The council however argues that:

*"The council has confirmed that the information remains relevant to its decision making procedures generally and would be equally relevant should there be a further development proposal made in the future relating to the same site."*

49. The advice which is held within the briefing may be relevant to future issues regarding land sales, however the council has not clarified exactly how, why or when this might be relevant to its future dealings. It suggests only that should a further proposal be made to develop the land the advice would be relevant. For the most part, however, the Commissioner considers that the advice was specific to the terms of the contract which was agreed with the developer, and the circumstances in place at that time. Any future decisions regarding the site will not relate to a decision as to whether to terminate this contract, and will instead be based upon a completely different contract, possibly with a different developer.
50. The issues which were for decision in this briefing note did not directly involve the planning decision per se, but whether the developer's failure to meet contractual terms within a set period should lead to the council terminating the contract – a commercial decision for the council to take in its position as the landowner rather than its position as planning authority (in which the council acts independently of its own commercial interests). Although the planning issues were involved (as a termination of the contract would have effectively negated the viability of the development under that contract), it was a contractual decision which was to be discussed by the council. As noted above, the extension of the contract was itself clouded in controversy, as reported in local media.<sup>8</sup>
51. In reaching a view on the balance of the public interest in this case the Commissioner has considered the circumstances of this particular case and the content of the withheld information. She accepts that there is a public interest in disclosure of the information given the history of events over the proposed development. The issues which the development went through as it progressed resulted in significant costs to the council, and the issues as to how the reversal of the decision to continue with the contract are generally unclear.

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<sup>8</sup> <https://www.gazetteherald.co.uk/news/13844367.ryedale-district-council-vote-to-extend-wentworth-street-car-park-developers-contract-is-challenged/>

52. Whilst she is also mindful of the strong public interest inbuilt into legal professional privilege in protecting the confidentiality of advice between a lawyer and their client, she has also taken into account the effects which the issue had on the population, the costs which were subsequently incurred and the time which has passed since the issues were directly relevant.
53. Given the strong factors in favour of the disclosure of the information the Commissioner has concluded that the balance of public interest rests in the information being disclosed. The council was not therefore correct to rely on Regulation 12(5)(b) to withhold the briefing note.

Regulation 12(4)(e)

54. As the Commissioner has decided that the public interest rests in the disclosure of the information which is subject to Regulation 12(5)(b) she has gone on to consider the council's application of Regulation 12(4)(e) to withhold the information.
55. Regulation 12(4)(e) of the EIR says an authority may refuse to disclose information to the extent that the request involves disclosure of internal communications. This regulation is subject to the public interest test under Regulation 12(1)(b).
56. As the Commissioner notes in her published guidance on the application of Regulation 12(4)(e), the term '*internal communications*' is not defined in the EIR and is normally interpreted in a broad sense. She has considered the meaning of '*internal*' and '*communications*' separately.
57. With regard to the term '*internal*', the Commissioner notes in her guidance that "...an '*internal*' communication is a communication within one public authority".
58. With regard to '*communications*', the guidance notes that '*the concept of a communication is broad and will encompass any information someone intends to communicate to others, or even places on file... It will therefore include not only letters, memos, and emails, but also notes of meetings or any other documents if these are circulated or filed so that they are available to others*'.
59. The Commissioner is satisfied that as the document is a briefing to councillors it is an internal communication and thus falls within the scope of the exception. The information has not been disclosed outside of the council, nor was it ever intended to be.

60. She has therefore decided that the exception in Regulation 12(4)(e) is engaged by the information. As such the Commissioner has gone on to consider the public interest test required by Regulation 12. When doing so she has again taken into account the presumption in favour of disclosure specified by Regulation 12(2).
61. The test, provided in Regulation 12(1)(b), is whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Public interest

The public interest in the information being disclosed

62. The Commissioner's published guidance on Regulation 12(4)(e) advises that public interest arguments relating to this exception should always relate to the content and sensitivity of the particular information in question, and the circumstances of the request. She has therefore borne in mind many of the factors outlined in her consideration of the application of Regulation 12(5)(b) above.
63. The council acknowledged that there is a general public interest in transparency in decision making and the exercise of statutory powers. It confirmed that it considered that disclosure of the information may assist the public in satisfying themselves that the council has sought and provided appropriate legal advice and that all relevant matters have been considered. The council confirmed that it recognised that the proposal to which the matter relates is a matter of concern for the local community and disclosure might aid local understanding of the situation.
64. The complainant has previously provided the Commissioner with the following submissions in support of disclosure:
- On 29 July 2010 the council voted to sell the edge-of-town car park in its ownership at Wentworth Street, Malton (WSCP) to a superstore developer.
  - The council chose to bring the application to the same planning meeting as an application from Fitzwilliam Malton Estate (FME) to redevelop the livestock market.
  - At the planning meeting the council refused the livestock market site on four grounds and awarded permission to its own car park site. The subsequent planning appeal resulted in all four grounds for refusal being reversed and permission awarded to FME along with £148,000 costs being paid by the council.

- In 2014 the council again awarded permission for a superstore on its site. A subsequent Judicial Review in the High Court quashed the permission, ruling that the council's conclusions were "*infected with error*", *'inchoate'* and *'significantly misled members.'*" (Justice Dove, Judgment 9.7.2015, case CO/4915/2014)<sup>9</sup> and the council again had to pay costs.
65. The Commissioner recognises that shortly after this decision point, the meeting to debate whether to terminate the contract occurred and the council's initial decision was to agree to continue with the contract. As noted above, the press noted that this decision was criticised internally within the council, and the decision was reversed shortly afterwards.
66. The complainant considers that the council's conduct in this matter has been unreasonable and resulted in irresponsible waste of public money. She considers that these factors constitute compelling reasons for greater transparency and accountability and for disclosure of the information to serve these ends.
67. The Commissioner accepts that there is a public interest in disclosure in promoting transparency and accountability around decisions made by public authorities. The Commissioner also accepts that there is a public interest in allowing the public to better understand how decisions are reached.
68. As noted, the issue regarding the Wentworth Street Car Park was, at the time, extremely controversial. A number of council decisions regarding the planning decisions which were taken were subsequently overturned in appeals, and the High Court was critical of the council's actions and in respect of the council's decision making. This creates a strong public interest in creating greater transparency on the overall issues which occurred.

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<sup>9</sup> <https://s3-eu-west-1.amazonaws.com/cjp-rbi-estatesgazette/wp-content/uploads/2015/07/miltonj.rtf>

69. The Commissioner also notes that the controversy surrounding the issue stretched specifically to the briefing note in question, with one councillor criticising the document to other councillors and resigning his post on the basis that it provided a biased and one sided opinion. He accused the writers of the report of scaremongering and of writing a report intended to back the reader into a corner.
70. When taken into account with the High Court's criticism of planning advice received by councillors from council officers the public interest in the disclosure of the information becomes particularly strong.
71. However, the Commissioner notes that the meeting to which the briefing notes refer was not a planning approval meeting, nor was it the meeting which decided to go ahead with the proposed development in the first instance. The issue at hand was whether to terminate the contract given that certain conditions initially agreed between the parties had not been met by the time of the meeting.
72. As the meeting was neither specifically agreeing the contract, nor addressing the planning aspects of the intended development, this does weaken the public interest in the disclosure of the information. However it has to be recognised that by continuing with the contract the council was effectively making a decision that it should still proceed with the development. A disclosure of the briefing note would provide details on the arguments for that decision being reached.
73. There is a public interest in allowing the public to be able to access information on why the decision not to terminate the contract was taken when the decision was effectively reversed a short time later. There is also a strong public interest in disclosing the information given the eventual costs of the project to the council (and therefore the public purse), together with the associated issues which the development ultimately entailed.
74. The issue is no longer a live issue insofar as this particular development is concerned. The information relates to a proposed development which will not now go ahead. There are therefore no extant requirements for thinking space in order to determine the council's future policy over this issue. This lowers the public interest in the exception being maintained.

The public interest in the exception being maintained

75. The Commissioner has outlined the reasons for the council's refusal in her arguments relating to the application of Regulation 12(5)(b) above. It argues that if it were to disclose this advice, even after the relevant issue has been completed, this goes against the general principles protecting the rights of individuals to have full and frank discussions

with their legal advisers on a confidential basis and to share this information in order to reach decisions on a fully informed and legally robust basis.

76. The Commissioner's guidance on Regulation 12(4)(e)<sup>10</sup> provides that the central arguments surrounding the application of the exception relate to creating a 'safe space' in order to consider and discuss issues and formulate policy, and in ensuring that no 'chilling effect' occurs as a result of the disclosure of information.
77. The Commissioner's guidance specifically addresses the issue of safe space arguments and considers that the public interest factors in maintaining the exception weaken once the issue at hand is no longer live.
78. As regards chilling effect arguments, paragraph 52 of the Commissioner's guidance states:

*"Public authorities often argue that 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 and lead to poorer decision making. This is known as the chilling effect"*

79. At paragraph 59 the guidance goes on to state:

*"The Commissioner does not consider that chilling effect arguments will automatically carry much weight in principle. The weight accorded to such arguments will instead depend on the circumstances of each case, including the timing of the request, whether the issue is still live, and the content and sensitivity of the information in question."*

80. In this case the council has demonstrated that basis of its claim that the briefing note was based upon legal advice which is subject to legal professional privilege. The confidentiality of that advice has not been lost by its inclusion within the briefing note which was disclosed to councillors. It argues that:

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<sup>10</sup> [https://ico.org.uk/media/for-organisations/documents/1634/eir\\_internal\\_communications.pdf](https://ico.org.uk/media/for-organisations/documents/1634/eir_internal_communications.pdf)

*"The council has confirmed that the information remains relevant to its decision making procedures generally and would be equally relevant should there be a further development proposal made in the future relating to the same site."*

Balance of the public interest

81. Any public interest in disclosure has to be balanced against the prejudice that would be caused to the ability of the council to carry out its planning and discuss sensitive commercial matters in the future.
82. The Commissioner accepts the council's argument that free and frank discussions to inform decision making are required in order for it to be efficient and effective. She has considered the council's argument relating to the need for 'safe space' for discussions and the potential for a chilling effect to occur in the future. As noted above, the Commissioner does not consider that the issue is still a live issue, and this significantly weakens the arguments for the need for any continued 'safe space'.
83. Under the circumstances of this case she considers that the potential for a chilling effect to occur has also been significantly weakened given that the issue is no longer live, the contract has been terminated and the development will not now occur.
84. The issues raised in the briefing note relate primarily to the contract, not to the wider planning issues. The potential future planning issues which arose are essentially a separate issue to the contractual commercial aspects of the contract extension which are considered in the briefing note.
85. Taking into account the factors which she has outlined above the Commissioner considers that there is a very strong public interest in creating greater transparency over the issue of the contact.
86. Having reviewed the information in question, given her findings on the importance of disclosure under Regulation 12(5)(b), the Commissioner has therefore decided that the balance of the public interest rests in the disclosure of the information.

87. The Commissioner has therefore decided that the council was not correct to rely upon Regulation 12(4)(e) under these circumstances.

Regulation 11(4)

88. Regulation 14(2) provides that where a requestor asks the authority to review its decision, the authority shall notify the applicant of its decision as soon as possible and no later than 40 working days after the date of receipt of the representations.

89. In this case the complainant made her request for review on 2 August 2018. The council responded after considering the information under the FOI Act, on 22 November 2018.

90. This falls outside of the period of time required to respond set by Regulation 11(4).

## Right of appeal

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91. 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: 0870 739 5836  
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)

92. 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.

93. 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**