

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

**Date:** 29 March 2021

**Public Authority:** Lee Valley Regional Park Authority  
**Address:** Myddelton House, Bulls Cross  
Enfield  
Middlesex  
EN2 9HG

**Decision (including any steps ordered)**

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1. The complainant has requested information from Lee Valley Regional Park Authority (LVRPA) about its disposal of parcels of land. LVRPA has refused to disclose the information it holds that is relevant to part 1 of the request under regulation 12(4)(e) of the EIR (internal communications) and considers the public interest favours maintaining this exception. The complainant disputes LVRPA's reliance on regulation 12(4)(e) and considers that LVRPA holds further information within the scope of the second part of his request.
2. The Commissioner's decision is as follows:
  - On the civil standard of the balance of probabilities, LVRPA does not hold information within the scope of part 2 of the request and therefore regulation 12(4)(a) can be applied to that information.
  - The information that LVRPA holds that falls within the scope of part 1 of the request can be categorised as an internal communication under regulation 12(4)(e) of the EIR and the public interest favours maintaining this exception.
3. The Commissioner does not require LVRPA to take any remedial steps.

## Background

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4. In its submission to the Commissioner, LVRPA has provided a background and context. It has explained that it is a statutory body created by the Lee Valley Regional Park Act 1966. The Land and Property Review Working Group (LPRWG) is a working group comprising certain of the Authority's Members. Members are, predominantly, councillors for local authorities from London, Essex and Hertfordshire.
5. LVRPA has also formed an Executive Committee which, ultimately, is accountable to Members who govern it. Members take key decisions, eg a decision in principle that land owned by LVRPA may be disposed of, at a public meeting. The public does not have any right to be consulted on a potential land disposal. However, they are permitted to make oral and written representations at formal, public Members' meetings.
6. The park for which LVRPA is responsible is very large and it owns almost 5,000 acres of the 10,000 acre Regional Park. From time to time, in the interests of the proper management of the park and the furtherance of its statutory remit, LVRPA disposes of or acquires land. For example, it may raise funds by selling to a developer a piece of land that adds little to the park's function.
7. Not all land disposals are for commercial or residential development, however. LVRPA provides various leisure activities and manages a vast amount of open space, and a disposal might, for example, be a long lease to enable the development of a new leisure facility for the benefit of members of the public who come to enjoy the park.
8. The function of the LPRWG is to be a sounding board for potential land acquisitions or disposals. It meets from time to time to discuss, for example, a potential sale. However, the LPRWG's role does not involve producing or reviewing any kind of written analysis of the pros and cons of a potential disposal. Rather, it would simply meet to review and discuss matters. Comments from the LPRWG may be carried back by officers to the Executive Committee.
9. The LPRWG has no decision-making power. Any actual disposal 'in principle' – ie decision that land may be advertised for disposal if appropriate – is made by Members at a formal public meeting, following a proposal from an officer. If the proposal is approved, the land may be marketed if a suitable opportunity arises.
10. LVRPA follows the statutory requirements for local authorities in publishing meeting information in advance. This entails giving five clear days' notice of the agenda for any formal Members' meeting. Such notice is published on LVRPA's website. Information on a proposal 'in

principle' to dispose of land would be contained in a 'Part 1 Report' published on the website in respect of the meeting question.

11. Any commercially sensitive information about a potential disposal is contained in a private 'Part 2 Report'. However, the proposal to dispose of the land will itself always be public, in the Part 1 Report. The Part 2 Report might contain, for example, sensitive information on a target price for a plot of land or financial information on the future transaction and/or details of the potential purchaser of the land.
12. Although Part 1 Reports are published five clear days' in advance, actual meeting dates are published much earlier, months in advance. It is not LVRPA's practice to put a proposal to dispose of land at any additional meetings of Members that may be called, so it would – save in exceptional circumstances that LVRPA cannot foresee – be put at one of these meetings whose date is known well in advance.
13. LVRPA stresses the above because it says it is relevant to the complainant's arguments on the public interest. However, LVRPA notes that for present purposes it would be easy for a concerned member of the public to diarise the dates of planned meetings well in advance, and to check for the Part 1 Report five clear days in advance of each meeting. The effect of this is that a disposal will not be 'sprung upon' members of the public.

## **Request and response**

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14. On 31 January 2020 the complainant wrote to LVRPA and requested information in the following terms:
  1. A list sufficiently identifying all those parcels of land which have been identified by the Authority's Land and Property Review Working Group for potential disposal as areas of land which could be considered as land not required for Regional Park purposes.
  2. In relation to each such parcel of land the analysis (contained either in the minutes of the Land and Property Review Working group or in any working paper presented to the Land and Property Review Working Group) setting out the basis of its identification for potential disposal as an area of land which could be considered as land not required for Regional Park purposes.
15. LVRPA responded on 29 February 2020. It withheld the information that it holds under regulation 12(4)(e) of the EIR and confirmed it considered the public interest favoured maintaining this exception.

16. LVRPA provided an internal review on 28 May 2020. It upheld its position.

## **Scope of the case**

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17. The complainant contacted the Commissioner on 5 June 2020 to complain about the way his request for information had been handled.
18. The complainant has told the Commissioner that wider correspondence with LVRPA had indicated to him that it did not hold the information requested in part 2 of his request, which he accepted at the time. The complainant now considers that LVRPA would have held the information requested in part 2 of the request (for an analysis), at the time of his request.
19. LVRPA has provided the Commissioner with certain information it holds for the purpose of this investigation but has advised that it does not consider this information to fall within the scope of part 2. LVRPA considers that it holds no information relevant to that part. LVRPA has advised that if the Commissioner finds that this information is within the scope of part 2, it will refuse to disclose it under regulations 12(4)(e) and 12(5)(e) (commercial confidentiality).
20. The focus of this investigation will therefore be first, to consider whether LVRPA holds information within the scope of part 2 of the request and can apply regulation 12(4)(a) to that part. She will then consider whether LVRPA can withhold the information relevant to part 1 of the request (and if necessary, in part 2) under regulation 12(4)(e) and/or 12(5)(e), and the balance of the public interest.

## **Reasons for decision**

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### **Regulation 12(4)(a) – information not held**

21. Regulation 12(4)(a) of the EIR says that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
22. LVRPA has confirmed that it does not hold the information requested in part 2 of the request at time it received that request. Part 2 is for analyses associated with parcels of land that the LPRWG had identified as being suitable for potential disposal as land not required for park purposes (a list of which is requested in part 1), that set out the basis on which the parcels had been identified as such.

23. LVRPA says in its submission that it has interpreted part 2 as being any analyses that the LPRWG carried out. This is, LVRPA says, because part 1 concerns a list of parcels of land that the LPRWG had identified.
24. However, the request gives as an example, analyses in any working paper that may have been presented to the LPRWG. In the Commissioner's view it is conceivable that a third party may have carried out and presented analysis that the complainant is seeking ie someone outside of the LPRWG. The Commissioner considered LVRPA's interpretation of part 2 was too narrow and she asked it to consider whether it holds any analyses carried out by a party other than LPRWG. LVRPA confirmed that it does not, and its reasoning has been included in the following discussion.
25. LVRPA has told the Commissioner that, in its view, the analyses that the complainant is seeking does not exist. This is because the LPRWG does not set out any written analysis of why it has chosen to discuss any given land parcel for disposal. It simply discusses land parcels that are put to it by LVRPA's officers. Note that the LPRWG discusses parcels of land identified by officers, it does not identify such parcels itself.
26. LVRPA has provided to the Commissioner documents for LPRWG meetings at which land up for potential disposal has been discussed. It has advised that it has done this in the interests of completeness and transparency as it does not consider this information falls within the scope of part 2. LVRPA considers that this material is not analytical in nature, nor does it reflect the reasons for which land is brought up to the LPRWG for discussion. Rather, LVRPA says, information [about land] in this material is simply a collection of facts about each land parcel which may be relevant to any analysis actually produced.
27. But LVRPA has gone on to explain that, in fact, there is no subsequent analysis by the LPRWG of why it has chosen to discuss any given parcel of land, or otherwise 'identified it' as land for potential disposal. This reflects the fact that there is not a linear, formal process by which the LPRWG discusses a potential land disposal and then puts forward an analysis to the Executive Committee. The LPRWG simply discusses certain land-related issues that are put before it by officers, and members of the working group then discuss any potential disposals as part of the report presented to the Executive Committee.
28. According to LVRPA, any "analysis" by the LPRWG of why it has chosen to discuss a particular plot of land would, if it existed, be found in the minutes of the LPRWG. LVRPA says that none of the minutes contain any such analysis because often, in practice, the LPRWG does not discuss in any detail why a given parcel of land is up for discussion. It simply discusses the progress of a disposal and practical matters that

have arisen. LVRPA notes that the complainant is seeking information on the rationale for the land's potential disposal. LVRPA has confirmed that it has checked the minutes of all LPRWG meetings but has found no such information. It says such discussions would likely be verbal and informal prior to a formal Members' meeting at which the matter would be discussed in public. If and when a formal Members' meeting is listed, "at that point an analysis of the rationale for disclosure will be recorded in writing in a Part 1 Report."

29. LVRPA concludes its submission on regulation 12(4)(a) by confirming it is confident that it does not hold the information requested in part 2 and there is no 'analysis' available which provides the basis for which the LPRWG has identified any parcel of land for potential disposal. LVRPA says that the LPRWG creates and reviews a relatively limited number of documents, which are largely restricted to those that LVRPA has provided to the Commissioner. LVRPA says its officers have looked through these limited documents and have found no information that would constitute an 'analysis' of the kind the complainant is seeking.
30. In his complaint to the Commissioner the complainant has referred her to paragraph 30 of a report (no. A/4237/17) presented to a LVRPA meeting and dated 19 January 2017. In that paragraph it is stated "The Working Group has identified broadly areas of land for potential disposal which could be considered as land not required for Regional Park purposes..." This would suggest that it was the LPRWG that *had* identified potential sites. However the complainant has gone on to note that earlier paragraphs in the above report describe how parcels of land had in fact been identified for potential disposal as a result of "iterations" between LVRPA officers and the LPRWG.

#### *Commissioner's conclusion*

31. In its submission LVRPA has confirmed that the LPRWG does not 'identify' land for potential disposal – rather, LVRPA officers maintain a list of sites, for internal use, that might be considered for disposal. From time to time, LVRPA officers would discuss certain items on this list with Members, who did not have access to the full list.
32. Since the LPRWG is not responsible for identifying parcels of land for potential disposal, the LPRWG would not have generated any analyses of parcels of land, or considered an analysis provided by a third party in order to identify any parcel. LVRPA has explained that at the point that a potential parcel or parcels are presented to the LPRWG they will have already been identified by officers, with perhaps a little input from the LPRWG.

33. The Commissioner has reviewed the information that LVRPA has provided to her. It comprises meeting papers from certain LPRWG meetings over the period March 2016 to 23 January 2020 at which the matter of the disposal of land parcels was discussed. The minutes of the meetings show a LVRPA officer (eg the Head of Property) outlining particular sites that have already been identified potentially as opportunities for disposal, providing updates on such sites; either updates concerning existing activity with a site, or updates on a new activity associated with a site. The minutes show LRPWG members considering these opportunities, commenting and agreeing proposed actions or decisions.
34. The Commissioner agrees with LVRPA that these minutes show that LPRWG might review and discuss potential disposals, but that these discussions cannot be categorised as an 'analysis' of a potential disposal. At the point it is put before the LPRWG a parcel of land will have already been identified by officers. As LVRPA has said, the focus of the LPRWG minutes is on practical matters such as the progress of a disposal.
35. For each parcel of land identified for potential disposal, the complainant appears to be seeking an initial analysis - ie a detailed examination - of the parcel of land that led to it having been so identified, such as the parcel's history and features; the opportunities and threats associated with it. However, the Commissioner understands that the process of identifying parcels is not as formal as the complainant believes it to be. Parcels of land with the potential for disposal are identified from time to time, as are parcels of land with the potential to be acquired - but this does not happen through any formal process of analysis. Such parcels are presented to the LPRWG at its meetings and are subject to some discussion but the LPRWG does not have any decision-making role. The fate of a parcel is decided by Members at a formal public meeting.
36. The Commissioner has considered the circumstances of the request and the submissions of both the complainant and LVRPA. She accepts that analyses of the kind that the complainant has requested do not exist. The LPRWG may discuss parcels of land in its meetings but it does not itself identify potential parcels of land; the process of identifying parcels of land is an ad-hoc process; and information about potential parcels of land included in LPRWG minutes cannot be categorised as analyses of why those parcels may be suitable for disposal. As such the Commissioner is satisfied that regulation 12(4)(a) can be applied to part 2 of the request as LVRPA did not hold 'analysis' information when it received the complainant's request for it.



### **Regulation 12(4)(e) – internal communications**

37. In part 1 of his request the complainant has requested a list of parcels of land which the LPRWG has identified for potential disposal, as areas of land which could be considered as land not required for Regional Park purposes.
38. As has been discussed, the LPRWG does not 'identify' land for potential disposal – rather, LVRPA officers maintain a list, for internal use, of sites that might be considered for disposal. It could therefore be argued that LVRPA does not hold the requested information because it cannot hold a list of potential parcels of land that the LPRWG has identified. The LPRWG does not identify parcels of land. However, LVRPA does hold a list of potential sites that officers have identified and from time to time the LPRWG may discuss a parcel of land on that list. As such, the Commissioner will accept that the list falls broadly within the scope of the complainant's request. It is this list that LVRPA has withheld under regulation 12(4)(e) and LVRPA has provided the Commissioner with a copy of it.
39. Regulation 12(4)(e) of the EIR says that a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications. This regulation is subject to the public interest test under regulation 12(1)(b).
40. 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.
41. With regard to the term 'internal', the Commissioner notes in her guidance that '...an 'internal' communication is a communication within one public authority'.
42. In its regulation 12(4)(e) submission to the Commission, LVRPA has discussed both the LPRWG minutes and the above list, all of which it has categorised as "communications". The Commissioner has found that the LPRWG minutes are out of scope of the complainant's request and so her 12(4)(e) analysis has focussed only on the list.
43. The Commissioner is satisfied that term 'internal' can be applied to the complete list of sites that might be considered for disposal. LVRPA has confirmed to her that its officers draw up and maintain the list; it is an internal LVRPA document produced for its officers (only) to consult. Individual sites might be discussed at LPRWG meetings and eventually, the future of a site might be discussed at a formal public meeting. But



the entire list is not circulated more broadly or made available to external bodies.

44. With regard to items on the list being discussed at LPRWG meetings, the Commissioner is satisfied that the LPRWG can be considered to be internal to LVRPA because it is comprised of LVRPA Members. In any case, the complete list is not circulated at LPRWG meetings.
45. Turning to 'communications', the Commissioner's 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'.
46. The Commissioner is satisfied that the list of sites for potential disposal can be categorised as a 'communication'. It is intended to communicate information about those sites to LVRPA officers, and items on the list are broadly discussed at LPRWG meetings.
47. In his submission to the Commissioner the complainant has discussed LVRPA's reliance on regulation 12(4)(e). The following points appear to the Commissioner to be relevant:
  - The list goes further than being an 'internal communication' and amounts to positive identification of land allowing officers of the LVRPA to take preparatory steps to dispose of the land for non-Park related development.
  - The complainant has not requested details of any communications between LVRPA officers and the LPRWG and therefore there can be no intrusion on the 'safe space' that the Commissioner has identified in her guidance as intended to be protected by regulation 12(4)(e).
  - The identification of parcels of land for potential disposal is a completed process. But LPRWG's remit is to appraise and adjudge officers' work on potential disposals and that goes beyond an internal communication.
48. At issue here is whether the complete list of proposed sites for potential disposal that LVRPA held at the time of the request is an internal document and is a communication. The Commissioner has noted the complainant's points but for the reasons discussed above, she is satisfied that the list meets both of those criteria, that the list can be categorised as an internal communication and that therefore the exception under regulation 12(4)(e) can be applied to it. The Commissioner has finally considered the public interest test.

### **Regulation 12(1) – public interest test**

49. Under regulation 12(1)(b) a public authority may refuse to disclose environmental information requested if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. However, regulation 12(2) says that a public authority shall apply a presumption in favour of disclosure.

#### Public interest in disclosing the information

50. The complainant's arguments for disclosure can be summarised as follows:

- LVRPA has a statutory duty to preserve, develop and manage the Park. Where, it is possible that parcels of land are to be redesignated for development, and because the majority of the land identified for potential disposal is Green Belt/Metropolitan Open Land, there is a public interest that information about potential development is disclosed.
- There is a clear public interest that where the LVRPA effectively decides to go against its own published Area Proposals to promote Park compliant uses, this is made known to members of the public.
- Members of the public should have the opportunity to make their own representations at the time that those authorities are carrying out consultations. If LVRPA's representations to redesignate land for development are not known and publicised, interested parties may be out of time to make representations.
- Part 1 reports (which contain proposals to dispose of land) may be published five days before a public meeting but LVRPA's affairs are not actively followed by the majority of people within the Park. If a proposal appears on the LVRPA's agenda that a specific parcel of land be approved for disposal, the chances are small that interested parties would notice the agenda in time to make representations.

51. In its submission to the Commissioner LVRPA has acknowledged the public interest in being transparent and the EIR's presumption in favour of disclosure.

#### Public interest in maintaining the exception

52. In its submission to the Commissioner LVRPA has presented arguments in favour of maintaining the regulation 12(4)(e) exception and

withholding the information. Its public interest arguments concern both the LPRWG minutes and the list. The Commissioner has noted that LVRPA has advised her that the LPRWG has not met since the complainant submitted his request. This is because LPRWG members are concerned that the Commissioner could find that the LPRWG minutes are within scope of the request and could decide that those minutes must be disclosed. Members of the LPRWG are concerned that their meetings could therefore lose the 'safe space' element that they consider is important for their discussions. LVRPA says that the actual existence of a definite chilling effect over a period of more than a year is strong evidence that the public interest favours withholding the information sought.

53. The Commissioner has taken the LPRWG's concern into account as she considers there is some crossover between their meetings, at which individual parcels of land with the potential for disposal on the list are discussed, and the complete list of such parcels.

54. LVRPA's public interest arguments are as follows:

- Potential land disposals are often politically sensitive, at least in terms of local politics. A discussion around disposing of a given plot of land that forms some part of the park may evoke strong feelings. It is right and proper that at some point these matters are aired publicly. However, in view of this political sensitivity, Members would be reluctant to air potentially controversial proposals in LPRWG meetings if they felt that the meetings were not a 'safe space'. This is not a hypothetical fear, but a real one that Members have expressed, as a result of which the LPRWG has not met since the request was submitted. The danger here, LVRPA says, is that the LPRWG either continues not to meet – with discussions as to land disposal happening orally only, or land disposals simply being reduced in number – or that Members are unwilling to float controversial proposals. The result will be that the LVRPA is less able to approach its land holdings with an open mind and freely make decisions in the park's best interests. This would be a serious detriment to the public interest.
- Fears of commercial prejudice are also likely to have a chilling effect on the LPRWG's discussions if the information sought becomes disclosable. There are many potential situations where the revelation of a mooted land disposal could prejudice LVRPA commercially. For example, it may be that LVRPA is already marketing 'Plot A' when it wants to discuss the sale of 'Plot B', adjoining. If potential buyers of Plot A learn that Plot B might also go up for sale, and might (for example) be developed, that may well impact negatively on Plot A's sale price. LVRPA has stressed

that this commercial prejudice is linked back to the central rationale of regulation 12(4)(e), in that the potential for prejudice is likely to have a chilling effect on LPRWG discussions. LVRPA considers that this kind of public interest consideration – where a fear of commercial prejudice in turn causes a chilling effect – is a valid one, as the Commissioner's published guidance recognises at paragraph 71.

- Disclosing the information sought would lead to a barrage of correspondence from members of the public about any land parcels identified internally for discussion for potential disposal even though the proposal may never go anywhere, for example because the LPRWG decides that it does not in fact think that a sale is a good idea. LVRPA says that it accepts, of course, that members of the public are entitled to express a view on a contemplated disposal. However, they have ample opportunity to express a view on a potential disposal before it is actually approved 'in principle' at a public meeting (see below). LVRPA says that there is no need for members of the public to be able to have input on proposals that may never even make it past the LPRWG. If they were to do so this would place an entirely unnecessary drain on the Authority's limited resources. While LVRPA has a large number of employees who operate the leisure facilities that it provides, it has a relatively small executive staff. The fear that members of the public will engage in extensive correspondence about such matters will have a chilling effect, again making Members reluctant to discuss any potentially controversial disposal. This goes to the heart of the 'safe space' rationale; LVRPA says it should not have to worry about opening itself up to extensive correspondence simply for mooting an issue at an internal working group.
- Once a proposal is actually made to approve a land disposal in principle, that proposal is made publicly available several days in advance of the meeting where it is to be considered. As noted, the dates of LVRPA meetings are published far in advance. It is therefore easy for a member of the public to diarise upcoming meeting dates and check closer to the time whether any land disposal proposals are on the agenda. They may then make representations at the meeting. So LVRPA is already transparent about proposals to dispose of land.
- That transparency "further down the line" diminishes the public interest in early disclosure of provisional, internal proposals for example, by disclosing the complete list of possible sites.

- The public have no legal right to be consulted on proposed land disposals by LVRPA. It accepts that there will always be some interest in transparency for transparency's sake and notes the presumption in favour of transparency. However, in LVRPA's view, the interest in (early) transparency is much stronger where transparency may aid the exercise or protection of legal rights enjoyed by the public. By contrast, in the present case, members of the public such as the complainant do not themselves have any legal rights that are likely to be affected by a potential land disposal by LVRPA. This weakens the public interest in disclosure.
- Finally, LVRPA has given the Commissioner specific examples that, it says, demonstrate why there is a compelling public interest in not releasing the list. These examples concern particular sites and particular terminology in the list document. The Commissioner does not intend to detail these examples in this notice, but she has taken them into account.

#### Balance of the public interest

55. The Commissioner considers that LVRPA's public interest arguments against disclosure are persuasive. She agrees with LVRPA that many people have strong views about how the natural environment and land, including green belt land, is managed. Publishing the complete list of sites in the Park that have been identified as having the potential for disposal is therefore likely to generate a high volume of correspondence and queries from the public. Fielding these communications would take LVRPA officers away from their day to day duties. That would not be in the public interest, particularly since there are likely to be sites on the list that are never in fact disposed of for one reason or another. LVRPA would have spent time managing concerns that do not go on to be realised.
56. The Commissioner appreciates the complainant's concerns about the process for members of the public to make representations about particular parcels of land that have been identified as having the potential for disposal. However, there is such a process. Dates of public meetings are published well in advance and sites that will be discussed in the meetings are published five days in advance of each meeting. Interested members of the public can submit representations about specific sites at those public meetings. The Commissioner agrees that how the LVRPA manages the Park has a great deal of public interest, but she is satisfied that the above process satisfies that interest. As such, the Commissioner finds that the public interest favours maintaining the exception under regulation 12(4)(e) of the EIR on this occasion.

57. Since she has found regulation 12(4)(e) to be engaged and the public interest to favour withholding the information within scope of part 1 of the request, it has not been necessary for the Commissioner to consider whether regulation 12(5)(e) can be applied to the information.

## Right of appeal

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58. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

59. 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.
60. 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

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**