



Case Reference: EA/2022/0109  
Neutral Citation number: [2022] UKFTT 00445 (GRC)

First-tier Tribunal  
General Regulatory Chamber  
Information Rights

Heard: By CVP  
Heard on: 10 November 2022  
Decision given on: 21 November 2022  
Corrected decision given on: 02 December 2022

Before

TRIBUNAL JUDGE SOPHIE BUCKLEY  
TRIBUNAL MEMBER PIETER DE WAAL  
TRIBUNAL MEMBER SUZANNE COSGRAVE

Between

SOUTH GLOUCESTERSHIRE DISTRICT COUNCIL

Appellant

and

(1) THE INFORMATION COMMISSIONER  
(2) MARK SMYTH-ROBERTS

Respondents

DECISION CORRECTED UNDER RULE 40

**Decision:** The appeal is allowed. South Gloucestershire District Council ('The Council') were entitled to rely on s 12(5)(e) of the Environmental Information Regulations 2004 (EIR) to refuse the request.

**Substituted Decision Notice:**

**Organisation: South Gloucestershire District Council**

**Complainant: Mr Mark Smyth-Roberts**

**The Substitute Decision - IC-129560-K8G5**

For the reasons set out below South Gloucestershire District Council ('The Council') were entitled to rely on s 12(5)(e) of the Environmental Information Regulations 2004 (EIR) to refuse the request. No action is required.

## REASONS

### **Introduction**

1. This is an appeal against the Commissioner's decision notice IC-129560-K8G5 of 31 March 2022 which held that South Gloucestershire District Council (the Council') had breached regulation 5(1) of the Environmental Information Regulations 2004 ('the EIR') and that it was not entitled to rely on regulation 12(4)(d) or 12(5)(e) of the Environmental Information Regulations 2004 (EIR).
2. The Commissioner required the Council to take the following steps:
  - 2.1. Disclose the communications between it and the landowner's agent (and all associated attachments). In doing so it may redact the names and contact details of non-senior staff and private individuals, in accordance with regulation 13 (personal data) of the EIR.

### **Factual background to the appeal**

3. Charfield rail station in South Gloucestershire opened in 1844. It was closed in 1965 as part of the 'Beeching cuts'. National, regional and local policy seeks to reverse some of these cuts. Land has been safeguarded in the South Gloucestershire Local Plan since 2006 to build a station immediately adjacent to the former station site in Charfield.
4. The key milestones for the project that have been achieved to date are as follows:

<b>Date</b>	<b>Process</b>	<b>Milestone</b>
Dec 2018	Feasibility	Options Assessment Report
Dec 2020	Business Case	Strategic Outline Business Case approved by WECA

Aug 2021	Design	Network Rail single option design and preliminary highways design
Aug 2021	Planning	Local Planning Authority pre-application scoping and Environmental Impact Assessment Screening Opinion
Oct 2021	Planning	12-week pre-application public consultation
Dec 2021	Business Case	Outline Business Case approved by WECA
Sep 2022	Planning	Planning application submitted

5. This appeal arises out of proposals to build a station carpark for the new railway station.
6. At the time of the request the Council had been in email correspondence with a landowner ('the Landowner') in relation to the proposed acquisition of land by the Council on which it proposed to build the station carpark. Initial contact was made in 2018 and substantive discussions commenced in 2020. These negotiations were on-going at the date of the request (and are still on-going). At the date of the request the Council was also involved in negotiations with another landowner in relation to the purchase of land for the station itself.

### **Requests, Decision Notice and appeal**

7. This appeal concerns a request made on 30 July 2021 by Mr. Smyth-Roberts. The relevant parts of the request for the purposes of this appeal are in italics:

*I request copies of all plans, documents, emails and minutes that provide the following information in relation to options for a railway station overflow car park on Station Road in Charfield:*

1. Detail of all site options considered in the last 24 months, including location and drawings/plans.
2. Copies of all evidence used to compare and contrast the site options, in particular vehicular access, cost/price (of land and construction) that have resulted in the published plan.
3. Minutes of any meetings concerning site comparisons and in particular recording justification of the selection of the Station Road site.

*Copies of all communication between South Gloucestershire and the organisation considering the options on their behalf and Mr A Baker (owner of Hill House Farm and the land on which the proposed car park is to be built) including any material referring to a) negotiation/discussion of the acquisition of the land for the site on Station Road, b) the price of the land, c) any negotiated deal regarding the layout, meeting a condition/request by A Baker and c) negotiation/agreement*

*to provide access to the field behind the proposed car park site (via an access road that runs down the side of the proposed car park).*

8. The information in scope of the part of the request in italics is referred to in this decision as ‘the disputed information’.
9. The Council replied on 31 August 2021 under the Freedom of Information Act 2000 (FOIA). The Council refused the request, relying on s 22 and s 43(2) FOIA.
10. Mr Smyth-Roberts applied for an internal review. On 1 October 2021 the Council upheld its decision.
11. During the course of the Commissioner’s investigation the Council was asked to reconsider its request under the EIR. In response to this on 9 February 2022 the Council indicated that it relied on regulation 12(4)(d) and 12(5)(e) EIR.
12. In a letter to the Commissioner dated 22 March 2022 the Council accepted that some of the withheld information could have been disclosed to Mr. Smyth-Roberts. Mr Smyth-Roberts now has this information
13. In a decision notice dated 31 March 2022 the Commissioner decided that the information was environmental and the request should have been dealt with under EIR.
14. In relation to parts 1-3 of the request, the Commissioner noted that the Council had identified that the following information fell within the scope of those parts of the request:
  - Appendix A – Option Assessment Report (dated December 2018)
  - Appendix B - Strategic Outline Business Case (dated 2 October 2020)
  - Appendix C - Outline Business Case (dated 19 September 2021)
  - Appendix E – Public consultation display boards
  - Appendix F – Frequently asked questions (dated 18 October 2021)
15. The Commissioner treated the Council as having withdrawn reliance on regulation 12(4)(d) in relation to appendices A and B. The Commissioner stated that he had no reason to disbelieve the Council’s claims that appendices C, E and F were still in the course of completion on 1 October 2021 (the time the internal review was completed). The Commissioner found that the Council had not provided any information about why, at the time of the request, the public interest favoured maintaining the exception. The Commissioner concluded that the Council was not entitled to rely on regulation 12(4)(d) to refuse the request for appendices C, E and F.
16. As the documents had now been provided to Mr. Smyth-Roberts, the Commissioner did not require the documents to be disclosed.

17. In relation to the part of the request in issue in this appeal the Commissioner held in relation to regulation 12(5)(e) that:

17.1. The information was commercial in nature.

17.2. The information was subject to confidentiality provided by law because it was not trivial in nature, it had been provided with an expectation that negotiations would be conducted in confidence and information about the negotiations had not entered the public domain.

18. The Commissioner concluded that the Council had failed to show that disclosure would result in harm to a legitimate economic interest. The Commissioner did not go on to consider the public interest but noted that in the absence of any public interest arguments provided by the Council, it is unlikely that he would have been able to conclude that the public interest in maintaining the exception was stronger than that in disclosure. The Council was ordered to disclose the documents set out in para 2.1 above.

### **The grounds of appeal**

19. The Council appealed the decision on the following grounds:

19.1. The Commissioner erred in his conclusions on stages 3 and 4 of the four stage test when applying regulation 12(5)(e) to the disputed information. He should have concluded (a) that the (accepted) confidentiality of the disputed information protected a legitimate economic interest; and (b) that disclosure would adversely affect that confidentiality.

19.2. The Commissioner should have concluded that the public interest weighed in favour of maintaining the exception protected a legitimate economic interest; and (b) that disclosure would adversely affect that confidentiality.

20. Insofar as is necessary the Council relies on a new exception. The Council submits that regulation 12(4)(d) applies to certain draft information contained within the disputed information and that the public interest weighs in favour of maintaining that exception.

### **The Commissioner's response**

21. In the light of the information provided in the grounds of appeal the Commissioner does not oppose the appeal to the extent that it relates to regulation 12(5)(e).

22. The Commissioner submits that the four-step test is satisfied on the basis of the information provided in the grounds of appeal:

22.1. The information is commercial in nature as it relates to the proposed purchase and planned development of land. In the correspondence the

- parties set out their negotiating positions and proposals for the use of the land.
- 22.2. The confidentiality in the information is provided by law. The information has the necessary quality of confidence because it is not trivial and is not in the public domain. The information was shared in circumstances creating an obligation of confidence.
- 22.3. The confidentiality is protecting a legitimate economic interest. The Council has shown that disclosure would adversely affect its own legitimate economic interests and those of the landowner (namely, their abilities to have a safe space for negotiation so as to protect their bargaining positions in this and future negotiations). The Commissioner agrees with the Council's submission that the inherently sensitive purchase of land for development by a local authority means that disclosure would hamper the ability to reach agreement on the most favourable terms for either the Council or the landowner.
- 22.4. It is inevitably the case that the confidentiality would be adversely affected by disclosure.
23. The Commissioner submits that the public interest in maintaining the exception outweighs the public interest in disclosure. The public interests in disclosure include a strong public interest in transparency. The Commissioner notes that there has already been disclosure and publication of information relating to the proposed purchase and the development of the new train station. This partially discharges the public interest in transparency.
24. The Commissioner agrees with the Council that the remaining public interest in disclosure is outweighed by (i) the negative impact on the economic interests of the landowner and the council (by making it harder to reach agreement on the most favourable terms for each) (ii) the negative impact on the Council's ability to negotiate with the Landowner and, in the future, other landowners because of their lack of confidence that confidential negotiations will remain confidential and (iii) the negative impact on public funds and on the development of a piece of infrastructure, of the Council's negotiations being disrupted or made more difficult.
25. The Commissioner submits in the alternative that the appeal should be allowed in part on the basis of ground three. The Commissioner considers that the draft heads of terms and draft plans and maps contained within the withheld information were still in the course of completion at the time of the request and therefore the exception in 12(4)(d) is engaged. The Commissioner considers that the public interest favours maintaining the exception for essentially the same reasons as in regulation 12(5)(e).

### **First response of Mr. Smyth-Roberts**

26. The appeal is opposed on two grounds:

- 26.1. There are multiple areas of legitimate public interest that have neither been addressed or acknowledged by the Council.
  - 26.2. The commercial consequences of land purchase information release are secondary to the public interests in their release.
27. Mr. Smyth-Roberts sets out additional factual information, which he says is relevant, including:
- 27.1. The business case and plans for a railway station conflate the justification for opening the station with detail of significant housing development in the village.
  - 27.2. The housing numbers quoted include properties to be built in the field where the overflow car park is currently planned. The Council knows that previous attempts by the landowner to seek speculative planning permission for the field have failed as there is no suitable access. Access now appears to form part of the car park plans with the early stages of an access road being built alongside the car park (seemingly at tax payers expense), along with a redirection of the right of way of Station Road in anticipation of permission being granted (see car park plans for evidence). Neither of these changes/features are required for the car park itself.
  - 27.3. The land identified for the overflow car park appears to be the only site that the Council have considered for the overflow car park, options analysis (detailed in the business case) was only done for the station itself and that was influenced by speculative housing development denying alternative sites.
  - 27.4. The land purchase negotiations being undertaken simultaneously (as mentioned at paragraph 6 of the appeal document) are not comparable.
  - 27.5. At £22m (initial and unqualified estimate made in 2021, not reflecting current material and workforce risks) the predicted cost for a village railway station is significant.
28. Mr. Smyth-Roberts details the following factors relevant to the public interest balance:
- 28.1. There is a public interest in releasing information to provide a full picture of the justification, plans and consequences of building an overflow car park, so that consultation is not constrained and shaped by information that SGC chooses to release.
  - 28.2. Likelihood and severity of any prejudice: The purpose of information release on this matter is to avoid prejudice by being able to assess the facts of the matter.
  - 28.3. The age of the information: the information is still relevant for forthcoming planning application release and associated business case approval. Any further delay will result in the information being out of date in that it will not be able to be used to meet public interest.
  - 28.4. How far the requested information will help public understanding: The requested information will allow the public to understand the consequences and true cost of the plans being submitted for an overflow

- car park. They will be able to separate out the car park issues from the station issues.
- 28.5. Whether similar information is already in the public domain: This information refers to a specific purchase and plan and is not in the public domain. Business case documentation and plans do not refer to options for the overflow car park, but they do refer to options for the station itself. Although business case documentation specifies the anticipated use of the station it does not provide figures for increased vehicle traffic associated with housing growth (which can be derived from confirmation of any agreement for housing growth associated with the car park).
  - 28.6. As the station development will require considerable public funds at a time of austerity and reducing public services, there is public interest in transparency and accountability. This is particularly true given that the investment will only service the needs of less than 2% of the local population, while driving up vehicle numbers and demands on local services caused by the additional housing.
  - 28.7. Promotion of public understanding. The public have not been provided with all of the relevant information. The public will be able to understand the cost, risk and consequences of the proposals. If the Council has justifiable reasons for non-competitive land purchase and not seeking alternative quotes/options these should be made public.
  - 28.8. There is public interest in good decision-making by public bodies. By not seeking options for the overflow car park, and by relying on levels of housing development previously dismissed under the JSP, SGC is arguably ignoring policy trends and is in contravention of the 'green book' guidance for planning and business case development.
  - 28.9. In securing the best use of public resources: the Council has submitted designs that lead to the loss of actively farmed agricultural land rather than prioritising the reuse of existing infrastructure.
  - 28.10. In ensuring fair commercial competition in a mixed economy. If the target budget and associated decision factors were shared then it is possible that alternatives for the overflow car park could be identified.

### **The Council's reply**

29. The Council does not accept the accuracy of the factual matters raised in Mr. Smyth-Roberts' response:
  - 29.1. The Council has not taken into account future housing development.
  - 29.2. The access road to the car park and realignment of the right of way are required as a direct consequence of proposals to deliver the southern car park.
  - 29.3. The Council did not only consider one option for the car park. Three options were shortlisted but only one could be pursued.
  - 29.4. The Council does not agree that concurrent negotiations with other landowners would not be affected by disclosure.

29.5. The total budget and cost benefit ratio for the project, by which value for money is assessed, have been published in the Outline Business Case (OBC). Individual cost headings within the budget have been redacted in the OBC so that a commercial advantage is not afforded to landowners and future contractors regarding forecasts for costs. The request in issue in the appeal is not for information on individual predicted cost headings in the budget and the Disputed Information would throw no light on this subject. Nor would disclosure significantly further inform debate on actual costs as no price for purchase of the land for the overflow car park has yet been agreed and other costs of the car park (e.g. road modification) are not included in the negotiations.

30. In relation to the public interest the Council submits:

30.1. There is no proper basis for allegations that the Council (a) has failed to consider alternatives/options for the car park; and (b) has improperly taken into account potential future housing development in connection with the station project as a whole and acquisition of land for the overflow car park.

30.2. It is denied that disclosure is required in order to allow the public to take informed part in consultation, as alleged. Disclosure of the Disputed Information would not inform the public concerning budgeted nor actual costs for the overflow car park; nor would it assist to identify alternatives for the overflow car park as alleged; nor would it significantly add to understanding of the plans for the car park (which in any event at the time of the request were due to be published as part of public consultation and which has now taken place).

### **Second response of Mr. Smyth-Roberts**

31. There is a shortfall in the OBC between the predicted catchment area population figures and the potential developments for which planning permission has been submitted. Coupled with the fact that publicly maintained access to this landowner's land is included in the plans, the lack of which had previously made development by the Landowner untenable, it is reasonable to assume that additional houses in Charfield and on this site in particular have been predicted in the catchment uplift.

32. In the time that has passed since the decision was made in 2018 that only one car park site option could be pursued, have no other options been revisited and no alternative to providing the required parking been considered?

33. The other land negotiations are not like for like nor are they in competition with each other.

34. The Value for Money calculations referred to by the Council are for the station as a whole. Mr. Smyth-Roberts' response focussed on the relative cost of the car park in relation to the whole station plan, a ratio that is not available for the public to see in the current OBC format. It is of public interest whether by being constrained to a single option there is considerable cost (and consequence of additional residential development).

### **Legal framework**

35. The EIR applies the provisions of Directive 2003/4/EC of the European Parliament and the Council on public access to environmental information to England and Wales. The relevant parts of reg. 12 are:

Regulation 12:

Exceptions to the duty to disclose environmental information

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

(a) an exception to disclosure applies under paragraphs (4) or (5); and  
(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

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

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

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

(d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data [...]

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

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

36. There is a presumption in favour of disclosure under the EIR under reg. 12(2). The result is that the threshold to justify non- disclosure is a high one.

37. Under reg. 12(5)(e), subject to the public interest test, a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest. This has four elements:

1. Was the information commercial or industrial?
2. Was the information subject to confidentiality provided by law?
3. Was that confidentiality to protect a legitimate economic interest?
4. Would disclosure adversely affect that confidentiality?

38. In **Elmbridge Borough Council v Gladedale Group Limited** EA/2010/0106 in paragraphs 18-19 the Tribunal considered the approach to the third question above, namely whether confidentiality was to protect a legitimate economic interest and concluded that disclosure would have to adversely affect a legitimate economic interest of the person the confidentiality is designed to protect and that this requires consideration of the sensitivity of the information and the nature of any harm that would be caused by disclosure.
39. The Tribunal in **Elmbridge** accepted that, taking into account the duty in paragraph 4.2 of Directive 2003/4 EC to interpret exceptions in a restrictive way, the wording “where such confidentiality is provided to protect a legitimate economic interest” (as opposed to “was provided”) indicates that the confidentiality of this information must be objectively required at the time of the request in order to protect a relevant interest and that it is not enough that some harm might be caused by disclosure. It is necessary to establish (on the balance of probabilities) that some harm to the economic interest would be caused by disclosure.
40. The Tribunal in **Elmbridge** noted that the implementation guide for the Aarhus Convention (on which the European Directive on access to environmental information and ultimately the EIR were based) gave the following guidance on legitimate economic interests: “Determine harm. Legitimate economic interest also implies that the exception may be invoked only if disclosure would significantly damage the interest in question and assist its competitors”. They found that this was consistent with the general scheme of Regulation 12(2) EIR which states that “a public authority shall apply a presumption in favour of disclosure” and with the EIR 12(5) exceptions, which require that “disclosure would adversely affect” the relevant interests identified in each exception.
41. ‘Would adversely effect’ should be interpreted in the sense that the adverse effect has to be identified and the Tribunal must be satisfied that disclosure “would” have that adverse effect, not that it “could” or “might. (See **Mersey Tunnel Users v ICO and Halton Borough Council** EA/2009/0001). This must be assessed at the time of the original decision (not the internal review - **Montague v Information Commissioner and DIT** [2022] UKUT 104 (AAC) para 63).
42. If the conditions of 12(5)(e) are met, the information must only be withheld to the extent that in all the circumstances the public interest in maintaining the exception outweighs the public interest in disclosure.

### **Evidence and submissions**

43. We read an open and a closed witness statement and heard oral evidence from Kevin O’Connor, Senior Transport Planning Officer in the Transport and Environment Policy Team, on behalf of the Council. He is the Station Project Manager. We have read and taken account of an open bundle of documents and a

closed bundle containing the disputed information and a closed version of Kevin O'Connor's witness statement. An amended closed bundle was provided on the day of the hearing and the tribunal has read and taken account of that amended bundle. We heard oral submissions from the Council and from Mr. Smyth-Roberts.

### **Gist of closed session**

44. The following gist of the closed session was provided to Mr Smyth-Roberts in the hearing:

1. Mr O'Connor gave evidence in chief and in re-examination as follows:
  - (1) He expanded on his open evidence that each of the landowners with whom the Council was negotiating for purchase of land for the station project would withdraw if the disputed information were disclosed, giving reasons for holding that belief.
  - (2) He confirmed his open evidence that there was a risk if the negotiations broke down of the need for a compulsory purchase order and gave further detail on the potential impact of that to the station project.
  - (3) He gave information on the proposed price for the acquisition.
2. Mr O'Connor gave evidence in response to questions from the Tribunal as follows:
  - (1) He gave further information concerning designs for access and layout of the proposed car park and the role of the Council and the Landowner in determining those issues generally and by reference to the content of the disputed information.
  - (2) He explained searches that had been conducted for information in scope of the request.
  - (3) He gave further explanation for his reasons for concern about breakdown of negotiations generally and by reference to the content of the disputed information.
  - (4) He confirmed open evidence that the Council had made it clear to the Landowner that development of Hill House Farm was not within the remit of the negotiations and gave further detail on that issue.
  - (5) He gave evidence about the proposed price for the acquisition.
  - (6) He gave evidence on the commercial sensitivity of parts of the disputed information.
3. Ms Ivimy made closed submissions on the subjects set out above.

### **Issues**

45. Mr Smyth-Roberts indicated at the start of the hearing that it was not in dispute that regulation 12(5)(e) is engaged. The Commissioner is also now of the view that regulation 12(5)(e) is engaged. Given that Commissioner decided in the decision

notice that regulation 12(5)(e) was not engaged, we have to determine this issue despite the agreement of all parties.

46. The issues we have to determine under regulation 12(5)(e) are:

- 46.1. Was the information commercial?
- 46.2. Was the information subject to confidentiality provided by law?
- 46.3. Was that confidentiality to protect a legitimate economic interest?
- 46.4. Would disclosure adversely affect that confidentiality?
- 46.5. If so, does the public interest in maintaining the exception outweigh the public interest in disclosing the information?

47. Although the Council raised regulation 12(4)(d) it was not necessary for us to consider this provision.

#### The role of the tribunal

48. The tribunal's remit is governed by s.58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved exercising discretion, whether she should have exercised it differently. The Tribunal may receive evidence that was not before the Commissioner, and may make different findings of fact from the Commissioner.

#### **Discussion and conclusions**

49. It is not in dispute that the EIR is the appropriate regime, and that would have been our conclusion in any event.

#### *The information in scope*

50. The question of whether or not the Council had included all the disputed information in the closed bundle arose during the hearing in two ways. First, it emerged that some documents had been omitted from the closed bundle. These were included in an amended bundle which was provided to the tribunal on the day of the hearing.

51. Second, Mr Smyth-Roberts raised the question of whether the disputed information should include correspondence between the planning authority and the Landowner/his representative.

52. We are satisfied on the basis of Mr O'Connor's evidence that any communications between the Council and the Landowner's agent which fell within the scope of the request would have been with the project team and not with the planning authority. Any communications relating to options for the overflow carpark including any material referring to negotiation/discussion of the acquisition of land, the price of

the land, any negotiated deal regarding the layout, meeting a condition/request by the Landlord or negotiation/agreement to provide access to the field behind the proposed car park site, if held, would be held by the project team, not by the planning authority.

*Was the information commercial?*

53. The disputed information consists of emails and attachments between the Council and the Landowner dating from 2018 to 29 July 2021. The emails discuss the proposed purchase of the site from the Landowner. The emails include preliminary discussions of car park layout, access routes, surveys, overage, valuation costs and land prices. They include an exchange of draft Heads of Terms and detailed comments on the draft. The tribunal finds that the disputed information, which relates to the proposed purchase and development of land, is commercial in nature.

*Was the information subject to confidentiality provided by law?*

54. The information is not trivial. We accept that there is an implied expectation of confidentiality in relation to commercial negotiations of this nature between the Council and the Landowner.

*Was that confidentiality to protect a legitimate economic interest?*

55. We accept that confidentiality protects each party's bargaining positions and provides a safe space for negotiations. We accept that each party has a legitimate economic interest in securing an agreement on the best available terms. We find that the confidentiality was to protect a legitimate economic interest.

*Would disclosure adversely affect that confidentiality?*

56. We adopt the approach in **Elmbridge** and therefore the question is whether or not, on the balance of probabilities, disclosure would cause some harm to the economic interests of the relevant parties. We find on the balance of probabilities that it would.

57. We find that disclosure of emails containing confidential negotiations for the purchase of land at a stage when those negotiations are still live would remove the safe space for negotiation, in which the parties can explore options and test their bargaining positions. It would harm the parties' ability to protect their negotiating positions and ultimately their ability to secure the best available agreement. We accept that disclosure while negotiations were ongoing would undermine the negotiation process.

*Public interest*

58. We consider first the public interest in maintaining the exception. Underlying all the following findings is the crucial fact that negotiations with the Landowner were ongoing at the date of the request.

59. We accept that there is a very strong public interest in maintaining confidentiality in commercial negotiations undertaken by public bodies, particularly while those negotiations are ongoing. There is a very clear public interest in protecting the safe space provided by that confidentiality while those negotiations take place. The safe space enables both parties to secure the best available agreement in particular where significant sums of public money are at stake.
60. We accept that disclosure in these circumstances is likely to have a 'chilling effect' in particular in relation to (i) these ongoing negotiations and (ii) the ongoing negotiations with another landlord about the purchase of land for the proposed station. Whilst the tribunal expects all parties to be aware of the existence of FOIA and the EIR, we accept that disclosure of confidential negotiations at a date when negotiations are continuing and in the absence of a clear and compelling public interest in disclosure would be likely to cause a chilling effect on this Landlord's and the Council's willingness to engage fully in the type of discussions that form part of an effective negotiation. Further we accept that disclosure is likely to have a similar chilling effect on the ongoing negotiations with the other landlord, with a potential risk of destabilising those other negotiations.
61. Based on the open and closed evidence of Mr O'Connor we accept that there is a real risk that disclosure would lead to a breakdown of trust between the Council and the Landowner and accordingly a real risk that the Landowner would withdraw from the negotiations. This would lead to delay and a significant increase in costs to the public purse. This carries particular weight because the project is a public infrastructure project which is in itself in the public interest.
62. Turning to the public interest in disclosure, we accept that there will always be a general public interest in transparency and a particularly strong public interest in public understanding of the decision making process where a significant amount of public money is being spent and where the information is environmental.
63. That public interest is met in this case to a large extent by the fact that some information was already in the public domain and other information, including a detailed outline business case, was scheduled to be put into the public domain as part of a planned public consultation. In the light of the information already disclosed and the information scheduled to be disclosed, we find that disclosure of the disputed information would be of little additional value in enabling an informed public debate.
64. Mr Smyth-Roberts also raises particular concerns which he says make disclosure of this particular information strongly in the public interest. There is no dispute that those concerns are held in good faith. The appellant submits, however, that there is no valid basis for those concerns and further that the disclosure of the disputed information would shed little light on those concerns.

65. The tribunal understands Mr. Smyth-Roberts' concerns broadly to be as follows:
- 65.1. That the plans for the overflow carpark were designed to improve the prospects of the Landowner obtaining planning permission to build housing on his property.
  - 65.2. That the station project is linked to or dependent on future housing development, including development on the Landowner's property.
  - 65.3. That the land identified for the overflow car park appears to be the only site that the Council have considered for the overflow car park. This gives the Landowner a competitive advantage and the Council may not be securing good value for money.
66. There is no evidence either within the disputed information or otherwise that the plan for the carpark has been designed with the intention of improving the prospects of the Landowner obtaining planning permission to build on his property. We accept Mr. O'Connor's evidence on the reasons why the plan is as it is. Those reasons are unrelated to improving the prospects of the landowner obtaining planning permission, or any intention to provide the landowner with any other benefit. We accept, on the basis of the evidence, that Mr. O'Connor made clear to the Landowner's representative at an early stage that it was not within the remit of the Station Project Manager to discuss any matters relating to potential housing development.
67. Further we note from Mr. O'Connor's open evidence that although the Landowner had offered land for development in a 'Call for Sites' so have a large number of other landowners. It is far from certain where such development will take place. Further, the Local Plan, the statutory and regulatory framework by which sites or housing development opportunities are taken forward, will not be consulted upon until 2023. Any potential for housing development is operating on a very different timetable to the station project.
68. Mr. Smyth-Roberts may be right that as a consequence of the building of an adopted road at the south end of the carpark the prospects of the Landowner obtaining planning permission to build on his property will improve. It does not follow that that is the reason why that road was included in the plans. Benefits to third parties will occur as unintended consequences of the station project.
69. We accept that the Council envisages that if development takes place in Charfield the developers will benefit from the delivery of the station. If that is the case the Council intends to seek some funding from those developers, typically through a s 106 agreement. There is nothing improper about this position. It does not alter our conclusion, based on the evidence, including that contained in the disputed information, that the station carpark has not been designed in a particular way to benefit the Landowner or to increase his prospects of gaining planning permission. We accept Mr. O'Connor's explanations as to the basis for the housing figures for

used in the outline business case. They do not include any development on the Landowner's property.

70. For those reasons we do not accept that there is any proper basis for Mr. Smyth-Roberts' concerns about any improper link between housing development, in particular on the Landowner's property, and the station carpark or the station project more widely.
71. There is nothing in the disputed information which would illuminate that concern, save that there is some value in releasing the disputed information because it might reassure Mr. Smyth-Roberts that the plan for the carpark has not been designed with the intention of improving the prospects of the Landowner obtaining planning permission to build on his property. However, given that there is, in our view, no proper basis for that concern in any event, the public interest in disclosure for that purpose is fairly limited.
72. On the basis of the evidence of Mr. O'Connor we do not accept that this was the only site considered for the overflow carpark. Three possible car parking sites were identified initially at the date of the options assessment report in December 2018. Two of those sites subsequently became unavailable and negotiations were commenced in relation to the remaining site. This does not strike the tribunal as concerning or unusual.
73. The disputed information sheds no light on Mr. Smyth-Roberts concerns about any lack of consideration of alternative options. There is some value in releasing the disputed information because it might reassure Mr. Smyth-Roberts that the Council is obtaining value for money, but given that there is, in our view, no proper basis for that concern in any event, the public interest in disclosure for that purpose is fairly limited.
74. Taking all the above into account we find that the strong public interest in maintaining the exception significantly outweighs any public interest in disclosure.
75. We do not consider that the interests are evenly balanced and therefore the presumption in favour of disclosure does not mean that the information should be disclosed.
76. In the circumstances we do not need to consider regulation 12(4)(d).
77. For those reasons the appeal is allowed.

Signed Sophie Buckley

Date: 21 November 2022  
Corrected: 1 December 2022

Judge of the First-tier Tribunal

