

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

**Decision notice**

**Date:** 23 January 2012

**Public Authority:** Shropshire Council  
**Address:** Shirehall  
Abbey Foregate  
Shrewsbury  
SY2 6ND

**Decision (including any steps ordered)**

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1. The complainant requested a copy of reports related to the valuation of the building and land at the site of The Wakeman School and Arts College in Shrewsbury.
2. The Commissioner's decision is that the council incorrectly applied the exception at regulation 12(5)(e) of the EIR in order to withhold the information.
3. The Commissioner requires the council to disclose the report relating to the site's valuation.
4. He requires the authority to disclose the information within 35 calendar days of the date of this decision notice.
5. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

**Request and response**

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6. On 21 March 2011 the complainant requested the following information from the council regarding The Wakeman School and Arts College:

*"I understand the council has undertaken a valuation of the land and building. Please provide copies of related reports".*

7. On 6 April 2011 the information was refused under s43 of the Act.
8. The council's review of 27 May 2011 upheld the decision to withhold the information under s43(2).

### Scope of the case

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9. The complainant contacted the Commissioner to complain about the council's withholding of the information.
10. On 21 October 2011 the Commissioner asked the council for a copy of the information in order to determine the appropriateness of the exemption that had been applied. The council supplied the Commissioner with a desk top valuation report which had been compiled by its Estates Team.
11. The Commissioner determined the report to be environmental information as it related to plans and activities which had a direct impact on the use of land and landscape. Accordingly he asked the council to reconsider the request under the Environmental Information Regulations (EIR).
12. The council reconsidered the request and withheld the information under regulation 12(5)(e) of the EIR. This decision notice addresses the authority's withholding of the report under 12(5)(e).

### Reasons for decision

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Regulation 12(5)(e) of the EIR allows a public authority to withhold information if 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."*

13. The Commissioner applies the following tests to regulation 12(5)(e):

- (i) Is the information commercial or industrial in nature?

- (ii) Is the information subject to a duty of confidence provided by law?

- (iii) Is confidentiality required to protect a legitimate economic interest?

- (iv) Would that legitimate economic interest and thereby its confidentiality be adversely affected by disclosure?

14. With reference to the test at (i) the council informed the Commissioner that the school and playing field was part of the council's property portfolio. It submitted that its desk top valuation could impact on the commercial value of the site should the council decide to bring it to market.
15. The Commissioner accepts that the information is commercial.
16. With reference to the test at (ii) the Commissioner considers that the specific terminology of the exception - "confidentiality provided by law" - refers to confidentiality imposed on any person by either a contractual obligation, by statute or under common law.
17. The council did not supply the Commissioner with details of any contractual obligation or statute that would provide a duty of confidence. Consequently he has considered whether confidentiality has been provided under common law.
18. A duty of confidence under common law is owed by one party to another. This means that a party in receipt of the information cannot disclose it without the permission of the other. The 12(5)(e) exception can include information created by the council and provided to another party or to information jointly created or agreed between the council and a third party. No confidentiality can attach to information generated by the authority itself.
19. The information in this instance was generated by the council itself. It is not the council's case that the information was shared with a third party which might then owe the authority a duty of confidence. Therefore the Commissioner has concluded that no common law duty of confidence exists between the council and any third party in respect of the information.
20. Because the council has failed to demonstrate that the information is subject to confidentiality provided by contractual obligation, statute or common law the Commissioner's decision is that the exception at 12(5)(e) is not engaged.
21. Because the exception at 12(5)(e) is not engaged the Commissioner is not required to consider the public interest test in respect of this.

## Right of appeal

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22. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

23. 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.
24. 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 .....**

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