

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

Decision notice

Date: 21 August 2017

Public Authority: Jesus College Cambridge
Address: Cambridge
CB5 8BL

Decision (including any steps ordered)

1. The complainant has requested information relating to the North Barton Road Landowners Group (NBRLOG), of which the College is a member. The requested information included correspondence between the College and the consultants representing the group. The College withheld the information under the exceptions provided by regulation 12(5)(b) – course of justice and 12(5)(e) – commercial confidentiality. As well as the application of these exceptions the complainant was concerned that the College had not identified all the information falling within the scope of his request.
2. The Commissioner's decision is that the College has correctly identified the information captured by the request. Although the majority of the information withheld under regulation 12(5)(b) does engage the exception, some, particularly covering emails to the legal advice, does not. The Commissioner finds that only a very limited amount of the information withheld under regulation 12(5)(e) engages the exception, primarily information relating to a particular stakeholder and the monetary values of the fees charged by consultants.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the information which is not exempt by virtue of either regulation 12(5)(b) or (e), subject to limited redactions in respect of third party personal data

- Disclose the information which the College no longer considers confidential due to its release by another college, subject to the necessary redactions in respect of third party personal data.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 23 November 2016 the complainant requested information of the following description:

"I would like to make the following freedom of information requests.

The College is a member of the North Barton Road Landowners Group. Januarys and more recently Carter Jonas have been making representations on behalf of this group of colleges. The representations are regarding potential development of College land on the "West Fields" (The Coton Green Corridor which includes the land from the Grange Road conservation area up to the M11 and which also includes the farmland between the Barton Road and the Coton footpath).

1. Which member of the College is responsible for representing the college in these matters and who has historically filled this role?
 2. Please provide me with a copy of the letters engaging Januarys and Carter Jonas to act for the College in this matter.
 3. Please provide a list of emails (including dates and subject) between the College and [named consultant] (of January's and more recently Carter Jonas).
 4. Please provide me with copies of any communication between officers of the College and Januarys or Carter Jonas regarding these matters. Should this communication be hard to filter from other communication with these counterparties, I am happy to be provided with all communication in the last 4 years."
6. On 14 December 2017 the College responded. It advised the complainant that it was its former Bursar, now Estates Bursar who represented the college in the NBRLOG and named that individual. This was the information sought in part 1 of the request. However it refused

to provide the remaining information. It cited the following exceptions as the basis for doing so:

- Regulation 12(3) – personal information
 - Regulation 12(4)(e) – internal communications
 - Regulation 12(5)(b) – course of justice
 - Regulation 12(5)(e) – commercial confidentiality
7. The complainant requested an internal review on 16 December 2016. The College sent him the outcome of the internal review on 14 February 2017. The College revised its position. It advised the complainant that it did not hold a copy of the letters engaging the consultants named in the request. It also dropped its reliance on regulations 12(3) and 12(4)(e) to withhold the information. However the College maintained its reliance on regulations 12(5)(b) and 12(5)(e) to withhold the information requested at points 3 and 4 of the request.
8. During the course of the Commissioner's investigation the College released a further two sets of documents which had previously withheld under regulation 12(5)(e).

Scope of the case

9. The complainant contacted the Commissioner on 20 February 2017 to complain about the way his request for information had been handled. As well as challenging the use of the exceptions cited and the application of the public interest test, he was also concerned that, when informing him of the outcome of the internal review, the College had said it had examined papers printed out by the Bursar and kept as the primary record. The Complainant argued that his request was wider than just the correspondence selected by the Bursar as the primary record.
10. The Commissioner considers that the matters to be decided are whether the College carried out appropriate searches to identify all the information falling within the scope of the request and whether the information requested at points 3 and 4 can be withheld under the exceptions cited.

Background

11. The College owns a small piece of land in the area to the north of Barton Road in Cambridge. The land is within the greenbelt and some of the landowners within the area have formed an association, the NBRLOG, to share the cost of promoting this land with a view to its development.

This has included making submissions to the local councils when they were developing their Local Plans and when those Local Plans were then examined by the Planning Inspectorate. The members of NBRLOG are all colleges within the University of Cambridge.

Reasons for decision

Scope of the request and the searches conducted by the College

12. In its internal review letter the College explained how it had conducted the review. This included a reference to the files that had been considered. The reviewer informed the complainant that he had examined paper files of e-mails and letters printed out and kept as a primary record by the administrator and assistant to the former Bursar going back to 2012. The complainant has argued to the Commissioner that his request is wider than just the information which the Bursar had chosen to keep in paper form. In particular he argued that additional information may well be held on private email accounts and questioned whether any information had been deleted since the date of his request.
13. The Commissioner accepts that the request as phrased would capture any correspondence between the College and the consultants regardless of whether it is held in paper or electronic files. Also any emails about the College's affairs held by college staff in private email accounts would be captured, providing those emails were only held by virtue of that individual's official role within the College.
14. In her initial letter the Commissioner specifically asked the College to explain what searches it had conducted for the withheld information, whether those searches included both electronic and paper files, and, if electronic files were searched, what search terms were used. She also asked the College to explain why it considered the searches that had been conducted would have identified any information captured by the request. Following receipt of the College's submission the Commissioner contacted the College by telephone to clarify certain issues. As a result of these enquiries the Commissioner understands that the searches were wider than had been suggested in the internal review letter.
15. The College is not a full member of the NBRLOG. It only holds a small piece of the land forming the potential development site and, due to a conflict of interest arising out of its interest in land elsewhere in the area, is only an associate member of the group.
16. The College has advised the Commissioner that its involvement in the North Barton Road project was handled by just one member of its staff, the former Bursar, now the Estates Bursar. He was the only individual

who had dealings with the group and its consultants. The College has stated categorically that no other officers or employees were involved. Therefore the Bursar would be able to identify the relevant files and his office would have access to all the relevant documents. The College has explained that its searches did include electronic files. Those searches were conducted using the terms 'Barton' and 'NBRLOG'.

17. The Estates Bursar's email account was also searched. The outbox was searched by recipients and the inbox was searched by sender. In addition the account was searched using the terms 'Barton' and 'NBRLOG'. The College has advised the Commissioner that in accordance with its policy 'Acceptable Use of the College' individuals are not permitted to hold College data on personal devices. Although remote devices are provided these all connect to the College's email accounts so that there is no practical need for staff to use personal computers for work purposes. Therefore even though it has not conducted any searches of personal email accounts it is confident that this would not have been necessary in order to locate all the relevant emails.
18. The College has also informed the Commissioner that, in line with its policies, all significant information on property matters are kept indefinitely. As the College is still in the process of developing a reliable means of preserving electronic records this involves documents being printed out and storing them in a paper filing system. This is what the Commissioner understands to be the 'primary record' referred to in the internal review letter. The Estates Bursar was able to identify the relevant paper files and these were searched manually to identify any relevant pieces of correspondence.
19. The Commissioner also queried why in its internal review letter the College referred to the correspondence only going as far back as 2012. The simple explanation for this was that the consultants named in the request were only engaged from 2012.
20. The Commissioner is therefore satisfied that although the internal review letter suggests that only paper records have been considered by the College when handling the request, the College has searched the relevant electronic files and the Estates Bursar's email account. Assuming staff adhere to the College's policies the Commissioner is satisfied that on the balance of probabilities the searches would have found the all the information captured by the request.

Information released by another public authority

21. The College has made the Commissioner aware that the complainant made a similar request to another member of the NRBLOG. That request lead to the disclosure of fifty two items, eighteen of which are also held

by Jesus College. In light of this development the College considers it is irrelevant to argue for the confidentiality of these eighteen documents. The College has confirmed it has therefore withdrawn its application of any exceptions to this information. The Commissioner therefore requires the College to disclose this information to the complainant. It may however redact certain personal data from those communications in order to ensure their disclosure does not breach the provisions of the Data Protection Act 1998. The Commissioner will set out in more detail the personal data which she believes the College should withhold later in this notice.

Regulation 12(5)(b) - course of justice

22. So far as is relevant regulation 12(5)(b) provides that a public authority may refuse a request to the extent that disclosure would adversely affect the course of justice.
23. The College has applied the exception to four sets of correspondence each being either a short email chain, or an email and attachments. Each set either contains legal advice, or relates to requests for legal advice in respect of either the consultation exercise for the Local Plans or the subsequent formal Examination of the Local Plan by the Planning Inspectorate. The Commissioner understands that the College considers this information would attract legal professional privilege.
24. In broad terms, legal professional privilege protects the confidentiality of communications between a client and their legal adviser. This allows the client to set out the issues on which they need advice as fully as possible and the legal adviser to provide full and frank advice which may, on occasions, include the weaknesses or criticism of their client's position. For this reason legal professional privilege is considered a cornerstone of the English legal system. It has therefore been accepted by the Tribunal that undermining the principle of legal professional privilege would have an adverse affect on the course of justice.
25. For the information to be capable of attracting legal professional privilege the information must form part of a communication either from the client to their legal adviser, or the legal adviser to the client. Where legal advice is required in relation to actual litigation which is either in contemplation or progress, the privilege may extend to communications between a client and third parties, where for example a client is obtaining an expert opinion to help inform the legal advice. In this case there is no litigation in prospect that the Commissioner is aware of and therefore only communications directly between the client (or their agent) and their legal adviser is capable of attracting legal professional privilege.

26. In order to attract legal professional privilege the communication must have been made for the dominant purpose of seeking or providing legal advice. Privilege can attach to draft documents prepared with the intention of putting them before a legal adviser, even if they are not subsequently sent to the adviser.
27. The Commissioner has examined the four sets of documents in question. The first of the four consists of a covering email from a firm of consultants which appears to be managing the promotion of the land's development on behalf of the NBRLOG together with a copy of a draft briefing note to counsel. The Commissioner finds that as the draft note was prepared by the consultants on behalf of the NBRLOG it is capable of attracting legal professional privilege. However the covering email from the consultants to the group cannot be considered a communication between a client and their legal adviser and so is not capable of attracting privilege. Nevertheless the Commissioner recognises that the exception provided by regulation 12(5)(b) is not limited to protecting privileged information, it can apply to information that would in any way prejudice the course of justice. Therefore she has considered whether the contents of the covering email reveal any of the details of the nature of the advice that is being sought. Although she finds that it does identify some perceived weaknesses in the Councils' Local Plans, those arguments are only discussed briefly and very generally and the groups approach to these matters would have become apparent through its submissions to the Councils during the consultation periods. The Commissioner finds that the covering email does not engage the exception. The College is required to disclose this information subject to any redactions in respect of personal data.
28. The second set consists of a cover email from the consultants, attached to which are, an email relating to the counsel's terms of engagement and a copy of the instructions to the counsel. Only the actual instructions are capable of attracting legal professional privilege. This information can be withheld under regulation 12(5)(b). The Commissioner has examined the contents of the covering email and the email concerning the counsel's terms of engagement. The first is very brief and simply introduces the attachments. The email concerning the counsel's terms of engagement was not made for the dominant purpose of providing legal advice. It simply sets out standard terms which the Commissioner presumes any prospective client would receive. The Commissioner can see no grounds for thinking the contents of either of these emails would in any way undermine the freedom of NBRLOG to seek legal advice or protect its legal rights. The Commissioner requires the College to disclose these emails subject to any redactions in respect of personal data.

29. The third set of documents contains a cover email from the consultant attached to which are instructions to counsel. There is also a document which appears to have been published by the Planning Inspectorate setting out the matters to be discussed at the different hearings that formed part of the Examination of the Local Plan. As before the cover email is neither capable of attracting legal advice, nor would its disclosure in any way interfere with the NBRLOG's ability to assert its legal rights. It does not engage the exception and must be disclosed subject to redactions for personal data. The document produced by the Planning Inspectorate is one that would have been published to assist all parties wishing to participate in the examination hearings. It does not engage the exception. However the instructions to counsel are privileged and do engage the exception and therefore can be withheld.
30. The fourth set again includes a cover email, which, for the same reasons as those in the second and third sets, does not engage the exception, and a meeting note. The College is required to disclose the covering email, subject to redactions for personal data. The meeting note sets out the issues discussed with the group's legal adviser. Having studied this note the Commissioner is satisfied that its focus is on the questions put to the legal adviser and the advice he provided. The meeting note in its entirety is capable of attracting legal professional privilege and so engages the exception and therefore can be withheld.

Public interest – legal professional privilege

31. Regulation 12(5)(b) is subject to the public interest test as set out in regulation 12(1)(b) of the EIR. This means that although the exception is engaged in respect of the information attracting legal professional privilege, that information can only be withheld if, in all the circumstances of the case, the public interest in favour of maintaining the exception outweighs the public interest in disclosure.
32. There is a weighty public interest in preserving the principle that a client can consult with their legal adviser in a full and frank manner. As explained in paragraph 24, this is necessary so that they can lay out all the issues relevant to the matter they require advice on and so that their legal adviser can respond in full to those enquiries. This may include explaining any weaknesses in, or criticism of their client's position. Without being able to have such frank exchanges it would not be possible for clients to obtain the best legal advice possible and so defend their legal rights.
33. As well as preserving the principle that clients should be able to obtain confidential legal advice the Commissioner has also considered the actual information in question and whether its disclosure would have an

impact on NBRLOG's participation in the Examination of the Local Plans or any related matters to which the legal advice would be relevant.

34. The Commissioner recognises that the privileged information was over a year old at the time the request made. The advice also mainly relates to stages of the examination process that had already taken place by the time the request was made and this means it is possible that NBRLOG's position as discussed in the legal advice had already been revealed. Nevertheless the Examination of the Local Plans had not been concluded at the time of the request. Therefore the Commissioner considers that the advice still relates to an ongoing issue. This adds weight to the value in preserving the confidentiality of the legal advice in question.
35. In favour of disclosure there is always a general public interest in promoting transparency and accountability in respect of the actions of public authorities. In this specific case the public interest is heightened by the fact that the matters relate to decisions around the future of the green belt.
36. The complainant has argued that there is a very clear public interest in disclosing any of the withheld information as the NBRLOG is actively lobbying to overturn the Local Plan which is supported by the majority of local councillors. However the Commissioner considers that by lobbying for changes to the Local Plans the NBRLOG is simply exercising its legitimate rights to make representations to the Planning Inspectorate in respect of the soundness of the Local Plans and is doing so through the appropriate process established under the planning regime for this purpose. Furthermore that process is one in which the arguments made to the Planning Inspectorate together with any evidence in support of those arguments are made public. The Commissioner can see no reason why the fact that the NBRLOG is taking a different position to that of the councils in this matter would in itself undermine the group's right to seek confidential legal advice.
37. The complainant has also argued that the University of Cambridge has a seat on the Greater Cambridge City Deal which deals with issues such as transport. He therefore considers that Jesus College's involvement in the NBRLOG presents a conflict of interest. The Commissioner assumes that the Greater Cambridge City Deal conducts its business in a way which would allow potential conflicts of interest to be addressed as and when they arise. Having considered the information withheld under regulation 12(5)(b) the Commissioner has found nothing that would suggest that Jesus College is acting inappropriately.
38. In light of the above the Commissioner finds that the public interest in favour of maintaining the exception and withholding the information, is greater than that in favour of disclosing the information. This is due to

the value in preserving the principle of legal professional privilege, particularly when that advice relates to an ongoing issue.

Regulation 12(5)(e) confidentiality of commercial information

39. Regulation 12(5)(e) of the EIR states that 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.
40. For the Commissioner to agree that the withheld information is exempt from disclosure by virtue of regulation 12(5)(e) of the EIR, the College must demonstrate that:
- the information is commercial or industrial in nature;
 - the information is subject to confidentiality provided by law;
 - the confidentiality provided is required to protect a legitimate economic interest; and
 - that the confidentiality would be adversely affected by disclosure.

If the first three tests can be met it follows that the fourth test would also be satisfied if the information was disclosed.

41. The College has withheld eighteen sets of documents under the exception. It has raised two main arguments, firstly that the information contains either frank advice from consultations, or candid discussions of issues. This open dialogue is necessary so that the College, as part of NBRLOG, can protect and promote its commercial interests in respect of its land. Such discussions, it is argued, should remain confidential. The second main argument is that some of the information relates to the consultants' fees and that this too is commercially sensitive and so should remain confidential.
42. The withheld information consists of individual emails, some with attachments, and email chains. Often the sets of documents include correspondence from other consultants with expertise relevant to different aspects of the Local Plans and much of the correspondence relates to fees proposals. Other sets of documents contain submissions to be presented on behalf of the NBRLOG at the Examination of the Local Plans. The Examination of the Local Plans included hearings at which the planning inspector scrutinised the submissions and the withheld information includes reports on how those hearings had gone and what issues the different parties had raised. Other email chains are more administrative in the sense that they discuss, or arrange meetings

between the members of the NBRLOG and their consultants. Having looked at the information the Commissioner is satisfied that all the information is of a commercial nature, relating as it does to the promotion of land owned by the NBRLOG as a potential site for development and the engagement of consultants for that purpose.

43. The Commissioner will first consider the College's argument that the information relates to confidential discussions with, and advice from its consultants. Much, but not all, of this information is likely to have been understood as being confidential at the time these communications were sent or the submissions drafted. However when considering whether the exception is engaged the Commissioner is required to consider the situation at the time of the request i.e. 23 November 2016 by which time circumstances may have changed.
44. The Commissioner understands that both Cambridge City Council and South Cambridgeshire District Council produced Local Plans in conjunction with one another. The Local Plans went through a public consultation process from July 2013 to September 2013. The plans were then submitted to the Secretary of State for Communities and Local Government via the Planning Inspectorate at the end of March 2014. This is the process known as the Examination of the Local Plans. Interested parties were provided with the opportunity to make submissions on whether they considered the Local Plans were sound. There was then a series of hearings between November 2014 and April 2015. These hearings provided the planning inspector with the opportunity to test both the robustness of the Local Plans and of the submissions that had been provided by interested parties, including NBRLOG. The public were able to attend the hearings, although only those who had said in advance that they wished to speak are allowed to do so. Following those hearings the planning inspector issued her preliminary conclusions in May 2015 and asked the Council to carry out further work in support of their plans. That was duly carried out with further public consultations being conducted by the Councils from December 2015 to January 2016. The latest update on Cambridge County Council's website is dated July 2017 from which it is understood that the planning inspector has not yet published her final report.
45. Most of the correspondence contained in the sets of information date from May 2015 or earlier. These include a couple of documents that relate to the period when the Local Plans were the subject of the initial public consultation carried out by the Councils in 2013, but the majority of the information relates to the submissions being prepared for the Examination of the Local Plans by the Planning Inspectorate. In addition there are a few documents concerning a related planning issue that was the subject of a separate consultation exercise towards the end of 2015.

46. The information from May 2015 and before includes submissions which would have been made public by the time of the request, some brief discussions of strategies that would have become evident by the time of the request, or what appear to be factual reports of the issues discussed at the public hearings held by the Planning Inspectorate. The Commissioner does not consider such information can be considered to be confidential at the time the request was made, or that its disclosure could in any way have an adverse affect on the commercial interests of NBRLOG including those of the College.
47. The only exception to this is where the information refers to a local stakeholder. The Commissioner recognises that in promoting their land for development NBRLOG may wish to solicit the views of local groups and discuss how best to address their concerns in order to give their proposals a better chance of success. NBRLOG is entitled to safe space in which to consider such matters and while there is still potential for the land to be developed there is a value to NBRLOG in maintaining working relations with the stakeholders in question. The Commissioner is satisfied that disclosing the information relating to the stakeholders would be detrimental to the commercial interests of NBRLOG. The Commissioner is also satisfied that the information has remained private. Having concluded that it is confidential and that its disclosure would damage commercial interests the Commissioner finds that the exception provided by 12(5)(e) is engaged.
48. The information that postdates May 2015 covers a period from October 2015 to December 2015. The information concerns a planning matter related to the potential development of the land owned by NBRLOG. It again consists of a mix of proposed submissions to the relevant consultation process, fees proposals, and a brief discussion of the value in submitting a consultation response. From the information itself the Commissioner understands that the consultation took place towards the end of 2015, meaning that any submissions, or proposal would have become public by the time of the request.
49. The Commissioner notes that within the post May 2015 correspondence there is one briefing note which discusses the work which NBRLOG are advised to commission in readiness for the consultation exercise which the Councils were to conduct in respect of the further work to their Local Plans as required by the Planning Inspectorate. This consultation exercise was completed by the end of January 2016. This was nearly eleven months before the request was made. Therefore although the document does contain some detail of the strategy that was being developed, the Commissioner is not convinced the information would be still commercially sensitive at the time the request was made.

50. Before going on to look at the College's other main argument for withholding information under this exception the Commissioner will consider an argument allied to the need for safe space in which to discuss business affairs. The College has argued that the disclosure of certain documents would harm the ability of the members of NBRLOG to work together. The College has not expanded on this argument. However having looked at the correspondence to which this argument has been applied the Commissioner considers it can be characterised as that which involves some form of questioning of a particular proposal, or at least seeking clarification of an issue. The emails appear to have been sent to representatives of the whole group and the issues raised do not appear to have been particularly contentious. The Commissioner is not convinced that disclosing this information would either inhibit the willingness of members of the group to discuss issues, or that disclosure of those discussions would assist someone opposing the development of NBRLOG's land. If the argument is that other members of the group would object to the College's disclosure of the requested information, the Commissioner notes that the other members of the group are also Cambridge colleges and therefore they too are subject to the EIR. It is unlikely therefore that they could object to disclosures which the legislation could also require them to make. The exception cannot be engaged on the basis of these arguments.
51. The Commissioner will now consider the College's argument that disclosing the withheld information will compromise its ability to negotiate fees effectively. The Commissioner understands the College to be applying the exception to protect its own ability to negotiate fees rather than protecting the interests of the consultants. In any event the Commissioner would not accept arguments regarding the commercial interests of a third party without something which indicated that the concerns being raised accurately reflected those of the third party in question. Apart from one clause in the terms and conditions that accompanied the fees proposal of one of the consultants, no such supporting material has been provided. Therefore the Commissioner will only consider the extent to which the disclosure would prejudice the ability of the College to negotiate fees.
52. The Commissioner acknowledges that at the time the fees proposals, or any other communication relating to the cost of consultants, including how those fees were to be split, were produced there would have been a general understanding that the communications were confidential. However for the exception to be engaged it is important to consider whether the disclosure would actually have an adverse effect on the College's commercial interests at the time of the request. It is noted that many of the consultants in question appear to have still been undertaking work for NBRLOG at the time the request was made and therefore the information was still current at that time.

53. However there is nothing within the correspondence which suggests there was any active negotiation of the fees. There was a lead consultant on whom, the Commissioner presumes, the NBRLOG relied on for selecting the other consultants and that the choice would have had some regard for whether their fees represented good value for money. Nor is there anything to suggest that the fees were anything other than those which professionals in the field would have recognised as the going rate. Nevertheless the Commissioner does recognise that the promotion of the land owned by NBRLOG as a development site is an ongoing process and that the group will need further input from consultants in the future. These may not necessarily be the same consultants as are currently involved. Furthermore the Commissioner is aware that the College has other land holdings, separate from NBRLOG land, and may at some stage engage consultants in respect of those sites. Therefore the Commissioner recognises that the College would be disadvantaged if potential future consultants knew what fees the College had been prepared to pay the consultants it currently uses.
54. The Commissioner finds the exception is engaged but only in respect of the actual monetary values contained in the correspondence i.e. the actual amount to be charged for work whether that is provided as an hourly/daily rate, or for providing a particular service. Once this information is redacted there are no grounds for considering any other the information about the work that is to be undertaken is in any way commercially sensitive.

Public interest

55. Having found that the exception is engaged in respect of information relating to NBRLOG's approach to a local stakeholder and to the monetary values of the fees (but only the actual monetary values) contained in the correspondence it is now necessary to consider the public interest test. The public interest test is set out at regulation 12(1). This provides that even though information may engage an exception it can only be withheld if, in all the circumstances of the case the public interest in maintaining that exception outweighs the public interest in disclosure.
56. When withholding all eighteen sets of documents in their entirety under regulation 12(5)(e) the College recognised that there is a public interest in understanding the College's position with regard to the potential development of the site in question due to the potential impact such planning decisions may have on the local community. However it considered that its positions on the site were now a matter of public record and that therefore the public interest lay in the ability of NBRLOG being able to debate the advice it had received in private and so further its commercial interests in promoting the development of the site. This

value in maintaining the confidentiality of the advice and internal debate is, the College argued, particularly strong whilst the development of the site is under active deliberation.

57. The Commissioner acknowledges that the NBRLOG's position in respect of the site's development is a matter of public record. It is for this very reason that the Commissioner finds the disclosure of much of the information to which regulation 12(5)(e) was applied does not engage the exception.
58. The complainant has presented the same arguments in favour of disclosing the information withheld under regulation 12(5)(e) and he did in respect of the information withheld under 12(5)(b) – course of justice. Firstly is that the College was lobbying to overturn the Local Plans which were supported by a clear majority of councillors and that there was a potential conflict of interest arising out of the College's membership of both NBRLOG and the Greater Cambridge City Deal. As previously discussed the Commissioner does not place any great weight on these arguments. NBRLOG is simply exercising its right to participate in the formulation of the Local Plans through the appropriate processes which appear transparent and open and the Commissioner assumes the Greater Cambridge City Deal has procedures for dealing with potential conflicts of interest and notes that there is nothing to suggest the College has in any way attempted to conceal its role within both bodies.
59. It should be remembered that the College's land holdings will be managed as assets to benefit its functions as a university. Therefore the College's promotion of the NBRLOG site for development will ultimately be for the purpose of obtaining additional finance to fund the work of the College. This is not a purely private interest, there is a public interest in having well-funded institutions such as the College.
60. In respect of the monetary values of the professional fees which the College is being charged the Commissioner considers the disclosure of this information would add nothing to the public's understanding of the College's position or its strategy for promoting the site's development. Its disclosure would simply compromise the College's position when it came to engaging consultants in the future. Therefore she finds that the public interest in maintaining the exception outweighs the public interest in disclosing these costs.
61. In respect of the information on the local stakeholder group the Commissioner recognises that this information is sensitive in that it concerns NBRLOG's relationship with part of the local community that would be affected by the site's development. It is obviously important to develop a positive relationship with that group and this requires safe space. Therefore there would be some harm caused by disclosing the

information about that stakeholder. This has to be balanced against the public interest in understanding how public authorities, such as the College, acting together with other public authorities and with the support of professional advisers approach such groups. However the Commissioner does not consider this issue is central to understanding the overall position of the College in respect of promoting the site's development or allowing those who may oppose the site's development to counter NBRLOG's arguments. Therefore the Commissioner finds that the public interest in maintaining the exception outweighs the public interest in disclosure.

62. In conclusion the Commissioner finds that in respect of all the information which engages the exception provided by regulation 12(5)(e) the public interest favours maintaining the exception. The College is entitled to withhold this information.

Regulation 13(1) – personal data

63. So far as is relevant regulation 13(1) provides that personal data shall not be disclosed if disclosing it to a member of the public would contravene any of the data protection principles contained in the Data Protection Act 1998 (DPA).
64. The College did originally rely on regulation 13(1) to withhold some of the requested information, however it withdrew its reliance on this provision at the internal review stage. Nevertheless in her dual role as both regulator of the EIR and the DPA it would be inappropriate for the Commissioner to order the disclosure of information which could breach the data protection principles. She has therefore proactively considered whether any of the information which she has found not to be exempt under regulation 12(5)(b), or (e) should be withheld under regulation 13(1). She has also considered whether any of the information contained in correspondence already disclosed by another member of NBRLOG (see paragraph 21) is exempt under regulation 13(1).
65. The first data protection principle states that the processing of personal data shall be fair and lawful and, in particular, personal data shall not be processed unless one of the conditions in Schedule 2 of the DPA can be satisfied. Processing includes the disclosure of information.
66. The Commissioner has considered whether the disclosure of names of the representatives of the NBRLOG, or their professional advisers (including legal advisers), together with the contact details of these individuals such as direct phone numbers and email addresses would breach the first principle. In addition she has considered whether the profiles of the staff of one of the firms of consultants engaged by NBRLOG can be disclosed.

67. Personal data is defined as being information which both identifies and relates to a living individual. The Commissioner is satisfied that the information described above is personal data. When considering whether the disclosure of that personal data would breach the first principle the Commissioner's approach is to start by looking at whether the disclosure would be fair.
68. 'Fairness' is a difficult concept to define. It involves consideration of:
- The possible consequences of disclosure to the individual.
 - The reasonable expectations of the individual regarding how their personal data will be used.
 - The legitimate interests in the public having access to the information and the balance between these and the rights and freedoms of the particular individual.

Often these factors are interrelated.

69. In respect of the names of NRBLOG representatives and consultants contained within the correspondence the Commissioner finds that the individuals representing the members of the NBRLOG all appear to be bursars or possibly estates bursars at their respective colleges. This is a senior role within the college structure. With that seniority there would come an expectation that some information in respect of their role could be disclosed to the public. The bursars' role within the NBRLOG is likely to be already understood by the public, certainly the College felt able to reveal the name and job title of their representative in the NBRLOG when responding to the request. The Commissioner therefore does not foresee any untoward consequences resulting from disclosing this information. Furthermore the disclosure of the information would assist the public make sense of the dialogue between the parties. The Commissioner therefore finds that it would be fair to disclose their names. The Commissioner is not aware of any grounds for believing such a disclosure would be unlawful and so she is satisfied that disclosing their names would be both fair and lawful. As far as the disclosure satisfying a condition in Schedule 2 of the DPA, the sixth condition provides that personal data can be disclosed if it is necessary for the legitimate purposes of the person to whom it is to be disclosed to, except where the disclosure would prejudice the rights and freedoms of the data subject. This condition involves the same considerations as have already been taken into account when looking at whether the disclosure would be fair. Therefore having found the disclosure is fair the Commissioner is satisfied that the sixth condition can also be met. The names of the bursars contained in the headers and footers to the

various emails and contained in the body of that correspondence, or any of the attachments should be released.

70. Any college staff below the position of Bursar, Estates Bursar, or their equivalent are likely to have different expectations regarding the disclosure of their names. The Commissioner is satisfied that the disclosure of such personal data would not be fair. Any such personal data contained in the correspondence can be withheld.
71. The Commissioner will now look at the names of the consultants ie the names of the individual professional advisers employed by the various firms of consultants (for completeness the actual names of the firms should be disclosed). In respect of the names of the individual consultants, the Commissioner is aware from the contents of the correspondence that at least some of these individuals attended the public hearings on behalf of NBRLOG. Furthermore, internet searches indicate that the submissions made to the Councils as part of their consultation exercises for the Local Plans and the submissions as part of the Examination of the Local Plans contain the names of the consultants involved. The Commissioner therefore finds that it would be fair to disclose these names as their involvement in promotion of the land in question as a development site is already known. In the absence of any information to the contrary the Commissioner finds the disclosure would also be lawful. As no prejudicial consequences are foreseen as a result of disclosure and the release of the names would help one's understanding of the correspondence, the sixth condition is also satisfied. These names are also to be released.
72. If however the College identifies any individual professional advisers who have not already been publicly identified as being connected with the promotion of the land as a development site, or any individual who only holds a relatively junior role within their respective firm of consultants, the names can be withheld from the information to be released.
73. Although the names of both the bursars and the individual professional advisers can be disclosed without breaching the data protection principles the Commissioner considers that the disclosure of their direct contact details such as direct phone numbers and email addresses could lead to an unwarranted disruption of their professional lives. As such the disclosure would be unfair. The College is entitled to redact this information.
74. The final set of personal data that the Commissioner has considered is contained in the set of correspondence labelled by the College as 4 5. The correspondence includes a quote from one of the firms of consultants and as part of that quote the professional profiles of the

individuals who would undertake the proposed work are provided. The profiles give details of the individuals' experience and careers to date. The profiles of two of those referred to in the letter appear on the consultant's website which the Commissioner takes to be an indication of their seniority within the company. Having regard for that seniority and the fact that the information is already available, the Commissioner finds this information should be disclosed. However in respect of the other two individuals, their profiles do not appear on the website and given the level of detail contained in the profile the Commissioner finds that disclosing this information would be unfair. These profiles can be withheld.

75. The Commissioner has produced a short confidential annex to help clarify which information can be withheld and which should be disclosed. This annex will be provided solely to the College and the complainant.
76. Only one of the sets of correspondence is to be withheld in full, that being one email relating to the local stakeholder referred to in paragraph 47. The Commissioner recognises that in point 3 of the request the complainant has asked the College to provide a list of the correspondence it holds. The Commissioner is satisfied that the one email to be withheld in its entirety would also be exempt from inclusion any such list. As information from each of the remaining sets of correspondence is to be released, the Commissioner is satisfied that this would in effect provide the complainant with the disclosable information that the list would be comprised of. Therefore compliance with this notice would also satisfy part 3 of the request.

Right of appeal

77. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

78. 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.

79. 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

Rob Mehan
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF