

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

**Date:** 15 December 2022

**Public Authority:** London Borough of Lewisham Council  
**Address:** Town Hall  
Rushey Green  
Catford  
London  
SE6 4RU

**Decision (including any steps ordered)**

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1. The complainant has requested a copy of a valuation report. The London Borough of Lewisham (the Council) disclosed two reports with redactions made under 12(5)(e) (commercial confidentiality).
2. The Commissioner's decision is as follows:
  - The withheld information engages regulation 12(5)(e) and the public interest lies in maintaining the exemption.
  - The Council breached regulation 14(3) (refusal to disclose information), as it failed to issue a valid refusal notice.
  - The Council also breached regulation 5(2) (duty to make environmental information available upon request) as it failed to disclose all information that fell within the scope of the request within 20 working days.
3. The Commissioner does not require the public authority to take any steps.

## Background information

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4. The Commissioner understands that this request refers to the Catford Regeneration Partnership Limited ('CRPL'). The CRPL 2015/16 business plan<sup>1</sup> describes the project as follows: 'Catford Regeneration Partnership Limited (CRPL) is a wholly owned subsidiary of Lewisham Council. The company was originally created in January 2010 to purchase the leasehold interests in and around the Catford Centre in order to manage and regenerate the property to improve the economic, social and environmental wellbeing of the people of the London Borough of Lewisham (LBL).' The Commissioner understands that CRPL's portfolio comprises of 33 retail units, 13 market stalls and 16 flats.

## Request and response

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5. The complainant made a request, below, that was received by the Council on 5 October 2021:

"In accordance with the EIR and FOI legislation, please supply a copy of reports and correspondence in relation to the valuations in the Council's 2020/2021 accounts namely those for the Catford Regeneration Partnership Limited that were carried out by Wilks Head and Eve Chartered Surveyors and Town Planners.

The Council have said that their valuation report has been prepared under the terms and definitions set out in the Royal Institution of Chartered Surveyors RICS Valuation – Professional Standards issued in January 2014 (The Red Book), revised April 2015 and that they concluded that a £2.122m increase in value from 2019/20."

6. On 9 November 2021 Lewisham responded and disclosed a redacted copy of the 2020 valuation report.
7. The complainant requested an internal review on 10 November 2021.
8. The Council provided the outcome to its internal review on 26 November 2021. It upheld its original response, explaining that information contained within the report is exempt under regulation 12(5)(e) (commercial or industrial information) of the EIR. The Council also released commentary which it believed would assist the complainant's understanding of the report.

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<sup>1</sup> [CRPL Business Plan Appendix.pdf \(lewisham.gov.uk\)](https://www.lewisham.gov.uk/CRPL%20Business%20Plan%20Appendix.pdf)

9. During the scope of this investigation, the Council identified the 2021 valuation report, which it considered would fall within the scope of the request. The Council disclosed a redacted version of this report to the complainant.
10. The information being withheld, from both the 2020 and 2021 valuation report, is:
  - Third party information, relating to staff of Wilks, Head & Eve who carried out the valuation, being withheld under regulation 13.
  - Rent passing values and capital values of individual properties, both residential and business, being withheld under regulation 12(5)(e).

## **Reasons for decision**

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### **Regulation 13 (personal data)**

11. Information can only be disclosed, in response to a request made under the EIR, when the legitimate interest in this information outweighs the fundamental rights and freedoms of the data subject.
12. The complainant's arguments focus on the need to disclose commercial information relating to the Council, so it can be fully scrutinised. The Commissioner doesn't consider it necessary to disclose third party personal data in order to meet this legitimate interest. Therefore, he is satisfied that the Council is entitled to withhold any third party personal data under regulation 13.

### **Regulation 12(5)(e)**

13. According to regulation 12(5)(e), information is exempt 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.
14. The Commissioner has seen an unredacted copy of the report. He is satisfied that the information that is being withheld relates to land and property values which is commercial information.
15. He is also satisfied that this information is commercial in nature as it is not trivial and it is not otherwise in the public domain. The Council has explained that the information was shared with it 'in circumstances which impart an expectation of confidence'. The Council has explained the information is also subject to confidentiality provisions incorporated into the valuation report.

16. Such confidentiality provisions do not automatically mean that the information is exempt. In order to engage regulation 12(5)(e), disclosure must adversely affect the legitimate economic interest that said confidentiality agreement is designed to protect.
17. The Council has explained 'The redacted information if released into the public domain, would prejudice CRPL's ability to extract best consideration from its land in any future negotiations. Disclosure of the detailed financial information would have a detrimental impact on the Council's bargaining position and ability to achieve best value in the interests of local taxpayers.'
18. The complainant has argued that 'The land held by Lewisham Council and Catford Regeneration Partnership Limited is not for sale on the open market and there is no expectation that it will be.' The Commissioner acknowledges the complainant's concern and notes that the purpose of the 2020 report is to 'provide a 'Market Value' valuation for the portfolio to be used for accounting purposes.'
19. Whilst the report may have been authored for accounting purposes, the report does not dismiss the possibility that the portfolio, or any individual property within it, may be sold in the future and the commission of the report itself seems to support that possibility. Furthermore, if rent passing rates are disclosed to the world at large, this would prejudice the CRPL's negotiating position in relation to any future tenants. As a wholly owned subsidiary of the Council, if CRPL's ability to obtain value for money would be prejudiced, the Council's commercial interests would also be prejudiced.
20. The Council has explained that, under section 123 of the Local Government Act 1972,<sup>2</sup> it is the Council's duty to achieve best value for money. The Commissioner is satisfied that disclosure would adversely affect the legitimate economic interest that said confidentiality agreement is designed to protect. Therefore regulation 12(5)(e) is engaged and therefore the Commissioner will go onto consider where the balance of the public interest lies.

### **Public interest test**

21. In this case, the Commissioner believes that the public interest lies in maintaining the exception.

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<sup>2</sup> [Local Government Act 1972 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

22. The Council acknowledges that 'there is a need for openness and transparency with regard to Lewisham Council's assets.' Disclosure of the requested information would allow scrutiny of whether CRPL, and the Council, are obtaining value for money.
23. There is also the general public interest in openness and transparency which would be met by compliance with the request. The Commissioner notes that this public interest increases with the amount of taxpayer money involved which is the case here.
24. To reiterate, the Council provided the complainant with some commentary to help them understand the 2020 report with redactions. This commentary included 'There were additional residential units included as part of 2020-21 which were not present in 2019-20 which will also account for some of the difference.'
25. At the time of raising their complaint with the Commissioner, the complainant expressed concern that there was no further explanation offered. However, the Commissioner notes that a redacted copy of the 2021 report has now been disclosed to the complainant which will allow the difference in valuations to be scrutinised.
26. The complainant is concerned that 'large parts of the narrative remain redacted'. However, the Commissioner is satisfied that only the information referred to within paragraph 11 has been redacted and the Council has been as transparent as possible about this matter, except for information which engages regulation 12(5)(e) and regulation 13 of the EIR.

### **Procedural matters**

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27. Regulation 14(3) states that any refusal notice issued under the EIR must cite what exception is being relied upon. Since the Council's refusal notice only stated 'information that cannot be released has been redacted' and failed to explain what exception it was relying upon, it breached regulation 14(3).
28. The Council also breached regulation 5(2) as it failed to disclose a redacted copy of the 2021 report within twenty working days of receipt of the request.

## Right of appeal

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29. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

30. 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.
31. 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

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**