

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

Date: 19 December 2022

Public Authority: Governing Board of Manchester Metropolitan University

Address: All Saints Building
Manchester
M15 6BH

Decision (including any steps ordered)

1. The complainant has requested a copy of a Report on Title. The above public authority ("the public authority") relied on regulations 12(5)(b) – course of justice – and 12(5)(e) of the EIR to withhold the information.
2. The Commissioner's decision is that the public authority has correctly engaged regulation 12(5)(b) of the EIR and that the balance of the public interest favours maintaining the exception.
3. The Commissioner does not require further steps.

Request and response

4. On 27 September 2022, the complainant wrote to the public authority and requested information in the following terms:

"Please provide a copy of the Report on Title referred to on page 23 of the Rye Bank Road Chorlton, Development Framework June 2019."
5. The public authority responded on 4 October 2022. It relied on regulation 12(5)(b) to withhold the main body of the Report on Title. It determined that the annexes were not environmental information, but were already reasonably accessible via HM Land Registry and so it relied on section 21 of FOIA to withhold this information.

6. The complainant requested an internal review on the same day. She accepted that the annexes were reason accessible, but challenged the withholding of the main body of the Report on Title.
7. The public authority maintained its stance at internal review but, after the Commissioner accepted the complaint for investigation, it additionally relied on regulation 12(5)(e) of the EIR to withhold part of the requested information.

Scope of the case

8. As the public authority has applied regulation 12(5)(b) of the EIR to the whole document and regulation 12(5)(b) to just a single section, the Commissioner will only look at the latter exception in the event that he finds that the former does not apply.

Reasons for decision

9. The Commissioner considers that the public authority was correct to deal with the request for the Report on Title under the EIR. The withheld information concerns the ownership of a parcel of land as well as matters pertaining to rights of way and drainage. It is therefore information on measures affecting the elements of the environment.
10. Whilst it does not form part of this decision, as the complainant excluded these parts from her request, the Commissioner is of the view that the annexes to the Report on Title would also be environmental information. Not only do they inform the Report itself, but several of them concern measures likely to affect the elements of the environment.

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

11. Legal professional privilege is a fundamental principle underpinning the British legal system. Individuals and public authorities have the right to seek and receive, in confidence, good quality legal advice. Any impingement on that privilege would adversely affect the course of justice. Therefore if the Report on Title is subject to privilege, Regulation 12(5)(b) is engaged.
12. The complainant advanced two arguments as to why the information should not be subject to privilege. Firstly she argued that a “report” was not a communication and therefore could not attract privilege as a matter of principle. Secondly, she argued that, even if privilege had applied, the public authority had waived the privilege by referencing the

Report on Title in the public consultation document. Both arguments are misconceived.

13. The first argument does not reflect the purposive approach of the EIR. A "communication" is something intended to convey (or "communicate") information from one person to another. The precise form the information takes is immaterial: if it is being passed from one person to another, it is part of a communication.
14. In this case the Report on Title has clearly been prepared by one or more professional legal advisers and provides advice on various matters relating to the ownership of a particular piece of land. Reports on Title are designed to provide an overview of the current legal situation and any potential legal issues that might arise out of ownership (such as a right of way over part of the land). The fact that such information may have been compiled into a report, rather than pasted into the body of an email does not prevent that report from being a "communication". To argue otherwise is to confuse form with substance.
15. Having accepted that the document in question is a communication between a legal adviser and their client, the Commissioner next considers whether privilege has been waived.
16. The relevant section of the development framework document reads:

"A Report on Title (RoT) has been produced by the University that concludes that there are no restrictions on the land to prevent or restrict the redevelopment for new homes. The only restrictions evident are conveyances that set out various ways of ensuring poor quality housing is not built on the land, so as to ensure the character of the area is not compromised. This infers that this land was originally identified for future housing, which is supported by the historical map regression analysis over pages 25 to 27 of this Development Framework."
17. The Commissioner does not consider that such a limited reference could reasonably be said to amount to the public authority having waived privilege over a five page report. The withheld information goes much further in identifying the specific restrictions the land is subject to.
18. The Commissioner does not consider that public authority has cherry-picked or otherwise mis-represented the withheld information. He therefore considers that the public authority is entitled to maintain that the Report on Title is covered by privilege and thus regulation 12(5)(b) is engaged.

Public interest test

19. Whilst the site in question is not large, the Commissioner recognises that it is located in a relatively dense urban area and therefore any development is likely to affect a number of people – particularly when any development works are ongoing. There is therefore a public interest in understanding what is being proposed and why.
20. However, in the Commissioner's view, that public interest is largely met by the publication of the draft development framework, the associated consultation and the fact that many of the documents to which the Report references are accessible to the public. It is likely that there will be further opportunities to scrutinise more precise plans during any formal application for planning permission which follows.
21. In the Commissioner's view, revealing the legal analysis the public authority has received would add very little to public understanding of what is being proposed for the site in question. At the same time, it would damage the public authority's ability to defend its legal position (should it need to do so) or to receive good quality legal advice in future.
22. The Commissioner therefore consider that the balance of the public interest favours maintaining the exception.

Right of appeal

23. 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

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

24. 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.
25. 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

Roger Cawthorne
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