

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 4 May 2023

**Public Authority:** South Hams District Council  
**Address:** Follaton House  
Plymouth Road  
Totnes  
TQ9 5NE

#### **Decision (including any steps ordered)**

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1. The complainant has requested, from South Hams District Council ("the Council"), information about its household waste management contract. The Council disclosed some information but refused to provide the remainder citing regulations 12(5)(e) (Confidentiality of commercial or industrial information), 12(5)(f) (Interests of the person who provided the information to the public authority) and 13(1) (Personal Information) of the EIR. At a late stage, the Council also advised that some information was not held.
2. The Commissioner's decision is that the Council is entitled to withhold the pricing information in Schedule 3 under regulation 12(5)(e). In respect of the names of any parties who were responsible for signing off any part of the contract it should take the step below. He also finds that, at the time of the request, no information regarding 'compensation' was held.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
  - Disclose the names (and job role if included) of the parties responsible for signing off any parts of the contract.
4. The Council 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.

## Background

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5. According to the Council's Draft Statement of Accounts for 2021/22<sup>1</sup>:

"The ongoing issues with our waste and recycling service continue to be a significant cause of frustration for residents. The Council and FCC Environment have reached a mutual agreement to end the contract for waste, recycling, street and toilet cleaning services. Both parties agree that the past few years have presented a number of extremely challenging circumstances. In the best interest of the residents of the South Hams, it has been agreed that services will be operated by the Council from 3 October 2022".

6. At the time of the request the contract was still ongoing.

## Request and response

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7. Following an earlier, related request, which was dealt with by the Commissioner under reference IC-153809-Z1Q4<sup>2</sup>, on 11 December 2021 the complainant wrote to the Council and requested information in the following terms:

- "1. How much of the total value of the contract awarded to FCC environment (OJEC reference 2018/S 247-S70127-the Contract) was attributed to the collection of household recyclable items in the area of South Hams District Council (SHDC)?
2. How many households are still not receiving (at the date of this request) the service for the recycling of household items as defined in the contract? For the avoidance of doubt I do not consider collection of white and blue bags as before the contract commenced to be 'as defined in the contract'.

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<sup>1</sup>[file:///C:/Users/howescs/AppData/Local/Temp/MicrosoftEdgeDownloads/f4d27df8-5079-4c10-b155-91db940f46ce/SHDC Draft Statement of Accounts 2021-22.pdf](file:///C:/Users/howescs/AppData/Local/Temp/MicrosoftEdgeDownloads/f4d27df8-5079-4c10-b155-91db940f46ce/SHDC_Draft_Statement_of_Accounts_2021-22.pdf)

<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4023495/ic-153809-z1q4.pdf>

3. What proportion of households in the area of SHDC does this represent?
  4. What compensation has been paid by the contractor for its failure to deliver its obligations under the contract?
  5. What tests, demonstrations or other methods of assurance were conducted during contract negotiation to ensure that the methods proposed by the contractor for the collection of household recyclable items would be feasible in the particular circumstances of the SHDC area?"
8. On 21 December 2021 the Council responded. It provided some information and did not cite any exceptions.
  9. The complainant requested an internal review on 23 December 2021. When doing so, he introduced two new parts to the request (for clarity the Commissioner has labelled these as parts (6) and (7)) as follows:
    - "6. Please provide in electronic form a copy of the Contract awarded to FCC Environment (OJEC reference 2018/S 247-570127). For the avoidance of doubt, by Contract I mean the body of the Contract (sometimes known as 'terms and conditions') plus all schedules to the Contract and any modifications to the contractual agreement made in letters, emails, text messages, notes of meetings or any other record in any form following the date of signature.
    7. Please provide copies of all papers, letters, emails, text messages, notes of meetings or any other record in any form that set out the 'understanding' (as referred to in your response to my FOI request [redacted]) between SHDC or its agents and FCC Environmental to keep secret the basis for the payment of compensation by FCC Environmental for failure to deliver some or all of its obligations under the Contract".
  10. The Council treated this correspondence as a request for an internal review of parts (1), (2) and (5) of the request dated 11 December 2021, and responded on 13 April 2022. When doing so it noted that parts (6) and (7) were for new information so, although it provided a response to them in the internal review, it also logged them as a fresh request and sent a separate response so the complainant could ask to have a further internal review of these two new parts if he wished.
  11. In respect of parts (1) and (4) of the request, these were refused under regulation 12(5)(e) (Confidentiality of commercial or industrial information). The Council responded to part (2) of the request. In respect of part (3) of the request it advised:

"Officers are meeting on week commencing 25 April 2022 to conduct a Public Interest Test and determine whether the contract can be released into the public domain. Once this decision is made, a follow up response will be provided to you with the findings along with all information that has been deemed releasable".

In respect of part (5), the Council provided a list of steps included as part of the procurement process. In respect of part (7), it advised that a meeting had been held in connection with this request but there were no notes and no other information was held.

12. The complainant asked for an internal review of parts (6) and (7) of the request on 9 May 2022 and was told, on the same day, that the case was considered to be 'closed'.
13. On 19 August 2022, following the Commissioner's intervention, the Council provided an internal review covering parts (6) and (7) of the request. In respect of part (6), the Council disclosed some information, relying on regulations 12(5)(e) (Confidentiality of commercial or industrial information), 12(5)(f) (Interests of the person who provided the information to the public authority) and 13(1) (Personal Information) for the remainder. In respect of part (7), it revised its understanding of this part of the request and withheld the related information under regulation 12(5)(e) (Confidentiality of commercial or industrial information).
14. For simplicity, the Commissioner has considered both requests together.

### **Scope of the case**

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15. The complainant initially contacted the Commissioner on 9 May 2022, to complain about the way his request for information had been handled; he specifically referred to the Council having told him that his request was 'closed'.
16. Following the subsequent delayed provision of an internal review, the Commissioner contacted the complainant for his views. The complainant asked for some time to consider the Council's response before finalising what he wished to do.
17. On 23 August 2022, the complainant provided his grounds of complaint.
18. Having commenced his investigation, the Commissioner was provided with the full contract by the Council. The documentation was accompanied with a spreadsheet which listed all the individual documents which made up the contract. The spreadsheet stated what had / hadn't been disclosed to the complainant. It consists of over 300

individual documents; several of these were duplicated, although this wasn't apparent from their labelling.

19. In light of the volume of information caught within the scope of the request, on 4 October 2022 the Commissioner asked the Council whether it would be willing to disclose the spreadsheet to the complainant in an effort to allow him to 'tailor' his request to what he actually wanted. It agreed that it would do so.
20. On 10 October 2022, following provision of the spreadsheet, the Commissioner raised further queries with the complainant to try and 'narrow down' what he required from the contract.
21. In responding, the complainant agreed that he did not require: "things such as site plans / proposals, buildings, layouts, route information, health and safety information, etc. which have all been withheld". He queried that he did not have the main body of the contract, ie the terms and conditions.
22. The complainant further explained: "The specific issue that I am trying to nail concerns FCC's failure to deliver an adequate service when it claimed that there was a shortage of HGV drivers. This is exactly the sort of circumstance that should be covered, either specifically or generally, in an agreement like this one. I believe that it was not covered and so the Council had no recourse".
23. At this time, the Commissioner understands that 144 documents had been disclosed in full, 19 had been partially disclosed and the remaining 142 had been withheld in full.
24. Following further liaison, the Council disclosed more information.
25. On 7 February 2023, following further correspondence, the complainant advised the Commissioner that he only required him to consider disclosure of the following:
  - What compensation has been paid by the contractor for its failure to deliver its obligations under the contract?
  - The deductions for 'service failure' appear to be set out in Schedule 5 which he wished to have provided.
  - The prices of the service as contained in Schedule 3.
  - Information that is described in Schedule 12 as: The contractor's pricing information contained in the contractor's proposals.
  - An explanation of where performance standards can be found in the contract.

26. On 8 February 2023, the Commissioner raised these queries with the Council.
27. Following further liaison, on 7 March 2023 the Council made another disclosure to the complainant. It released three Pricing Lot documents which fell within Schedule 3, but with the actual figures and a section on "Surplus / Profit Share Mechanism" withheld from two of them. Regarding performance standards, it disclosed Schedule 5 in full. It confirmed that Schedule 12 had already been disclosed in full to the complainant. Regarding compensation it advised:
- "The Council can confirm that no compensation has been paid by the contractor. The Council has applied contractual deductions for failure to deliver obligations under the contract".
28. Following this disclosure, the Commissioner again asked the complainant for his views. The complainant responded saying that he was still dissatisfied, summarising that he still wanted to know:
- The figures in the pricing Schedule 3.
  - Clarification regarding what information had been redacted.
  - Who had signed the various documents.
  - How much had been repaid to the Council, whether it was categorised as compensation, contractual deductions, termination fees or whatever, for FCC's failure to deliver according to the terms of the contract.
29. The Commissioner asked the Council what information had been withheld from disclosure and was advised:
- "The only information that has been withheld is prices/signatures and information relating to the surplus share scheme, which is a proposal made by the contractor on how surplus share or profit is shared between the contractor and Council, specific to this contract and therefore deemed to be commercially sensitive".
30. When advised regarding the surplus share scheme the complainant made no further comment. On this basis, the Commissioner has therefore not considered this point any further.
31. The Commissioner will consider the withholding of prices from the three Pricing Lot documents which form Schedule 3, information about contractual deductions and names of signatories below.

32. As the Council had accepted that the deductions to monthly payments it had made to FCC could be considered to fall within the scope of "compensation", the Commissioner set out to consider disclosure of the total amount of money that was withheld from payment under the terms of the contract. However, it subsequently transpired, on 26 April 2023, that the Council did not hold this information at the time of the request. The comm will therefore consider this below.

## **Reasons for decision**

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### **Compensation**

#### **Regulation 5(1) – duty to make environmental information available on request**

33. Under regulation 5(1) of the EIR, a public authority must make environmental information available on request if it holds the information and it is not subject to an exception.
34. Where there is a dispute between a public authority and a complainant as to whether all requested information falling within the scope of a request has been provided to the complainant, the Commissioner, following the lead of a number of First-tier Tribunal decisions, must decide the matter based on the civil standard of on the balance of probabilities.
35. In this case, the Commissioner understood that he had viewed the withheld information caught within this part of the request, which he believed comprised of monthly amounts that were due to be withheld from contracted payments for the months of June to October 2022.
36. However, in correspondence received on 26 April 2023, he discovered that this was not the case. Apparently these figures were what: "the Council proposed to withhold from FCC under the Contract". It added that: "there is no figure which the Council can provide as at the date of the request in December 2021 because the proposed withheld amounts were disputed by FCC. This dispute led to a confidential settlement between FCC, the Council and West Devon with respect to the waste contract, in September 2022".
37. The Commissioner does not agree that the date for consideration here is December 2021. The Council did not respond to the first internal review until 13 April 2022, and the latter internal review until 19 August 2022. He therefore finds that the date for consideration should be 19 August 2022, which was when the latter internal review was provided. Nevertheless, as the settlement was only reached in September 2022, this clearly postdates the internal review so the actual 'compensation'



amounts were not known and were therefore not available until this was formalised.

38. Based on what he has now been advised, the Commissioner has determined that, on the civil standard of the balance of probability, the requested information was not held at the time of the request.

(It is noted that, in its response of 26 April 2023, the Council provided rationale for not disclosing the requested information. The Commissioner has not gone on to consider this here as, at the time of the request, the information was not held. It is also noted that the Council did not provide the requested information with its submission so any further analysis would have encountered yet more delays.)

## **Financial information**

### **Regulation 12(5)(e) - Confidentiality of commercial or industrial information**

39. This has been cited to cover any financial information withheld from Schedule 3 of the contract, which consists of three 'Pricing Lot' documents.
40. In its internal review, the Council also advised the complainant that it considered "Compensation payments, or contractual deductions form part of the pricing information of the contract, which FCC listed as confidential information under Schedule 12". It said that it had withheld this information under Regulation 12(5)(e).
41. Regulation 12(5)(e) of the EIR provides 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.
42. The Commissioner considers four tests when deciding whether the regulation 12(5)(e) exception is engaged. All four elements are necessary for the exception to be engaged:
1. The information is commercial or industrial in nature.
  2. The confidentiality is provided by law.
  3. The confidentiality is protecting a legitimate economic interest.
  4. The confidentiality would be adversely affected by disclosure.

### **Is the information commercial or industrial in nature?**

43. The Council has explained:



"The information is commercial in nature as it relates to the commercial activity relating to delivering a contract for Waste Collection and Recycling, Street Cleansing, Toilet Cleaning Service. This is a provision of goods and services. Releasing information relating to the pricing of a specific element of the contract and agreed contractual deductions with the contract would place these figures into the public domain".

44. The Commissioner is satisfied that the pricing information is commercial in nature. It relates to costs for the provision of a service which is a commercial matter.

**Is the confidentiality provided by law?**

45. The Council explained:

"The pricing of a specific element of the contract and agreed contractual deductions within the contract were negotiated with the contractor on the understanding that they would remain confidential and the contract was signed between the two parties on this basis. This can be found under Schedule 3.4, Form 4: Commercially Sensitive Information, of the contract. This would have been the same for any company tendering for the contract. These tender competitions are extremely competitive, with extremely tight margins between being successful in winning a contract and not. The information relating to the pricing of a specific element of the contract and agreed contractual deductions agreed between the contractor and Council is neither trivial, or in the public domain, and we believe that it is subject to a common law duty of confidence in relation to the figures agreed during the competitive tender process.

As a local authority, we strive to offer best value for money to our residents. It's clear that if information relating to the pricing of a specific element of the contract and agreed contractual deductions within the Waste Collection and Recycling, Street Cleansing, Toilet Cleaning Service contract were released into the public domain, competitors, or contractors bidding on any future tender exercise could use this information to attempt to negotiate more favourable contractual deductions for themselves, rather than provide best value for money for us as an authority. We believe that this would be of detriment to South Hams District Council".

46. The circumstances in which the information is held, and the Council's reason for holding it, would, in the Commissioner's view, be sufficient to impose an obligation of confidence on the Council and its employees. The information therefore has the necessary quality of confidence.

**Is the confidentiality provided to protect a legitimate economic interest?**

47. For this test it is necessary to consider how sensitive the information is at the date of the request and the nature of harm that would be caused by disclosure. The timing of the request and whether the commercial information is still current are likely to be key factors. Broader arguments that the confidentiality provision was originally intended to protect legitimate economic interests at the time it was imposed will not be sufficient if disclosure would not actually impact on those interests at the time of the request.
48. It is not enough that disclosure might cause some harm to an economic interest. It needs to be established that disclosure would cause harm (on the balance of probabilities – ie more probable than not).
49. Ensuring competitors do not gain access to commercially valuable information is one example of a legitimate economic interest.
50. Regarding whose interests would be affected by disclosure, if the information was jointly agreed or was provided under a contractual obligation of confidence, either party's interests could be relevant.
51. Finally, if a third party's interests are at stake the public authority will need to consult with them, unless the authority has prior knowledge of their views. It is not sufficient for the authority to speculate about potential harm to a third party's interests without some evidence that the arguments genuinely reflect the concerns of a third party.
52. The Council did contact the contractor for their views regarding disclosure. The contractor responded as follows:

“There would be a significant likelihood of the contractor suffering prejudice as a direct and foreseeable result of such disclosure. The contractor carries out a commercial activity, the provision of waste management services for financial recompense, in a competitive market in which there are a number of other companies that provide and tender for the same services as the services the contractor provides to the council. The information requested is intrinsic to the contractor's commercial activity as it contains, amongst other things, details of the contractor's fixed and variable costs, turnover and profit margins. Information such as this once released into the public domain, can be easily transmitted, copied and diffused without any form of control by either the council or the contractor. Such information could easily then be obtained by the contractor's competitors and, indeed, it is likely the contractor's competitors would actively seek out such information. This would give the contractor's competitors a significant advantage when tendering for contracts of a similar nature to this contract as it

would be very simple for the financial information to be linked to specific collection services as well as the contract with the council in general and calculations made so that any of the contractor's competitors could effectively tender for similar contracts at prices lower than those provided by the contractor. Such a scenario would give the contractor's competitors a clear competitive advantage over the contractor and have a prejudicial effect on the contractor's ability to compete in an open market".

53. The Commissioner accepts that the withheld figures would clearly be of interest to any competitor. Whilst FCC is no longer undertaking the contract for this Council, it is still a service provider in this field and has similar contracts with many other councils. According to its website<sup>3</sup>:

"More than 60 local authorities currently use our hassle-free household waste collection, recycling and treatment options, and we operate 88 household waste recycling centres to help communities recycle more".

54. Considering the rationale above, the Commissioner accepts that confidentiality is required to protect a legitimate economic interest.

**Would the confidentiality be adversely affected by disclosure?**

55. The Council explained:

"As the first three elements of this exception are established, we consider that it is inevitable that this element is also met. Disclosure of the truly confidential information into the public domain would inevitably harm the confidential nature of the information by making it publicly available and would also harm the legitimate economic interests that have been identified".

56. Although this is a necessary element of the exception, once the first three elements are established, the Commissioner considers it is inevitable that this element will be satisfied. Disclosing truly confidential information into the public domain would inevitably harm the confidential nature of that information and would also harm the legitimate economic interests that have been identified.

57. Since the four elements of the exception test have been met, the Commissioner is satisfied that the information that the Council is withholding under regulation 12(5)(e) of the EIR engages that

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<sup>3</sup> <https://www.fccenvironment.co.uk/municipal-services/>

exception. He has gone on to consider the associated public interest test.

### **Public interest test**

58. The test is whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in the information being disclosed.
59. Regulation 12(2) also provides that a public authority shall apply a presumption in favour of disclosure.

### **Public interest in favour of disclosure**

60. The complainant has argued:

"The early performance of the contractor suggested that this contract was flawed and had been 'negotiated' less than competently ... My suspicions were confirmed when the failures of the contractor became so bad that the Council eventually cancelled the contract. In my experience of outsourcing, cancellation is a rare event and indicates massive failure and/or incompetence on the part of one or both of the contracting parties.

These people were playing with and wasting public money. The public deserves to know what was done and how much of their money was wasted...

- It cannot be reasonable a public authority has an absolute privilege to define 'commercial confidentiality' to protect its members and officers from charges of incompetence or negligence;
- The commercial value of pricing information degrades with time. Indeed, believe the I [sic] have seen reports of a case or cases where the ICO has made this very argument;
- Not only does the value of pricing information degrade with time, it also degrades with changes of circumstance. The world has changed considerably in many ways since the contract was agreed;
- Given the disastrous failure of this contract, it is highly questionable that there is any commercial value in the pricing information at all;
- The Council told me it that based its refusal to reveal prices on some sort of confidentiality agreement between the Council and FCC. It turned out that the Council was relying on the wording set out in Schedule 12. I was puzzled because the Schedule 12 that I was sent was short and limited in scope, but the Council has now confirmed that it is the complete schedule 12. Given

the wording used I argue that the actual prices contained in the contract are not covered by the supposed confidentiality agreement; and

- The Council has provided full details of the items/tasks/duties against which charges were to be made. My experience of outsourcing suggests that these, i.e. the pricing structure, have as much commercial significance than the numbers with £ signs against each of them”.

61. The Council has argued:

- Disclosure of this information would promote general openness and transparency by the Council
- Allow the public to understand the Council’s decision making processes
- Allow the public and council tax payers to understand how finances are spent
- Allow the public a better understanding in relation to the contract for Waste Collection and Recycling, Street Cleansing, Toilet Cleaning Service

### **Public interest arguments in favour of maintaining the exception**

62. The Council argued:

“The public interest in not disclosing the information relating to the pricing of a specific element of the contract and agreed contractual deductions is that the disclosure of the information will adversely affect the commercial interests of the Council at a time when the Council is engaged in complex contractual negotiations with the contractor about the non-delivery of the services”.

63. Whilst the Commissioner is aware that the provision of this service has now returned ‘in house’, at the time of the request this was not the case.

### **Conclusion of the public interest test**

64. The Commissioner accepts that there is an interest in the public being made aware of the costs for services which they can expect from a waste management service contracted to work within their area. They can then question whether the prices agreed by the Council meet the needs of the area concerned, and hold the Council, or the company concerned, to account if they feel their requirements are not being met adequately.

65. The Commissioner also considers that there is a general public interest in the public being made aware of the costs, in terms of public money,

being spent to purchase such services. This provides confidence in the Council's financial management of public money.

66. Against this, there is a public interest in protecting market sensitive information. A disclosure of this type of information would ultimately make it harder for the Council to obtain services at best value to tax payers in future negotiations for similar services, were it ever to outsource the service again. It may also affect the level of service being offered in such bids.
67. Furthermore, disclosure of the prices would be very likely to have an unfair impact on FCC which remains a major contractor in this area of business. Revealing its margins would be detrimental to its business and place it at an unfair advantage with its competitors.
68. In the Commissioner's view, whilst there have clearly been issues which have resulted in the termination of the contract, the fact that this has occurred significantly reduces the public interest in disclosure as issues have clearly been identified and addressed accordingly.
69. Regulation 12(2) of the EIR states that a public authority shall apply a presumption in favour of disclosure, and the Commissioner has borne this in mind when reaching his decision. However, the Commissioner's view is that the public interest in the exception being maintained outweighs that in the information being disclosed.
70. Therefore, the Commissioner's decision is that the presumption in favour of disclosure required by Regulation 12(2) does not change the outcome of his decision that the exception was correctly applied by the council in this case.
71. On the evidence and arguments presented to him by both parties, the Commissioner has decided that the public interest in the exception being maintained outweighs the public interest in the pricing information being disclosed in this instance.

## **Names of signatories**

### **Regulation 13 – personal data**

72. The complainant has queried who has signed off some of the documents. The Commissioner notes that some of the versions of the documents he has seen are 'blank', ie there is no actual name of any signatory, but this is not always the case.
73. Unfortunately, it is not clear to the Commissioner what precisely has or hasn't been disclosed to the complainant in respect of signatures, or names of signatories. The Council has been asked regarding this but the precise position remains unclear. It appears to the Commissioner that

where a document has been signed the Council may have redacted the signature but not then transcribed their name.

74. Rather than delay matters further, the Commissioner will make a determination regarding the names of any party who was responsible for signing off any of the documents, whether they are from the Council or FCC.
75. Regulation 13(1) provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.
76. In this case the relevant condition is contained in regulation 13(2A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the data protection principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
77. The complainant has asked to be provided with the names of any person who has signed off the requested documentation. The Commissioner considers that, in the context of this request, the information clearly relates to those individuals and is therefore their personal information.
78. Disclosure under the EIR is effectively an unlimited disclosure to the world at large, without conditions.
79. The Commissioner acknowledges that the complainant considers that he has a legitimate interest in disclosure of the withheld personal information. However, the Commissioner must balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms.
80. In this case, the Commissioner is satisfied that the individuals concerned would have a reasonable expectation that their personal data could be disclosed to the wider world in response to an EIR request. Those who are involved with the formalising of highly lucrative contracts such as this should have a general expectation that their names may be disclosed in such circumstances. They are acting in a professional capacity rather than a personal one and are responsible for decisions which incur a significant expenditure of public funds.
81. The Commissioner considers that disclosure of the names (and job roles where included) of more senior employees is necessary for the legitimate interest of the complainant (and other interested members of the public) in order that they can see who was involved in this matter in their professional capacity. He considers the disclosure of employee names in these circumstances is necessary for accountability. As such,



the Commissioner finds that there is a wider public interest in disclosure of their names.

82. The Commissioner does not consider it necessary to disclose the personal contact details or signatures of senior employees as this does not further a legitimate interest.
83. Based on the above factors, the Commissioner has determined that there is sufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that disclosing the information in question would be lawful.
84. In this instance, the Commissioner has decided that the Council has failed to demonstrate that the exception at regulation 13(1) is engaged. It is therefore required to take the step at paragraph 3 above.

### **Other matters**

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85. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.
86. Whilst it is understood that there was been a significant amount of information to consider in this case, the Commissioner is of the view that the Council failed to clearly demonstrate what had / hadn't been disclosed to the complainant and where exceptions had been applied. This is in terms of where exceptions had been applied and where redactions had been made.
87. To facilitate a clearer understanding in future cases, where information has been redacted prior to disclosure to a complainant, the Council should ensure that this is clearly conveyed and should also ensure that it is readily apparent which exception has been applied in each instance. In the absence of such clarification it is not possible for a requester to know where information has been intentionally withheld with an exception, if it was deemed 'out of scope' of the request or whether it was just a blank page.
88. Additionally, whilst it is understood that a spreadsheet was useful to list all the relevant documents, the labelling of the documents did not show where items were duplicated or just presented in different formats such as Word as well as PDF files. This made comparison very time-consuming.
89. These practices have meant that there have been unnecessary delays and complication for the Commissioner when investigating this case as it has been difficult to fully understand what has or hasn't been disclosed and why.

90. The Commissioner is also very disappointed in the poor representations concerning 'compensation' made by the Council in this case. After the Council agreed that the 'compensation' amounts concerned were caught by wording of the request, and having been given what he assumed were the actual amounts which were 'clawed back' from the contract, it was only at a very late stage that it became apparent that these amounts were not finalised and were not actually deducted, ie they were not the actual 'compensation' amounts that were agreed.
91. The poor handling of this request with the complainant, and subsequent poor handling with the Commissioner, will be noted for monitoring purposes.

## **Right of appeal**

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92. 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)

93. 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.

94. 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 .....**

**Carolyn Howes  
Senior Case Officer  
Information Commissioner's Office  
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Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**