

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 23 January 2023

Public Authority: Norfolk County Council
Address: County Hall
Martineau Lane
Norwich
Norfolk
NR1 2DH

Decision (including any steps ordered)

1. The complainant requested from Norfolk County Council, ('the council'), information relating to the sale of Holt Hall by the council. The council refused the request on the basis that Regulation 12(5)(e) applied (commercial confidentiality).
2. The Commissioner's decision is that the council was correct to apply Regulation 12(5)(e) to withhold the information.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 30 March 2022, the complainant wrote to the council and requested information relating to the sale of Holt Hall in the following terms:

"Please supply the following information.

1. Who is the purchaser?
 2. Please supply copies of all correspondence (names redacted if necessary) between the winning bidder, Savills, NCC and any member of NCC whether in a private or public capacity, at any point in the past five years.
 3. Confirmation of whether the winning bidder visited the site in person prior to the sale being advertised
 4. What is the offered purchase price which Councillors have accepted?
 5. What is the status of the sale - awaiting exchange of contracts, sale agreed subject to contract or completed?
 6. What is the expected timescale for completing the sale?
 7. £1m in the offer is quoted by [name of councillor redacted by the ICO] to be for the benefit of Norfolk Children. Over what timescale will this be spent, and in which budget?
 - 8.. What is the list of purposes for which this £1m will be allocated, and how will it be ring-fenced for these?
 9. Please provide copies of the evaluation reports showing the lifetime evaluation of the balance of public benefit, sustainability and price for this outcome of the public competitive process?
 10. Please advise what obligations council will place on purchaser in the sale documents to protect the special environmental status of the site especially the woodlands, lake, flora and fauna. These natural assets are publicly documented as a County Wildlife Site sponsored with public money by Norfolk CC
 11. Please supply details of analysis of all proposals and recommendations made to Cabinet on this sale
 12. Given the great public interest in foreign investments in UK following the start of the Ukraine crisis, please state the sources of the purchaser's funds for this sale."
5. The council responded on 6 May 2022. It refused the request on the basis that the sale of the property had yet to be completed, and negotiations were ongoing at that time. It therefore applied the exception in Regulation 12(5)(e) of the EIR (commercial confidentiality).
6. On 9 May 2022 the complainant requested that the council carry out an internal review. Further correspondence took place between the parties following this.

7. The council wrote to the complainant on 6 July 2022 with the outcome of its internal review. It upheld its previous decision. It highlighted that:
- In response to parts 1-6 of the request, negotiations had not yet been completed and a disclosure of the requested information may dissuade the potential purchaser from continuing with the sale, thereby having an adverse affect upon the council's commercial interests.
 - In response to parts 7-8 of the request, it said that the intention was that an amount of £1 million would be used to support the education of children across the county, however specific proposals as to how to use the money in regard to this aim were still being developed by the relevant council department.
 - In response to parts 9-11 of the request, it said that all documentation submitted to cabinet is already available on the council's website, and it provided a link to the relevant section.
 - In response to part 12 of the request, it highlighted that the requested information is held within the due diligence information it holds on the potential purchaser. It said that this information is commercially confidential.

Scope of the case

Regulation 12(5)(e)- confidentiality of commercial or industrial information

8. The following analysis covers whether the council was correct to withhold the information which it did under Regulation 12(5)(e).
9. Regulation 12(5)(e) applies to information where 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.
10. In his assessment of whether regulation 12(5)(e) is engaged, the Commissioner will consider the following questions:
- Is the information commercial or industrial in nature?
 - Is the information subject to confidentiality provided by law?
 - Is the confidentiality required to protect a legitimate economic interest?
 - Would the confidentiality be adversely affected by disclosure?

11. For clarity, if the first three questions can be answered in the positive, the final question will automatically be in the positive because if the information is disclosed under the EIR, it would cease to be confidential.
12. Firstly, the Commissioner is satisfied that the requested information is commercial in nature. It relates to the sale of a council asset, Holt Hall. The sale of a council owned property in a competitive environment is a commercial matter.
13. The Commissioner also accepts that the information was provided in confidence. The information is clearly more than trivial as it relates to the prospective purchase of the property within a competitive environment. It includes details of the potential purchaser (who had expressed a wish to remain anonymous at that time), details of other parties' bids, due diligence information relating to potential buyers, and financial information relating to the potential purchase.
14. The Commissioner is also satisfied that the circumstances in which the information is held, and the council's reason for holding it, would be sufficient to impose an obligation of confidence upon the council until the negotiations had been completed and the sale formally agreed. For some information, such as the due diligence information, the obligation would extend beyond this. The information therefore has the necessary quality of confidence.
15. Thirdly, the Commissioner has considered whether the confidentiality is provided to protect a legitimate economic interest. He has decided that the council was correct to consider that a disclosure of the information would have an adverse affect upon its, and the potential purchaser's commercial interests.
16. In deciding this, he has taken into account the council's argument that the sale of Holt Hall was still under negotiation at the time that the request was first responded to by the council. There is strong evidence that this statement was correct given that the council subsequently withdrew from the sale in July 2022¹.

¹ <https://www.northnorfolknews.co.uk/news/local-council/22786222.calls-rethink-sale-holt-hall-falls/>

17. The council argued that it redacted information which would potentially prejudice the sale of the property; the deal had not yet been completed and negotiations were ongoing at that time.
18. It argued that where a potential purchaser wishes to keep its interest confidential during the negotiations, there is an onus on the council to do so; disclosing that information may cause the deal to fall through, thereby damaging its own commercial interests.
19. The Commissioner notes that in a controversial sale such as this, disclosing the name of the potential purchaser risks the interested party receiving unwanted, negative attention and press interest regarding a purchase which it had not yet completed. This may dissuade them from continuing with the purchase negotiations.
20. Information such as due diligence information regarding a potential purchaser's funds is sensitive information which is used by the council to ensure that the potential purchaser has the necessary funds to purchase the property, and to complete any conditions or promises it makes in negotiations regarding the sale. The Commissioner accepts the council's argument that a disclosure of such information into the general public domain would be a breach of commercial confidentiality which would cause it reputational damage, and prejudice the level of confidence which third party commercial enterprises would have in the council. In saying this, all parties considering entering negotiations with the council would need to recognise its obligations under the information access laws, and be aware of the possibility that some information may need to be disclosed where the circumstances of a case merit it.
21. The Commissioner accepts, given the arguments above, that a disclosure of the withheld information would put the council in a position where it would be more difficult to complete its negotiations and finalise the sale if the redacted information had been disclosed at the time that it initially responded to the request. The Commissioner notes that the subsequent withdrawal of the council from the sale highlights that at the time that it responded to the request, negotiations between the parties had not reached a point where a formal agreement could be said to have been reached.
22. Finally, as noted above, as the first three parts of the test have been met, the Commissioner is satisfied that the confidentiality would undoubtedly be affected if the council disclosed this information.

23. The Commissioner has therefore decided that Regulation 12(5)(e) of the EIR is engaged by the information which the council is withholding. He has therefore gone on to consider the associated public interest test required by Regulation 12(1).

The public interest test

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

The public interest in the information being disclosed

26. The complainant argues that there is a public interest in the disclosure of information. Holt Hall was used as a community resource for the education of children until 2020, and the land surrounding the building is a county wildlife site. He argues that the council has failed to be specific about the harm which it perceives would occur if it disclosed the requested information, that it has failed to take into account the strong public interest ensuring that the site continues to provide community value, and that it has failed to clarify how the sale might affect the flora and fauna surrounding the site.
27. The sale was controversial amongst the local community². Local campaigners subsequently managed to have the building classified as an asset of community value. A campaign group also sought to purchase the property, and argued that it should continue to provide community value as an outdoor learning centre.
28. There is a public interest in the council being transparent about the money it would receive from the sale, and the benefit it perceived would be obtained by completing the sale, measured against the loss of an important asset to the local community.
29. The sale of a community asset is a significant step by the council, and the public should be able to voice their concerns from an informed position rather than be presented with a completed agreement which it is not able to have any effect upon.

² <https://www.edp24.co.uk/news/education/20629860.its-awful---campaigners-battled-save-holt-hall-angry-sale/>

The public interest in the exception being maintained.

30. The negotiations for the sale were ongoing at the time that the request was received. There is a strong public interest in allowing negotiations to continue without sensitive and uncertain information being disclosed until the agreement and the details are finalised. During the negotiations, values, conditions, and timescales may be amended, and disclosing the information during this period may cause further disruption and delay in reaching a final agreement. Pressure groups and the media may voice their opinions on the sale and question each step during the negotiations. The council may then need to spend time responding to questions and arguments from the public regarding issues which may never be included within the final agreement. Delays are likely to add additional costs to the public purse at a time when many local authorities are under pressure financially.
31. The council highlighted that as regards the environmental, heritage, and planning obligations of Holt Hall, there are a number of national legislative obligations that any new purchaser would need to meet, which are supported by enforcement frameworks, often with civil and criminal penalties attached. The Commissioner understands this argument to mean that a degree of protection over the structure and the usage of the land and building would be in-built, and legally enforceable. In addition, planning decisions would set conditions on any major structural changes to the building and the surrounding environment in order to protect the cultural and environmental aspects of the land and building.
32. There is a public interest in protecting the ability of authorities to complete work within the time schedules it is working to, and for the best value it can obtain for the local community. This is both in terms of the funds it would receive, but also in terms of the overall benefits to the community the sale might bring.

The Commissioner's conclusions

33. 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 information being disclosed in this instance.
34. There is a public interest in the council being transparent about the intended sale; the value it would receive, its reasons for choosing a specific purchaser, the timescales involved, and the benefits it perceives to the community in the sale. There is a strong onus on the council take into account issues such as the loss of a community asset, and what

potential other uses the building might be put to which would continue to provide value to the community. This, however, is an argument which interested parties can, and did, put to the council without reference to the requested information.

35. On the counter side, a disclosure of the information at the time of the request would either delay or undermine the council's ability to complete the sale. The information had not been formalised at the time that the request was responded to. There is a public interest in protecting information relating to ongoing negotiations from disclosure. A disclosure of the information during negotiations would ultimately make it harder for the council to sell the property and receive best value for tax payers. It could make negotiations take longer, and provide opportunities for competitors or interested parties to seek to undermine negotiations in order to prevent the sale from being completed.
36. The Commissioner also notes the council's argument that a disclosure during negotiations could also undermine third-party confidence in the council's ability to keep sensitive commercial information confidential during future such negotiations. He also notes that a disclosure may prejudice its commercial position should it subsequently have to renegotiate the sale with a different party at a later time.
37. Whilst there may be circumstances where the public interest in disclosure justifies the disclosure of information, even with the risks outlined, for the reasons set out above, the Commissioner does not consider that this is such a case. His decision is therefore that the public interest rests in maintaining the exception in Regulation 12(5)(e).
38. 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 above demonstrates that the Commissioner's view is that the public interest in the exception being maintained clearly outweighs that in the information being disclosed at the time that the request was initially responded to.
39. 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.

Right of appeal

40. 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

41. 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.
42. 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

Ian Walley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF