

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

Date: 19 September 2023

Public Authority: Fareham Borough Council
Address: Civic Offices
Civic Way
Fareham
Hants
PO16 7PU

Decision (including any steps ordered)

1. The complainant has requested a business case relating to works at Solent Airport. Fareham Borough Council ("the Council") disclosed some information but withheld the remainder under section 43(2) of FOIA and regulation 12(5)(e) of the EIR.
2. The Commissioner's decision is that the Council is entitled to withhold the information under section 43(2) of FOIA and regulation 12(5)(e) of the EIR.
3. The Commissioner does not require further steps.

Request and response

4. On 17 March 2023, the complainant wrote to the Council and requested information in the following terms:

"I am writing to request full public disclosure of the business case relating to the installation of AGL at Solent Airport and any

associated impact assessment, risk assessment, cost benefit analysis, in conjunction with details of the scenario planning options developed by the Council."

5. The Council responded on 11 April 2023. It stated that the requested information was withheld under section 43(2).
6. During the course of the Commissioner's investigation, the Council provided an internal review response to the complainant. In this it revised its position, and disclosed the information previously withheld, subject to redactions for that information the Council maintained was exempt under section 43(2) of FOIA, and where the information was environmental, regulation 12(5)(e) of the EIR.

Reasons for decision

Context

7. The Council has explained that the request relates to proposed Aeronautical Ground Lighting ("AGL") at Solent Airport ("the airport"). The airport is owned by the Council, and operated on the Council's behalf by Regional and City Airports Ltd ("RCA"). The airport forms part of the wider 'Daedalus' site, which includes Faraday Business Park (in the early stages of development), an Innovation Centre, and two Further Education Colleges.
8. The Council has explained that the purpose of AGL is to provide runway lighting for use during poor visibility, such as during bad weather or nighttime.

The disclosed information

9. The Council has disclosed three documents in response to the request. The information under consideration in this decision is that which the Council has redacted from these documents. The documents are headed as:
 - Solent Airport – AGL Business Case – January 2022
 - SEW payback workings
 - AGL high level business case SEW
10. Of the redacted information, the majority is not environmental and therefore falls under the terms of the FOIA.

11. A minority of the information (contained in the document headed "Solent Airport – AGL Business Case – January 2022") relates to changes in 'movements' – which the Commissioner understands to represent flights. The Commissioner has considered this information and is satisfied that it represents environmental information under regulation 2 of the EIR. As this information is environmental it must be considered under the EIR and not the FOIA.

Section 43(2) of FOIA

12. This reasoning covers whether the non-environmental information could be withheld.
13. Information can be withheld under section 42(3) of FOIA if disclosure would prejudice the commercial interests of any person, including the public authority holding it.
14. The Council has explained to the Commissioner that it considers disclosure of the information would prejudice the commercial interests of the Council. The Council has explained to the Commissioner that AGL has been proposed for commercial reasons; that is, it enables the airport to be used at times of poor visibility. This Council has explained that this is an important commercial factor, in that it allows the airport to operate at all times. The provision of AGL will therefore benefit existing businesses around the airport who use it, and also attract new businesses to the Daedalus site.
15. The Council argues that the disclosure of the information would be likely to prejudice its commercial interests through disclosure of its business analysis to competitor airports. The Council argues that airport services are a competitive field by nature, with relatively few outlets and operators – the consequence of which is that competition is particularly high, with operators seeking commercial advantage. In respect of the withheld information, the Council has in particular explained that:
 - For that information relating to projected income scenarios, disclosure would reveal to competitors the Council's proposed new target markets, and the value of such contracts to a potential operator.
 - For that information relating individual income streams, disclosure would reveal the Council's commercial strategy in terms of demand, fees and target market. This would impact the Council's negotiating position with new organisations seeking to base their business at the Daedalus site, and current tenants seeking to renegotiate their charges for less. It would also provide insight to

other commercial airports or operators, who could seek to undercut the Council's charges.

16. The Commissioner has considered the Council's position, and the withheld information. Having done so, he is satisfied that the information relates to the commercial activity of the Council. The Commissioner is also satisfied that the disclosure of the information would prejudice the Council's commercial interests by revealing significant detail of its proposed operation to competitor airports and operators. The Commissioner has therefore concluded that section 43(2) is engaged and must go on to consider the public interest test.
17. The Commissioner recognises that there is a public interest that the Council operates transparently and is accountable to the public for the commercial decisions it makes in relation to the Airport. In the context of this case, the Commissioner understands that the Council's proposed operation of the airport has the potential to have significant impact on the local economy.
18. However, the Commissioner also recognises that there is a public interest that the Council is able to pursue best value in its proposed operation. Any commercial disadvantage to the Council will harm its ability to generate new income through the airport. This in turn will harm the local economy, and reduce its economic resilience for the future.
19. It is also relevant for the Commissioner to note that there is no evidence available to him that indicates that the Council is acting improperly in its handling of this matter, and which would increase the public interest in disclosure.
20. On balance therefore, the Commissioner finds that the public interest favours maintaining section 43(2).

Regulation 12(5)(e) of the EIR

21. This reasoning covers whether the environmental information could be withheld.
22. Information can be withheld under regulation 12(5)(e) of the EIR if disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
23. The Commissioner understands that the basis of the Council's concern for this information is similar as that considered under section 43(2). In particular, the Council argues that the disclosure of the information would adversely affect its economic interests by revealing the increases

of specific types of flight (e.g., corporate flights, medevac flights, etc.) to its competitors. This disclosure would give competitors an insight into the individual income streams being pursued in the proposed operation, which in turn would reveal the Council's commercial strategy in terms of demand, fees, and target markets. The Council has further explained that this information has been provided to it by RCA in confidence, and that it is not known by any other party.

24. The Commissioner has considered four tests. First, he is satisfied that the requested information is commercial in nature. Second, he is satisfied that the information is subject to confidentiality by law because it is not trivial and is not otherwise accessible and so has the necessary quality of confidence.
25. Third, the Commissioner has considered whether the confidentiality is provided to protect a legitimate economic interest. Having considered the Council's arguments, and the context of the information, the Commissioner is satisfied that disclosing the information would undermine the Council's commercial interests as it would provide competitors with an insight into the proposed operation of the airport.
26. Finally, the Commissioner is satisfied that the confidentiality would inevitably be affected if the Council disclosed this information.
27. Since the four tests have been satisfied the Commissioner finds that regulation 12(5)(e) of the EIR is engaged, as disclosing the information would adversely affect the Council's commercial interests. He has gone on to consider the associated public interest test.
28. The Commissioner recognises that there is a public interest that the Council operates transparently and is accountable to the public for the decisions it makes which may result in an increase in flights. Such an increase will have a clear environmental impact in respect of emissions and noise.
29. However, the Commissioner is aware that the Council has already disclosed the total estimated increase in movements; the information withheld here is a breakdown of that total by the specific types of flight. In this context, the Commissioner considers that the substantive public interest is met through the information the Council has disclosed. Whilst the withheld information would add further detail about the types of flights that make up this increase, the Commissioner does not consider that the value of this is sufficient to justify the wider damage that disclosure would cause to the Council's economic interests, and relatedly, the local economy.

30. The Commissioner's decision is therefore that at the time of the request, the public interest favoured maintaining regulation 12(5)(e).

Other matters

31. The Commissioner notes that the Council has advised, in its submissions to him, that it would seek to rely upon sections 41 and 43(2) of FOIA should the Commissioner find that regulation 12(5)(e) of the EIR is not engaged.
32. The Commissioner reminds the Council that information can only fall under one legislation (either FOIA or the EIR).

Right of appeal

33. 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

34. 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.
35. 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

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