

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

Date: 18 August 2015

Public Authority: Taunton Deane Borough Council

Address: The Deane House
Belvedere Road
Taunton
Somerset
TA1 1HE

Decision (including any steps ordered)

1. The complainant submitted a request to the public authority for an independent viability assessment report produced in relation to two planning applications.
2. The Commissioner's decision is that the public authority was entitled to withhold the information redacted from the viability assessment report in reliance on the exception at regulation 12(5)(e) of the EIR.
3. No steps required.

Request and response

4. On 14 January 2015 the complainant submitted a request to the public authority in relation to Planning Applications 05/13/0067 and 42/13/0079 in the following terms:

'...I request:

- i) The Viability Report(s) for these Applications, (which, despite their Material Significance, have not been placed in the public domain)*
- ii) Whether the Applicant(s) for Planning Permission for 05/13/0067 and 42/13/0079, have applied for any relief from CIL*
- iii) If they have, the terms of TDBC's response.'*

5. The public authority responded on 21 January 2015. The authority confirmed that it held a viability assessment report¹ which fell within the scope of part (i). The authority explained that it did not hold any information within the scope of part (ii) and consequently, part (iii) of the request.
6. The report was however withheld by the public authority in reliance on the exemptions at sections 41 and 43(2) FOIA.
7. On 27 January 2015 the complainant requested an internal review of the public authority's decision to withhold the viability assessment report.
8. Following an internal review the public authority wrote to the complainant on 9 February 2015. The review concluded that the request should have been handled under the Environmental Information Regulations (the EIR) and that the report was in any event exempt on the basis of regulation 12(5)(e) of the EIR.

Scope of the case

9. The complainant contacted the Commissioner on 4 March 2015 to complain about the way his request for information had been handled, specifically the decision to withhold the viability assessment report.
10. However, during the course of the Commissioner's investigation, the public authority voluntarily made substantial disclosures from the report to the complainant. This was done by providing the complainant with a copy of the report but with the information considered exempt on the basis of regulation 12(5)(e) redacted.
11. The scope of the investigation therefore was to determine whether the public authority was entitled to withhold the information redacted from the viability assessment report (the disputed information) in reliance on the exception at regulation 12(5)(e) of the EIR.

Reasons for decision

12. The Commissioner should mention at this stage that he has considered all of the arguments submitted by the complainant before reaching his
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¹ Also referred to as "the report".

decision even though he has not felt it necessary to address each argument in the body of this notice.

13. A public authority may withhold information in reliance on regulation 12(5)(e) of the EIR if it considers that disclosure of the information *'would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.'*
14. From the above, it is clear that four criteria have to be met in order to engage regulation 12(5)(e). First, the withheld information has to be commercial or industrial in nature. Second, the withheld information has to be subject to a duty of confidence provided by law. Third, the confidentiality has to be required to protect an economic interest. Finally, that economic interest, and thereby its confidentiality has to be adversely affected by disclosure of the withheld information.
15. For the avoidance of doubt, the Commissioner has examined the viability assessment report in full. He is satisfied that the disputed information is commercial in nature and that it was communicated with an express imposition of an obligation of confidentiality.
16. The planning applications relate to proposals to relocate existing units of student accommodation at Canonsgrove, Trull, Staplehay (the Canonsgrove Site) to West Playing fields, at Somerset College, Heron Drive, Wellington Road (the Wellington Road Site). The applications were submitted by Somerset College of Arts and Technology (SCAT). They were submitted primarily because SCAT considers that the remote location and outdated nature of the existing student accommodation at Canonsgrove Site does not meet current student expectations and has led to a decrease in the number of higher education students applying to attend the college.
17. The viability of relocating to the Wellington Road Site depends, in part, on the use of the capital receipt that arises from the intended disposal of the Canonsgrove Site. The level of capital receipt will be influenced by the amount, and form of, development that is approved on the Canonsgrove Site. In other words, the Canonsgrove application is being considered as an *enabling development* for the student accommodation development application on Wellington Road. It is clear therefore that confidentiality is required to protect SCAT's economic interest which is to secure a more accessible and modern student accommodation at the Wellington Road Site to increase the number of students applying to attend the college.
18. The Commissioner next considered whether disclosure of the disputed information would adversely affect SCAT's economic interests. The

public authority explained that the construction of new student accommodation at the Wellington Road Site was seen as key to making the college's offering more attractive to both local and national potential students. The Commissioner accepts that disclosure of the disputed information would reveal SCAT's financial position and the various development options considered which would be of direct benefit to a developer looking to purchase the Canonsgrove Site and a building contractor looking to secure a contract to build on the Wellington Road Site. That would in turn detrimentally affect SCAT's bargaining position and consequently impede its ability to maximise what the college obtains out of the Canonsgrove development to fund the Wellington Road development.

19. Clearly therefore, disclosure of the disputed information would adversely affect the economic interests of SCAT in particular, and the community more generally.
20. In view of the above, the Commissioner finds that the exception at regulation 12(5)(e) was correctly engaged by the public authority.

Public interest test

21. Regulation 12(5)(e) is subject to a public interest. This means that the Commissioner must determine whether, (despite his finding that the exception was correctly engaged), in all the circumstances of the case, the public interest in disclosing the disputed information outweighs the public interest in maintaining the exception.
22. The public authority recognised the general public interest in disclosure to promote transparency and accountability. However, it submitted that there was a very strong public interest in maintaining the exception at regulation 12(5)(e) in the circumstances of this case.
23. It argued that there was a strong public interest in not disclosing information which would undermine SCAT's bargaining position in future negotiations inextricably linked to the planning applications. The potential loss of much needed, appropriately located, modern and good quality student accommodation in the local area would not be in the public interest. This, it argued, would affect the viability of SCAT as a significant local employer and a local place of study for hundreds of students in a competitive environment.
24. The public authority further argued that there was a strong public interest in not disclosing information which was provided and received with an explicit obligation of confidentiality.
25. It did not consider that there was any evidence or suspicion of wrongdoing in relation to the planning applications which would have

added weight to the public interest in disclosing the disputed information. The public authority noted in that regard that the planning application process itself provides for direct public participation and participation by elected representatives. The fact that the Canonsgrove application is being considered as an enabling development for the student accommodation development on Wellington Road such that negotiations have been ongoing to relax planning rules in order to facilitate the proposed developments for both sites was public knowledge.

26. The public authority drew the Commissioner's attention to Minutes of a Planning Committee meeting of 10 December 2014 which contains details of an outline Planning Permission for Canonsgrove application issued in December 2014 stating that one of the conditions for full planning approval is to secure the linking and timing of the residential accommodation at Canonsgrove to student accommodation provision at SCAT.²

Balance of the public interest

27. The Commissioner accepts that some weight must be attached to the public interest in knowing the full extent to which planning rules could be relaxed for the Canonsgrove application in order to facilitate the development of student accommodation on Wellington Road. However, that must be balanced against the significant public interest in not undermining SCAT's bargaining position in future negotiations with developers in relation to both sites. Under those circumstances, and in the absence of any evidence or suspicion of wrongdoing, the Commissioner considers that the information already placed in the public domain by the public authority in relation to the enabling relationship of both planning applications does to some extent satisfy the public interest in that regard.
28. In any event, the Commissioner considers that in the circumstances, significant weight must be attached to the public interest in protecting not only SCAT's bargaining power in future negotiations with developers but also to the ongoing negotiations between the public authority and SCAT in relation to the planning applications. The Commissioner does not consider that there is any compelling factor which outweighs that significant public interest in the circumstances of this case.

2

<http://www1.tauntondeane.gov.uk/tdbcsites/tdbcagendas/RtnPDF.aspx?ImgName=Item+2.PDF&PMI=20151695> (items 119 and 120)

29. He therefore finds that in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the disputed information.
30. The public authority was therefore entitled to withhold the disputed information in reliance on the exception at regulation 12(5)(e).

Right of appeal

31. 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: 0300 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

32. 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.
33. 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

Alexander Ganotis
Group Manager
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Wycliffe House
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