

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

Date: 16 July 2015

Public Authority: Kent County Council
Address: County Hall
Maidstone
Kent
ME14 1XQ

Decision (including any steps ordered)

1. The complainant has requested information relating to Kent County Council's (the council) disposal of land to Tesco in the Lowfield Street area of Dartford. This followed the disclosure of information from an earlier related decision notice FER0546440¹. The council initially applied section 43(2), section 41 and section 22 to the requested information. However, it later applied regulation 12(5)(e), regulation 12(4)(e) and regulation 12(5)(d) as the Commissioner considers the information is environmental information.
2. The Commissioner has decided that the council was correct to withhold the requested information, and has therefore complied with the requirements of the EIR. Consequently, he does not require the council to take any steps.

Request and response

3. On 5 December 2014, the complainant requested information of the following description after the disclosure of documents about the sale of land to Tesco for development resulting from case FER0546440:
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¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1042603/fer_0546440.pdf

- "1. What is the Land Registry title number? – I assume the transfer was registered – who are the successors in title? – currently Tesco and their building arm Spenhill have started some demolition work – have the covenants set out in paragraph 12.8 of the TR1 been complied with?*
- 2. Annexure D is not attached to the Agreement for Sale. Does this define the premium for the 99 year lease?*
- 3. The £2 million sale price was not an open market value at the time, KCC have acknowledged an undervalue of £550,000. How is this explained?*
- 4. The £350,000 (maximum sum) was for a new build shop unit to be leased to KCC for 99 years at a premium based on the actual construction costs and fees – the latest proposal is not new build – the unit is the ground floor of no. 26 Lowfield Street – an existing building ie there are no construction costs or fees involved."*
4. On 8 January 2015 the council responded. It provided information in respect of questions 1 and 2. With regard to question 3, it stated that the council did not hold any records to suggest that the price paid for the land was not an open market value. In respect of question 4 the council clarified that it had understood the complainant to be seeking information concerning the negotiations on an acquisition from Tesco by the council, and contractual obligations relating to this acquisition. It therefore stated that it held this information but was withholding it relying on section 41 (confidential information), section 43(2) (commercial information), and section 22 (information intended for publication). It stated that it found that the public interest was in favour of upholding the exemptions.
5. The complainant responded on 21 January 2015 and provided more information about why he considered that the land had not been sold at market value. He also asked whether the council would now release the information as Tesco had recently announced it was abandoning the scheme. The council replied on 30 January 2015, stating that negotiations with Tesco remained ongoing and invited the complainant to request an internal review if he was not happy.
6. The complainant requested an internal review on 1 March 2015. The council sent the outcome of this on 27 March 2015. It upheld the original position, and also added that it considered that section 42 applied to some documents which may refer to legal advice from in house lawyers.

Scope of the case

7. The complainant contacted the Commissioner on 30 April 2015 to complain about the way his request for information had been handled. He specified that questions 1 and 2 had been answered satisfactorily, but questions 3 and 4 had not. The Commissioner therefore agreed that the scope of the case would focus on the council's responses to questions 3 and 4 only.
8. The Commissioner also confirmed that he considered the information to be environmental in nature and therefore asked the council to reconsider its response to questions 3 and 4 on this basis. The scope of this case therefore is to determine the extent to which the council has responded correctly to questions 3 and 4.

Background

9. This case originates from a previous decision notice, FER0546440. This ordered disclosure of the 2003 disposal agreement for the land at the centre of the requests in this case. The land was initially sold to St James Investments, and in 2008 it was sold on to Tesco as part of the acquisition of land for a major regeneration development in the Lowfield Street area of Dartford.
10. The terms of the agreement included an obligation on the purchaser to provide a shop unit to the council for community use. This was part of the wider plans to build a new Tesco store, housing and general regeneration of the area.
11. In January 2015, after the requests in this case had been submitted, Tesco officially announced that due to unfavourable market conditions, it would not be proceeding with the development plans. This announcement received national media attention as it was one of a number of large stores and developments that Tesco pulled out of at the same time.

Reasons for decision

Is it Environmental Information?

12. The council initially dealt with the request under the FOIA. However, in view of the previous decision notice and the nature of the information requested, the Commissioner asked the council to reconsider it under the EIR.

13. Regulation 2(1) of the EIR defines what 'environmental information' consists of. The relevant part of the definition are found in 2(1)(a) to (c) which state that it is as any information in any material form on:

"(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements..."

14. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner's opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor, etc. in question.
15. The Commissioner notes that the withheld information relates to decisions regarding planning, specifically the disposal of a development of land and negotiations relating to the use to which that land will be put. He has considered whether this information can be classed as environmental information, as defined in Regulation 2(1)(a)- (f).
16. In this case the subject matter of the withheld information relates to land/landscape and activities which could determine or affect, directly or indirectly, policies or administrative decisions taken by the council.
17. The Commissioner considers that the information, therefore, falls within the category of information covered by regulation 2(1)(c) as the information can be considered to be a measure affecting or likely to affect the environment or a measure designed to protect the environment. This is in accordance with the decision of the Information Tribunal in the case of Kirkaldie v IC and Thanet District Council (EA/2006/001).
18. In view of this the Commissioner considers that the council has now correctly handled the request under the EIR.

Regulation 5(1)

19. The complainant has requested that the Commissioner investigate whether the council was correct when it said in response to question 3 that it did not hold any information to suggest that the sale price for the property was not an open market value.
20. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
21. In other words, in order to determine such complaints the Commissioner will decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request
22. The complainant considers that the council's position that there is no information held regarding an undervalue is untenable. He considers that the price paid for the land was clearly affected by the requirement for the buyer to provide the council with a new unit within the development on a 99 year lease. In addition to this, he maintains that the sale of adjoining land by Dartford Borough Council the following year demonstrates that the price paid to the council for the land in question here was not at open market value. He has stated to the Commissioner that the land sales were only a few months apart, but the values of the sales per acre were vastly different.
23. The Commissioner has asked the council to consider that the Dartford Borough Council sale was not affected by the requirement for the buyer to provide a new unit or any other restriction, and therefore represents open market value. The complainant maintains that the figure the adjoining land was sold for by Dartford Borough Council is comparable on a price per acre basis and demonstrates that the council's land was sold at an undervalue.
24. In its initial response to the request, the council simply stated "we have no records to suggest that the sale price for the property was not at open market value." The complainant responded asking the council to reconsider its response based on his knowledge of the situation:

"The 2 acre site was sold in October 2003 for £2 million – this land includes the old Adult Education Centre and its 2 car parks with access to Lowfield Street and Market Street and a requirement to build and lease back a shop unit; the consideration for this requirement is a reduction of £227,272.7 per acre x 2 =£454,545 – which more than adequately covers the maximum construction cost of £350,000. The

land has not been sold at "Open Market Value" as defined in the Sale Agreement."

The council specifically considered this comment in its internal review but still found that it does not hold any information to suggest that the land was not sold at open market value.

25. The Commissioner asked the council to again consider whether it held any information in respect of question 3. As the request refers to the council having acknowledged the undervalue of £550,000, the Commissioner asked the council to provide evidence of this as well as any information held relating to such a statement. He also asked the council to provide details of the searches it has undertaken to locate the information.
26. The council explained that it has searched the deed packets and had looked in its current and old disposals file for such information but was unable to locate any such document. It also stated that it can find no evidence of ever stating or acknowledging that the land was sold at an undervalue.
27. In providing more detail of the searches undertaken for information falling within the scope of the request, the council confirmed that the council officer with responsibility for the project has searched through all the documents held in both electronic and manual form. The council has explained to the Commissioner that these searches did reveal some information which could be considered to be about the open market value of the land in question. However, it is of the view that such information does not fall within the scope of the request.
28. The Commissioner acknowledges the narrow scope of the complainant's request as it asks for an explanation of an acknowledged undervalue, and not a more encompassing request for information held about the open market value of the land. The council has intimated that the information located regarding the open market value does not relate to an undervalue of any kind, and therefore could not be disclosed in response to the request.
29. The Commissioner understands that the complainant is also of the view that if the council does not hold any records about the open market cost of the land, it ought to try and obtain it. The Commissioner's stance on this point is that the EIR does not compel a public authority to create information in response to a request, and nor does it require it to obtain information that is not held. However, given the council's comments above, the Commissioner would advise the complainant that he may wish to make a wider request to the council which would be likely to

provide information about the open market value, rather than specifically information about what he considers to be an undervalue.

30. Given that the council has located information about the open market value but which does not fall within the scope of the complainant's narrowly worded request about an undervalue, the Commissioner is satisfied that on the balance of probabilities, the council was correct when it said that it did not hold information within the scope of the request.

Regulation 12(5)(e) – commercial confidentiality

31. Turning to question 4, the council has provided the Commissioner with copies of the withheld information, it has marked the information with exceptions which it considers applies to each document. The vast majority has been withheld under regulation 12(5)(e), with some documents also being withheld under either regulation 12(4)(e) (internal communications) and regulation 12(5)(d) (confidentiality in law). There is only one withheld document which has not been marked as being withheld under regulation 12(5)(e). This consists of internal communications between various council officers. However, it is clear to the Commissioner that the content of the information is discussions about commercial information which is contained within the other documents that have been withheld under regulation 12(5)(e). Therefore, the Commissioner has considered this information under the 12(5)(e) exception.
32. 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".
33. The Commissioner considers that in order for this exception to be applicable, there are a number of conditions that need to be met. He has considered how each of the following conditions apply to the facts of this case:
- Is the information commercial or industrial in nature?
 - Is the information subject to confidentiality provided by law?
 - Is the confidentiality provided to protect a legitimate economic interest?
 - Would the confidentiality be adversely affected by disclosure?

Is the information commercial or industrial in nature?

34. The Commissioner considers that for information to be commercial or industrial in nature, it will need to relate to a commercial activity either of the public authority concerned or a third party. The essence of commerce is trade and a commercial activity will generally involve the sale or purchase of goods or services for profit.
35. As with the previous decision notice to which this case relates, FER0546440, the focus of the withheld information is on the sale of the Adult Education Centre and car parks of the East side of Lowfield Street, Dartford. The information takes the form of correspondence between the council, the council's agents, and Tesco. The correspondence relates to the contractual requirement for Tesco to provide a shop unit for an Adult Education Centre which will be leased back to the council.
36. Having considered the council's submissions and referred to the withheld information, the Commissioner is satisfied that the withheld information relates to a commercial transaction, namely the disposal of land and contractual requirements relating to this disposal. This element of the exception is therefore satisfied.

Is the information subject to confidentiality provided by law?

37. In considering this matter the Commissioner has focussed on whether the information has the necessary quality of confidence and whether the information was shared in circumstances creating an obligation of confidence.
38. In the Commissioner's view, ascertaining whether or not the information in this case has the necessary quality of confidence involves confirming that the information is not trivial and is not in the public domain.
39. In contrast to the section 41 exemption under FOIA, there is no need for public authorities to have obtained the information from another party. The exception can cover information obtained from a third party, or information jointly created or agreed with a third party, or information created by the public authority itself. The exception will protect confidentiality owed by a third party in favour of a public authority, as well as confidentiality owed by a public authority in favour of a third party.
40. The Commissioner considers that confidence can be explicit or implied, and may depend on the nature of the information itself, the relationship between the parties, and any previous or standard practice regarding the status of information.

41. The council considers that the information being withheld under this exception falls into three broad categories;

- Correspondence between the council and its Agents
- Correspondence between the council and Tesco
- Correspondence internal to the council

42. With regard to the first category, correspondence between the council and its agents, the Commissioner notes that part of the requested information consists of options appraisal documents which include conditions of engagement. These include specific reference to the confidentiality of the information provided:

"It will be confidential to the client and the client's professional advisors."

"Neither the whole nor any part of this valuation report nor any reference thereto may be included in the published document, circular or statement, nor published in any way without the Valuer's written approval of the form and context in which it may appear."

43. It is not clear whether these more explicit obligations of confidence transfer to the subsequent email correspondence between the council and the agents. However, as the associated correspondence clearly relates to and discusses the options outlined in the appraisals and reports, the Commissioner considers that at the very least there is a clear implied obligation of confidence in the information shared between the two parties.

44. In addition to this, it is clear to the Commissioner that the information in this category is not trivial in nature as it consists of detailed discussions regarding ongoing negotiations relating to a contract for the disposal of land and property. In addition to this, the council has confirmed that the information is not in the public domain and the Commissioner is satisfied that this is the case.

45. Turning to the second category of information, correspondence between the council and Tesco, the council has stated that the information is confidential within the common law meaning of confidence. It relates to ongoing commercial negotiations between the council and Tesco and is neither trivial nor in the public domain. The Commissioner agrees that this information therefore has the necessary quality of confidence.

46. The third category of information consists of correspondence between council officers in the council's Estates Team and other council officers. It discusses the information provided and outlined in the council's

correspondence with its external agents and with Tesco. As noted above, this exception is not limited to information provided by a third party, and as such, the Commissioner accepts that as it is the same information being discussed both externally and internally, then it will remain confidential for the purposes of 12(5)(e) when it is included in internal correspondence.

47. In relation to all three categories, the Commissioner considers that, where information relates to the disposal of land, particularly where such processes are incomplete as is the case here, it is reasonable to assume that information would be shared in circumstances creating an obligation of confidence. The Commissioner accepts that, since the passing of the EIR, there is no blanket exception for the withholding of confidential information, however, for the purposes of this element of the exception, he is satisfied that the information is subject to confidentiality by law.

Is the confidentiality provided to protect a legitimate economic interest?

48. The Commissioner considers that to satisfy this element of the exception disclosure would have to adversely affect a legitimate economic interest of the person the confidentiality is designed to protect. In the Commissioner's view it is not enough that some harm might be caused by disclosure. The Commissioner considers that it is necessary to establish on the balance of probabilities that some harm *would* be caused by the disclosure.
49. The council has argued that disclosure of the information would result in harm to its own and to Tesco's legitimate economic interests in the ongoing negotiations between the two parties for the provision of a shop unit as per the terms of the sale agreement. It has also argued that disclosure of the information would harm the legitimate economic interests of its agents in terms of reputational damage.
50. In relation to its own commercial interests, the council has stated that disclosure of the information would cause harm for the following reasons:
- Information includes advice to the council by its agents on negotiation tactics, exploring a variety of options. Disclosure would therefore lead to a failure by the council to get the best value in its negotiations with Tesco. This is because revealing tactics would give Tesco an unfair advantage in the negotiations, and would put the council on the back foot.

- The council has also argued that due to the nature of some of the tactics discussed, on the balance of probabilities it considers would lead to a total breakdown in the commercial negotiations.
- Disclosure to the world at large would attract further press attention and public comment due to the existing local and national interest in the situation. This, it argues, would lead to both the council and Tesco adopting increasingly entrenched positions, which in turn would be likely to increase the risks above.

51. With regard to the commercial interests of Tesco, the council has stated the following reasons that disclosure would cause harm:

- Public disclosure of ongoing commercial negotiations would lead to a failure of both parties to reach an agreement on best terms, if not altogether.
- Entrenched positions are likely to be adopted by both sides, meaning that little negotiation would take place and a best value deal would not be achieved.
- Tesco would not wish its commercial rivals to see its general commercial strategies, as this would be likely to put it at a disadvantage in any future competitive tender situations.
- Tesco would not wish to be seen by its shareholders as a weak negotiator.
- If the information was to be made public, and the negotiations become part of public debate, both parties would be reluctant to share any kind of sensitive or confidential information which would be relevant to obtaining a best value deal. This means that obtaining a best value deal for both parties would be unlikely and the council considers that on the balance of probabilities, it would fail altogether.

52. Finally, the council has put forward the following arguments regarding the harm to the commercial interests of its agents:

- Disclosure of the requested information would compromise the commercial relationship between the council and the agent as information that the agent has provided includes privileged information obtained from the agent's own market research. The agent has stipulated to the council that it wishes for all agreements to remain confidential.

- Disclosure would cause commercial damage to the agents as it will be misconstrued and taken out of context.
53. The Commissioner has considered these arguments and notes that the majority relate to the harm that would occur to the council's own legitimate economic interests, particularly as it appears that the council has not sought the views either of Tesco or the agents. It is clear to the Commissioner that the negotiations in this case were ongoing at the time of the request. In addition to this, the council has provided evidence to the Commissioner to show that a deal is yet to be reached with Tesco in relation to the provision of a shop unit, and indeed, it is clear from the content of withheld information that both parties are still working towards a deal. Therefore it is clear that negotiations remain ongoing.
54. The complainant is of the view that as Tesco has publically pulled out of the Lowfield Street development, the negotiations are no longer live and the information should therefore be disclosed. Whilst the Commissioner understands that the situation with Tesco announcing its withdrawal from the development could lead the public to believe there are no negotiations ongoing in respect of the project, it is clear to him that with regard to the contractual obligation for the provision of a unit for an Adult Education Centre, the negotiations are yet to be concluded.
55. Given the nature of the withheld information, the Commissioner is satisfied that its disclosure to the world at large, whilst the negotiations are ongoing, would harm the council's legitimate economic interests in obtaining a best value deal for the public purse. This is particularly with regard to the correspondence between the council and its agents as this discusses negotiation options available to the council and the different circumstances in which they may be of use. It is clear to the Commissioner that making this information publically available would give Tesco an advantage in the negotiations as it would enable it to see all the options available to the council and counter these accordingly to get a better deal in its favour.
56. With regard to the correspondence between the council and Tesco, the Commissioner finds that it is a little more difficult to see how the negotiations on this particular agreement would be prejudiced by disclosure as it is information that both parties to the negotiations are already privy to. However, the council's argument that disclosure would result in both parties becoming entrenched in those positions does hold weight in terms of the damage to the legitimate economic interests of both. The Commissioner can follow the chain of consequences that if the public, and indeed Tesco's competitors, shareholders and potential future development partners were to become aware of the positions discussed in the withheld information, given the nature and intensity of

the media coverage of the Tesco situation in Dartford, there is a strong likelihood that both parties would wish to maintain the positions stated. This would mean that further negotiations would become increasingly difficult as neither party would wish to be seen to be giving ground away to the other or being perceived as the weaker negotiator.

57. Finally, in considering the legitimate economic interests of the council's agents the Commissioner considers that aside from the assertion that the agents expect the information to remain confidential, there is little of substance in the council's arguments that the agent's interests would be harmed, particularly as it appears that the council has not specifically sought their view on the matter. However, on this point, the council has argued that in the context of a client/agent relationship it could be the confidant's economic interests that are protected by the duty of confidentiality, rather than the confider's. It relies on the Information Tribunal decision in *South Gloucestershire council v Information Commissioner and Bovis Homes (EA/2009/0032)* for this position.
58. The Commissioner finds that the correspondence between the council and its agents would be less likely to harm the agent's legitimate economic interests. However, he does agree that all the information contained in such correspondence, if disclosed, would on the balance of probabilities harm the council's legitimate economic interests.
59. The Commissioner considers that the council has identified the relevant effects of disclosure and has shown a causal link between the possible and likely effects, and the withheld information. The link is particularly clear in this case as the withheld information is predominantly comprised of discussions about negotiation tactics, or forms part of the ongoing negotiations themselves. It is clear from the withheld information that both at the time of the request and now, those negotiations are ongoing and an agreement is yet to be reached.

Would the confidentiality be adversely affected by disclosure?

60. As the first three elements of the test have been established, the Commissioner is satisfied that disclosure into the public domain would adversely affect the confidential nature of that information by making it publicly available and would consequently harm the legitimate economic interests of the council. He therefore concludes that the exception at regulation 12(5)(e) is engaged in respect of the withheld information and has gone on to consider whether in all the circumstances of the case the public interest in maintaining the exception outweighs the public interest in disclosure of the requested information.

Public interest test

Public interest arguments in favour of disclosing the information

61. The council accepts that there will always be some public interest in disclosure for the following reasons:

- To promote transparency and accountability.
- To create greater public awareness and understanding of environmental matters.
- To encourage a free and frank exchange of views.
- To encourage more effective public participation in environmental decision making.
- Accountability in spending public money.
- A large number of people are potentially affected by the proposal if the development were to go ahead.

62. The complainant considers that refusing his request is preventing the people of Kent and Dartford from knowing the facts in what has become a controversial matter. He does not consider that disclosure would have a negative effect, but rather that it would expedite the provision of much need community space in Dartford.

63. He has given the Commissioner his view that Tesco is in breach of contract, and as it has abandoned the development, the information should be disclosed.

64. The Commissioner notes that at the time Tesco announced its withdrawal from the Dartford development in January 2015, there was national media coverage and Tesco has come under some criticism from the public and local politicians in this matter². Media attention was rekindled in part during the parliamentary and local election campaigns in May 2015³.

65. It is clear therefore that as well as a general public interest in disclosure of the information for accountability and transparency reasons, there is

² <http://www.bbc.co.uk/news/uk-england-kent-30786411> accessed 15 July 2015

³ <http://www.bbc.co.uk/news/uk-england-kent-32137876> accessed 15 July 2015

also a more specific public interest in understanding the relationship between Tesco and the council, and providing assurances that the council is still working to obtain the best deal for the local people in respect of the Lowfield Street area regeneration. As acknowledged by the council, this development is large in scale and potentially affects a large number of individuals. However, it is important to note that the information requested here relates to a small portion of the land that had been accrued by Tesco up to this point.

Public interest arguments in withholding the information

66. The council has argued that there is an inherent public interest in withholding the information to protect the commercial and economic interests that would be adversely affected by disclosure. It has stated that it considers that any public interest in disclosing information about ongoing negotiations would be outweighed by the harm that would be done both to the public purse and the general public interest in redeveloping the Lowfield Street area of Dartford town centre, by either a best value deal not being reached or negotiations breaking down altogether. It has also argued that there is a public interest in avoiding any harm that would be done to Tesco's ongoing business.
67. In its arguments regarding the application of the exception, the council has been very clear in its position regarding disclosing the requested information while negotiations on the provision of a shop unit are ongoing. It has stated that it would be put at a disadvantage in negotiations if Tesco know the options it was considering. If the information was disclosed, the Commissioner accepts that this would happen, and the council would therefore be greatly hindered in achieving the best deal for the public purse. It is clear that the council considers that there is a very strong public interest in ensuring the best use of public money.

Balance of the public interest

68. In balancing the public interest arguments, the Commissioner considers that greater weight should be given to the fact that although Tesco has publically withdrawn from the redevelopment plans, it is clear that the council is still in negotiations with regard to a contractual requirement on Tesco to provide a shop unit for an adult learning centre. He accepts the argument that it would be detrimental to the council's negotiation position for Tesco to have possession of the requested information prior to an agreement being reached in respect of the provision of a shop unit. In addition to this, due to the nature of the information the Commissioner also accepts that there is a public interest in ensuring that the negotiations do not fall through entirely, which would result in the loss of community space as well as losses to the public purse.

69. The Commissioner agrees with the general public interest arguments put forward by the council. However, he does not find the complainant's public interest arguments compelling as it is clear that the negotiations are ongoing and he has not seen any evidence to support the comments that disclosure of the requested information at this time would expedite the provision of community space. If anything, he finds that the council's position that disclosure could lead to the negotiations stalling or falling through in their entirety to be a more likely outcome, resulting in yet more delays in the provision of the community space.
70. The Commissioner is of the view that, whilst there are strong public interest arguments on both sides, the public interest in disclosure is, in all the circumstances of the case, outweighed by the public interest in maintaining the exception. In reaching this decision he has placed considerable weight on the fact that at the time of the request the negotiations were, and still are, ongoing and there was a clear expectation of confidentiality.
71. The Commissioner's decision is that the Council is entitled to rely on regulation 12(5)(e) to withhold the requested information. In view of this decision he has not gone on to consider the council's alternative application of regulations 12(4)(e) and 12(5)(d).

Right of appeal

72. 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 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

73. 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.
74. 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

Andrew White
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