

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

**Decision notice**

**Date:** 12 January 2021

**Public Authority:** Shropshire Council  
Shirehall  
Abbey Foregate  
Shrewsbury  
SY2 6ND

**Decision (including any steps ordered)**

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1. The complainant requested planning related information in relation to a proposed development scheme. Shropshire Council (the 'Council') initially withheld all the information in scope under Regulation 12(4)(d) of the EIR but, following an internal review, it disclosed some of the requested information to the complainant. Additionally, during the course of the Commissioner's investigation, the Council disclosed a further three documents to the complainant. It maintained that Regulation 12(4)(d) of the EIR applied to the remaining information in scope of the request.
2. The Commissioner's decision is that the Council was correct to consider this request under the EIR. She also finds that it has correctly applied Regulation 12(4)(d) to the remaining withheld information. She concludes that the weight of the public interest lies in maintaining the Council's application of this exception.
3. The Commissioner also finds that the Council breached Regulation 5(2) of the EIR by failing to respond to the request within the statutory 20 working days' time limit. However, as this request was correctly considered under the EIR, which allows a public authority 40 working days to complete an internal review, the Commissioner finds that the Council complied with the requirements of Regulation 11(4) of the EIR.
4. The Commissioner does not require the Council to take any steps as a result of this notice.

## Background

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5. From publicly available information, the Commissioner understands the following<sup>1</sup>:
- Taylor Wimpey is promoting the land to the south of the A458 to deliver a new Garden Village to meet existing and long-term future housing and employment needs of Bridgnorth.
  - The site is being promoted as a more sustainable alternative to the current Local Plan Review preferred option of delivering a Garden Village on Green Belt land at Stanmore, which was consulted on by Shropshire Council in early 2019.
  - The site has the potential to deliver up to 1,050 dwellings and at least 16 hectares of new employment floorspace. This would be delivered alongside new community facilities including a primary school and a small local centre serving the day-to-day needs of the new development. New public open space will be delivered in the form of a new country park along with sports pitch provision to serve both new and existing residents.
  - A further 38 hectares would be reserved to meet the town's future employment and housing needs beyond the year of 2038.
  - Given the proximity to High Town, Tasley Garden Village presents a suitable and sustainable development opportunity that avoids the need to release Green Belt land for development at Stanmore.
  - Taylor Wimpey held an online public consultation, which ended on Wednesday 3 June 2020. A new consultation period began on 3 August 2020 and ran until 30 September 2020
6. The Commissioner notes that the complainant's request post-dates the closure of the online public consultation period but was submitted prior to the second consultation period.

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<sup>1</sup> <https://www.taylorwimpey.co.uk/tasleygarden>

## Request and response

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7. On 19 June 2020, the complainant wrote to Shropshire Council and requested information in the following terms (bold text as added by the complainant):

***"All correspondence and communications between officers and members of Shropshire Council and the developers (Taylor Wimpey) and landowners of the site, concerning the proposed 'Tasley Garden Village'.***

*I would like the above information to be provided to me as an electronic copy via return reply to this email.*

*If this request is unclear, I would be grateful if you could contact me for clarification, as I understand that under the Act, you are required to advise and assist requestors.*

*If the release of any of this information is prohibited on the grounds of breach of confidence, I ask that you supply me with copies of the confidentiality agreement, and remind you that information should not be treated as confidential if such an agreement has not been signed.*

*I understand that you are required to respond to my request within the 20 working days after you receive this email. I would be grateful if you could confirm in writing that you have received this request."*

8. The Council responded, late, on 17 August 2020 and refused to provide the requested information. It cited the following EIR exception as its basis for doing so: Regulation 12(4)(d) – material in the course of completion - and said that the public interest test favoured withholding the requested information. However, the Council provided the complainant with a link to the site assessment and background information on its website<sup>2</sup>.
9. The complainant requested an internal review on 11 September 2020 which the Council provided on 19 October 2020. It partly revised its position in that it disclosed some of the previously withheld information, but maintained that Regulation 12(4)(d) applied to the remainder. It

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<sup>2</sup> <https://shropshire.gov.uk/get-involved/reg-18-pre-submission-draft-local-plan-consultation/>

also advised it had redacted some personal information within the disclosures under Regulation 13(1) – personal information.

## Scope of the case

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10. The complainant initially contacted the Commissioner on 21 August 2020 to complain about the way his request for information (set out above) had been handled, specifically that he had not received a substantive response to the request.
11. On 17 September 2020, following the Commissioner's intervention, the Council confirmed it had issued its response to the complainant, who had received it and had since requested an internal review.
12. The Council provided the Commissioner with a copy of its response; she notes that the date of the response email pre-dates the date she received the initial complaint.
13. This notice is concerned with the complainant's dissatisfaction following the subsequent internal review outcome.
14. The complainant contacted the Commissioner again, on 21 August 2020, following the outcome of the internal review to complain about the way his request for information had been handled.
15. The Commissioner wrote to the complainant advising she would investigate the Council's reliance on Regulation 12(4)(d) of the EIR in relation to the remaining information in scope of the request and timeliness. She asked the complainant to confirm whether he had any remaining concerns in relation to the information already disclosed by the Council (at internal review).
16. The complainant agreed with the scope of the investigation. The Commissioner has therefore not considered the Council's reliance on Regulation 13(1) applied to the disclosed information any further.
17. During the latter stages of the Commissioner's investigation, on 5 January 2021, the Council revised its position in relation to three of the documents it had been withholding under Regulation 12(4)(d). It disclosed two emails (with minor redactions for personal information) and a press release statement now in the public domain, to the complainant.
18. The complainant confirmed that he had no objections to the Regulation 13(1) personal information redactions in the recently disclosed documents (referred to in paragraph 17 above), so the Commissioner has not considered this aspect any further.

19. In the case under consideration here, the Commissioner has determined whether the Council was correct to handle the request under the EIR. She has also considered whether the Council was entitled to rely on Regulation 12(4)(d) for the remaining withheld information in scope and the time taken to respond to both the request and the complainant's request for an internal review.

## Reasons for decision

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20. The Commissioner has first considered whether the requested information constitutes environmental information.

### Regulation 2 – Is the requested information environmental?

21. Environmental information must be considered for disclosure under the terms of the EIR rather than the FOIA. Information is environmental if it meets the definition set out in regulation 2 of the EIR, namely "*...any information in written, visual, aural, electronic or any other 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);*

22. Regulation 2(1)(c) of the EIR defines environmental information as any information on:

*"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."*

23. The request in this case is for information relating to planning matters. The Commissioner is satisfied that the requested information is on a measure that would, or would be likely to, affect the elements listed in regulation 2(1)(a) and is, therefore, environmental under regulation 2(1)(c) of the EIR.

## **Regulation 12(4)(d) – material in the course of completion**

24. Regulation 12(4)(d) of the EIR says that a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.
25. The Commissioner has published guidance on Regulation 12(4)(d)<sup>3</sup>. The aims of the exception are:
  - to protect work a public authority may have in progress by delaying disclosure until a final or completed version can be made available. This allows it to finish ongoing work without interruption and interference from outside; and
  - to provide some protection from having to spend time and resources explaining or justifying ideas that are not and may never be final.
26. In its submissions to the Commissioner, the Council confirmed that at the time it was requested on 19 June 2020, the Council considered Regulation 12(4)(d) applied to all the remaining information in scope. It said: *"The limb we are relying on is the 'material in the course of completion' [sic] on that basis that the local plan to which this relates is ongoing and not complete at the time of the request."*
27. The Council cited a previously issued decision notice *FER0663603*<sup>4</sup> issued by the Commissioner in February 2018 in support of its position.
28. The Commissioner has reviewed the referenced decision notice. That case also concerned a request for planning related information made to Colchester Borough Council in which Regulation 12(4)(d) (and other exceptions) were cited. The Commissioner upheld Colchester Borough Council's reliance on Regulation 12(4)(d) and found that the balance of the public interest favoured withholding the remaining requested information.

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<sup>3</sup> [https://ico.org.uk/media/for-organisations/documents/1637/eir\\_material\\_in\\_the\\_course\\_of\\_completion.pdf](https://ico.org.uk/media/for-organisations/documents/1637/eir_material_in_the_course_of_completion.pdf)

<sup>4</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2258271/fer0663603.pdf>

29. Whilst the Commissioner has taken account of the earlier decision notice, she is not bound by that decision. It is important to note that the Commissioner must consider each case on its merits, together with all the prevailing relevant circumstances.
30. Shropshire Council has submitted that some of arguments, (particularly those relevant to the public interest considerations), cited in that earlier decision notice apply in the current case. Specifically, the Council said that it withheld a number of documents from the complainant because, at the time his request was received, the documents were in draft form or related to the local plan which was in the course of development through public consultation (the Council referenced *paragraph 70* of the published decision notice).
31. The Commissioner has reviewed the withheld information which consists of ten documents, mainly emails. For the withheld information to engage the exception provided by Regulation 12(4)(d) it must meet at least one of the following criteria:
  - It must be information which relates to material which is in the course of completion. The 'material' in question may be a final policy document. It will include information contained in a completed document if that document is intended to inform an on-going process of policy formation.
  - The interpretation of unfinished documents is more straightforward. A document will be unfinished if the public authority is still working on it at the time the request is received. Furthermore, a draft version of a document will remain an unfinished document even once a final or finished version of that document has been produced.
  - Incomplete data is data that a public authority is still collecting at the time a request for information is received.
32. The position of the local plan at the time the request was received is clearly relevant to the application of Regulation 12(4)(d) as the withheld information can properly be considered to be 'material in the course of completion'. In view of this, the Commissioner is satisfied that the local plan was subject to potential amendment and therefore she is satisfied that the exception under regulation 12(4)(d) is engaged.
33. The Council's reliance on Regulation 12(4)(d) is subject to consideration of the public interest.



### ***Public interest test***

34. Regulation 12(1)(b) of the EIR provides that where Regulation 12(4)(d) is engaged then a public interest test is carried out. The test is whether, in all of the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. Furthermore, under Regulation 12(2), a public authority must provide a presumption towards the disclosure of the information.

### ***Public interest in favour of disclosing the information***

#### *The complainant's view*

35. The complainant did not provide any specific public interest arguments.

#### *The Council's view*

36. In favour of disclosure, the Council said:

*"We accept that there is always a general public interest favouring the disclosure of environmental information. Such disclosures inform public debate on the particular issue that the information relates to and we understand that Local Plans may have significant impact on local communities."*

37. It also advised the Commissioner that its public interest arguments were the same as those set out in decision notice FER0663603. Paragraph 73 of that notice is relevant here, which states:

*"Again, the Commissioner acknowledges that the disclosure of the information provides both openness and transparency in respect of the Council and the decisions it makes."*

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

38. The Council provided that the following statements in favour of maintaining the exception:

*"Disclosure of information where Regulation 12(4)(d) is engaged would likely result in a 'chilling effect' on the Council's ongoing and future discussions, and it is also likely to negatively affect the involvement of landowners and potential developers engaging with the council as part of the Local Plan process. The Council is required to undertake public consultations as appropriate stages in the Local Plan process and that the submission of a Local Plan would be subject to examination by a Planning Inspector in an 'Examination in Public'. As such we consider that that the disclosure of 'material in the course of completion' when the*



*Council received this particular request, would only serve as a distraction from the task of preparing the Local Plan.*

*However there is also a strong public interest in favour of applying the exemption and there is significant weight to the need for interested parties to engage and consult with the Council in a 'safe space' and without the 'chilling effect', which is likely to flow from the disclosure of material in the course of completion. A 'chilling effect' directly concerns the loss of frankness and candour in debate which would flow from an untimely disclosure of information. This would likely lead to poorer quality advice and would produce less well formulated policy and decisions.*

*The need for a 'safe space' is to allow free and frank debate is crucial to the planning processes both now and going forward and we cannot take action that could undermine this. The 'safe space' is about protecting the integrity of the decision making process and whether it carries any significant weight will be dependent on the timing of the request and in this case the Local Plan has yet to be finalised and we plan to publish the completed Local plan once the process has been concluded."*

39. Again, the Council directed the Commissioner to consider certain paragraphs in the previously issued decision notice FER0663603. Paragraphs 74-76 are relevant here and are set out below:

*"However, in this case the Commissioner considers that disclosure of information where Regulation 12(4)(d) is engaged would likely discourage the public, local businesses and landowners from engaging with the Council during the 'safe space' development of the local plan. In the Commissioner's opinion disclosure of material in the course of completion would frustrate the process of preparing the Local Plan which is a statutory requirement.*

*The Commissioner believes that disclosure of information where Regulation 12(4)(d) is engaged would likely result in a 'chilling effect' on the Council's ongoing and future discussions, and it is also likely to negatively affect the involvement of landowners and potential developers engaging with the council as part of the Local Plan process.*

*The Commissioner notes that the Council is required to undertake public consultations as appropriate stages in the Local Plan process and that the submission of a Local Plan would be subject to examination by a Planning Inspector in an 'Examination in Public.' Consequently, the Commissioner*

*considers that the disclosure of 'material in the course of completion' when the Council received this particular request, would only serve as a distraction from the task of preparing the Local Plan."*

### ***Balance of the public interest arguments***

40. In terms of the balance of the public interest arguments the Council submitted the following:

*"In terms of the public interest the decision notice linked to above [ie FER0663603] also considered this aspect in the similar case relating to an ongoing local plan and it was held that the public interest favoured withholding the information on the grounds stated in detail in paragraphs 73-89. The same arguments are being relied on here relevant to the local plan."*

41. Paragraphs 77-89 of FER0663603 state:

*"The Commissioner accepts that there is always a general public interest favouring the disclosure of environmental information. Such disclosures inform public debate on the particular issue that the information relates to.*

*The Commissioner understands that Local Plans may have significant impact on local communities and she acknowledges the strength of the public interest inherent in transparency and accountability where local plans are concerned.*

*That said, the Commissioner also recognises the strong public interest arguments in favour of the maintaining this exception. She is obliged to give significant weight to the need for interested parties to engage and consult with the Council in a 'safe space' and without the 'chilling effect' which is likely to flow from the disclosure of material in the course of completion.*

*The Commissioner believes that there are occasions when a 'safe space' is needed by public authorities to allow them to formulate policy, debate live issues and reach decisions without being hindered by external comment and/or media involvement.*

*The need for a 'safe space' is to allow free and frank debate and it is the Commissioner's view that this is required regardless of any impact that the disclosure of information may have.*

*The Commissioner considers the 'safe space' to be about protecting the integrity of the decision making process and whether it carries any significant weight will be dependent on the timing of the request.*

*A 'chilling effect' directly concerns the loss of frankness and candour in debate which would flow from an untimely disclosure of information. This would likely lead to poorer quality advice and would produce less well formulated policy and decisions.*

*Here, the timing of the request is important. The Council advised the Commissioner that the Local Plan had yet to be finalised and that it planned to publish the completed Local plan once the process had been concluded*

*Notwithstanding this, the Council informed the Commissioner that it had placed a large amount of material into the public domain as is usual with regard to planning applications and that, it seeks only to withhold material which could unjustly affect the final outcome of the planning appeal if it was to be disclosed.*

*Given that the Local Plan was not finalised at the time the Council received the complainant's request, and was that it was still subject to further discussion and amendment, the Commissioner accepts that disclosure would present a real risk of prejudice to the 'safe space'. The Commissioner is satisfied that, should the relevant information have been disclosed at the time of the request, there would have been a realistic prospect that interested parties would have been discouraged from being participating with necessary candour in the ongoing discussions regarding the Local Plan.*

*The Commissioner understands that the state which governs the Local Plan process requires the Council to make information available to the public by way of public consultations and, through hearings once it has been submitted to the Secretary of State for examination. The Commissioner would not want to undermine this Local Plan process.*

*The Commissioner takes the view that the mechanisms in place which allow for information to be made available to the public at the various stages of the Local Plan process provides the necessary transparency and openness of the process.*

*The Commissioner understands that local planning authorities are required to publish information annually which shows how their Local Plans are progressing. She also acknowledges that the Council will publish its local plan once the process has been concluded."*

*Conclusion*

42. The Commissioner has considered the Council's actual submissions in relation to the public interest test, as well as those it directed her to within the previously issued decision notice.
43. The Commissioner considers that the balance of the public interest lies in favour of maintaining the exception and thereby has concluded that the Council was entitled to withhold the remaining withheld information by virtue of Regulation 12(4)(d).

**Regulation 5(2) – duty to make available environmental information on request**

44. Regulation 5(1) states the following:

*“a public authority that holds environmental information shall make it available on request”.*

45. Regulation 5(2) states that such information shall be made available -

*“as soon as possible and no later than 20 working days after the date of receipt of the request”.*

46. The Council breached regulation 5(2) of the EIR by responding beyond the statutory timeframe of 20 working days.

**Regulation 11(2) of the EIR - Representations and reconsiderations**

47. Regulation 11 of the EIR provides that, if dissatisfied with a public authority's response to a request, the requester can ask for a review. Regulation 11(4) provides that a public authority should respond promptly and no later than 40 working days after the date of receipt of the request for review.
48. The complainant requested an internal review on 11 September 2020 and the Council provided the outcome on 19 October 2020. The Commissioner finds that the Council complied with the requirements of Regulation 11(4) of the EIR because it provided the outcome of its internal review within 40 working days.

## Other matters

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49. In relation to the delay in the Council's initial response, the Commissioner will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal in her draft Openness by Design strategy<sup>5</sup> to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our Regulatory Action Policy<sup>6</sup>.

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<sup>5</sup> <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

<sup>6</sup> <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

## Right of appeal

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50. 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@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)

51. 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.
52. 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**  
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**Cheshire**  
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