

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 15 September 2022

**Public Authority:** Manchester City Council  
**Address:** Town Hall Extension  
Albert Square  
Manchester  
M60 2LA

#### **Decision (including any steps ordered)**

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1. The complainant requested information from Manchester City Council ("the Council") relating to the Brunswick redevelopment. The Council provided the complainant with information within the scope of the request. The complainant considers that the Council has not disclosed all the information it holds within the scope of their request.
2. The Commissioner's decision is that the Council has provided the complainant with all the information it holds within the scope of the request.
3. The Commissioner does not require the Council to take any steps.

## Request and response

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4. On 24 May 2021, the complainant wrote to the Council and requested information in the following terms:

### "Background

Manchester City Council ("the Council") and S4B Ltd ("S4B") entered into a Project Agreement dated 20 December 2013. The purpose of this agreement was to provide a PFI concession to S4B to refurbish a housing estate, including works of demolition and new construction. On 20 December 2013 Mears entered into a Refurbishment Works Contract with S4B Limited for the carrying out of refurbishment works for Council housing in Manchester ("the Subcontract"). The Subcontract is part of the PFI scheme with Manchester City Council the client and S4B the contractor under the Project Agreement. There are various other subcontracts, including a construction contract between S4B and Galliford Try Construction Limited (GT) for the construction of various new builds and related infrastructure. The relationship between the various subcontractors is governed by an Interface Agreement.

### Freedom of Information Request

Our client's requests are narrow in scope and should be simple to respond to – they are as follows:

1. Minutes of any meetings held between the Council planning team and the Council PFI team regarding the Brunswick redevelopment in the period of May – June 2018
2. Minutes of any meetings held between the Council planning team and the Council procurement team regarding the Brunswick redevelopment in the period of May – June 2018
3. [Name redacted – Council Officer A's] correspondence related to the Brunswick redevelopment in the period of 22 – 31 May 2018
4. Minutes of any internal meetings held regarding the Brunswick redevelopment between 22 – 31 May 2018
5. Minutes of meetings and emails between [Council Officer A] and [Name redacted - Council Officer B] regarding the Brunswick redevelopment in the period of May – June 2018

6. Notes from [Council Officer A's] site visit(s) to the Brunswick redevelopment site in the period of May – June 2018"
5. The Council responded on 21 June 2021 and provided the complainant with information within the scope of the request.
6. On 9 July 2021, the complainant wrote to the Council and requested an internal review.
7. Following an internal review, the Council wrote to the complainant on 13 August 2021. It stated that it had provided all the information it holds within the scope of the request.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 5 November to complain about the way their request for information had been handled.
9. The Council originally considered the request under the FOIA. However, during the course of his investigation, the Commissioner wrote to the Council and set out his view that the requested information was likely to constitute environmental information as defined in regulation 2(1) of the EIR. The Council accepted the Commissioner's view and reconsidered the request under the EIR.
10. On 30 August 2022 the Council provided the complainant with a further response to the request in which they disclosed further information within the scope of their request.
11. Following receipt of the Council's further response to their request, on 8 September 2022 the complainant wrote to the Commissioner to complain about the response and the Council's handling of their request.
12. The scope of this case and the following analysis is to determine if the Council is correct when it says that it has disclosed all the information it holds within the scope of the request.

### **Reasons for decision**

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#### **Regulation 12(4)(a) – information held/not held**

13. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.

14. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide the requested information if it does not hold it at the time of the request being received.
15. 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 First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
16. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any or additional information which falls within the scope of the request (or was held at the time of the request).

### **The complainant's position**

17. In their complaint to the Commissioner, the complainant stated that they consider the Council's responses to their request to be inadequate and therefore, they do not consider the Council to have complied with its obligations under the legislation.
18. The complainant considers that the Council has not carried out adequate searches for information within the scope of their request. The complainant therefore considers the Council to hold further information within the scope of their request which has not been disclosed.

### **The Council's position**

19. As is the practice in a case where there is some dispute over the amount of information located by a public authority and the amount of information that a complainant believes the public authority to hold, the Commissioner asked the Council to provide him with a detailed explanation of the searches it had conducted for information within the scope of the request.
20. In its submissions to the Commissioner, the Council stated that it does not hold any information within the scope of questions 1, 2, 4, 5 and 6 of the request and that it has disclosed all the information it holds within the scope of question 3 of the request.
21. The Council explained that officers in the Planning Team conducted an electronic search of the emails, calendars and electronic folders of individual officers within the Planning Team who had some involvement or knowledge of the Brunswick redevelopment for information within the scope of questions 1, 2 and 4 of the request. The Planning Team also conducted a search of paper files and planning applications files relating to the Brunswick redevelopment for information within the scope of

questions 1, 2 and 4 of the request. The Planning Team's searches did not result in any information within the scope of questions 1, 2 and 4 of the request being located.

22. The Council explained that officers dealing with planning applications and redevelopment schemes do not usually take minutes of internal meetings. Individual officers may take handwritten notes however, these would have been destroyed when no longer needed. If meeting minutes were made, the minutes would have been saved as electronic copies and attached to emails, saved in electronic folders or placed in paper files relating to the Brunswick redevelopment. The Council considers that as no internal meeting minutes have been located, it is likely that the information was never held by the Council.
23. The Council explained that the Planning Team also conducted a search of its planning files and shared folders for information within the scope of questions 3 and 6 of the request. Whilst not all information held by the Planning Team from meetings and site visits would be saved in planning files and shared folders, key correspondence and other important information from site visits and meetings about planning applications would be saved as a matter of practice in the relevant planning file or shared folder. In this case that would be the Brunswick redevelopment shared folder. Officers within the Planning Team who were involved in the Brunswick redevelopment also searched their emails for information within the scope of question 3 and 6 of the request. This involved searching for correspondence sent or received from [Council Officer A] between 22 and 31 May 2018. The officers also conducted a search using the search terms "Brunswick", "Brunswick redevelopment" and "Brunswick PFI" for information within the scope of questions 3 and 6 of the request. Information within the scope of question 3 of the request was located as a result of the Planning Team's searches. This information has already been disclosed to the complainant.
24. The Council explained that the Planning Team conducted a search of [Council Officer B]'s emails for information within the scope of question 5 of the request. This involved searching [Council Officer B]'s email account for emails between [Council Officer B] and [Council Officer A]. The Planning Team also searched [Council Officer B]'s emails using the search terms "Brunswick" and "Brunswick redevelopment" for information within the scope of question 5 of the request. The Planning Team's searches did not locate any information within the scope of question 5 of the request. The Council considers that this is likely to be due to the fact that whilst [Council Officer B]'s name as Head of Planning is usually used to sign off letters from the Planning Team, [Council Officer B] was not involved in the Brunswick redevelopment

during May and June 2018 and therefore, did not send or receive emails from [Council Officer A] about the redevelopment.

25. The Council explained the Strategic Housing Team (PFI Team) conducted a search of the emails, electronic folders and paper records of officers who were involved in the Brunswick redevelopment project for information within the scope of questions 1, 2, 3 and 4 of the request. The Strategic Housing Team used the same methods of that of the Planning Team when conducting its search. The Team did not locate any information within the scope of questions 1, 2, 3 and 4 of the request.
26. The Council explained that whilst the Procurement Team was not involved in the Brunswick redevelopment, the Procurement Team has undertaken a search of its emails and electronic files for information held within the scope of the request. No information within the scope of the request was located.
27. The Council explained that as its legal team provides advice and legal support to the Planning Team and Strategic Housing Team, the legal team has also conducted a search of its electronic and paper records for information within the scope of the request. The legal team did not locate any information relating to internal meetings that took place between 22 and 31 May 2018. The legal team also undertook an electronic search for emails sent from or to [Council Officer A] between 22 and 31 May 2018 relating to the Brunswick redevelopment. The legal team did not locate any information within the scope of the request.
28. In its submissions to the Commissioner, the Council explained whilst [Council Officer A] left the Council in 2019, the Council has been able to conduct a search of [Council Officer A]'s email account for information within the scope of the request. The Council searched emails sent or received by [Council Officer A] between 1 May 2018 and 30 June 2018 using the search terms "Brunswick", "PFI" and "site visit" for information within the scope of the request. This search located information within the scope of question 3 of the request. The information has already been disclosed to the complainant.

### **The Commissioner's position**

29. The Commissioner has considered the Council's position in relation to whether the Council holds further information within the scope of the request.
30. The Commissioner is satisfied that the Council has carried out adequate searches for information within the scope of the request. Therefore, his decision is that on the balance of probabilities, the Council does not hold

any further information within the scope of the request and so the exception provided by regulation 12(4)(a) is engaged.

**Regulation 12(1)(b) – the public interest test**

31. Regulation 12(1)(b) of the EIR requires a public interest test to be carried out if a request is refused under any of the exceptions set out under regulation 12 of the EIR.
32. However, as no further information has been found to be held, the Commissioner can only find that the public interest in maintaining the exemption at 12(4)(a) of the EIR outweighs any public interest in disclosure, simply because there is no further information to disclose.

## Right of appeal

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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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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**  
**Cheshire**  
**SK9 5AF**