

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 18 June 2024

Public Authority: Suffolk County Council
Address: Endeavour House
8 Russell Road
Ipswich
Suffolk IP1 2BX

Decision (including any steps ordered)

1. The complainant requested information from Suffolk County Council (the "Council") regarding obtaining boundary line data.
2. The Council withheld the requested GIS shapefiles under the confidentiality of commercial information exception (regulation 12(5)(e) of the EIR.)
3. The Commissioner's decision is that the commercial confidentiality exception under regulation 12(5)(e) of the EIR is engaged for the withheld information and that the public interest favours maintaining the exception.
4. The Commissioner does not require further steps.

Request and response

5. On 6 February 2024, the complainant wrote to the Council and requested information in the following terms:

"This request is in reference to the 'Suffolk Landscape Character Assessment' and the character areas as shown in the following map:

<https://suffolklandscape.org.uk/map/>

Information on the boundaries surrounding the different Landscape Character Areas are not digitally available.

I would like to inquire about obtaining the boundary line data for the Landscape Character Areas, as shown within the Suffolk Landscape Character Assessment.

I am making this request under FOI, EIR, or Inspire regulations published on the ICO website.

To obtain accurate and detailed information, I would need to obtain a Shapefile format (SHP).

Can you please let me know if this data is available for the area?"

6. The Council responded on 6 February 2024 explaining:

"A 12-month licence for the Landscape Character Assessment dataset is £100 Plus VAT.

The Seascape Dataset is an additional £100 Plus Vat for 12 months if this is also required.

Please see the attached licence agreement form for further information.

If you would like to proceed on this basis, I would ask that you check your details that I have provisionally filled in, sign the licence agreement, and return it with a purchase order number and relevant company details for invoicing. The data can then be sent by return as a shapefile or MapInfo format. The invoice would be issued separately."

7. The complainant responded on 19 February 2024 as follows:

"Thank you very much for getting back to me. In response to your email, I understand that I have a fee of £100 for the map.

Just to be clear, I do not want to obtain information on the map in the link. Can you instead give me the shape files so that I can do my own map?

I am currently putting together information on a plan as part of a planning application. The information, therefore, needs to be accurate, as it is for planning. I appreciate that a fee is needed for the work on displaying this information. I have had this issue with other local authorities, and I accept that sometimes this has to do with licensing with the outsourced company that produced the maps. However, I am

only requesting information on the outline of the Local Character Areas. This information has been created as part of a Local Character Assessment (from either Babergh District Council/ East Suffolk District Council /Ipswich Borough Council /Mid Suffolk District Council / West Suffolk District Council) and therefore is for public usage.”

8. Following an internal review, the Council wrote to the complainant on 1 March 2024 and explained that the shapefile data requested was being withheld under the confidentiality of commercial information exception (regulation 12(5)(e) of the EIR.)

Reasons for decision

9. The following analysis sets out why the Commissioner has concluded that the Council was entitled to rely on the confidentiality of commercial information exception under regulation 12(5)(e) of the EIR in this particular case.

Regulation 12(5)(e) – Confidentiality of commercial or industrial information

10. Regulation 12(5)(e) states that:

“a public authority may refuse to disclose information to the extent that its disclosure would adversely affect-

(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.”

11. The Commissioner’s published guidance on this exception explains that, in order for this exception to be applicable, there are a number of conditions that must be met. These are:

- 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?

12. The Council explained to the complainant that the withheld information was commercial information as it was intrinsically linked and created by

reference to Ordnance Survey maps which are owned by Ordnance Survey and the Council uses under licence to Ordnance Survey.

13. The Council also explained that the licence under which the Council uses the Ordnance Survey maps recognises that the maps are confidential data and should not be released by licensees except in specific circumstances.
14. The Commissioner has considered the four tests in paragraph 11 above. 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.
15. Third, the Commissioner has considered whether the confidentiality is provided to protect a legitimate economic interest. The Commissioner considers that disclosing the withheld information would prejudice Ordnance Survey's commercial interests. This is because the Ordnance Survey Licensing model allows for the use of its maps under a licensing agreement for which payment is made. Should the licensing terms not be adhered to, the Ordnance Survey's asset would be available for use without constraints in the public domain to protect the Ordnance Survey's commercial activity. Individuals and organisations would then be able to use these assets for free resulting in a loss of income to Ordnance Survey through their licensing model.
16. Finally, the Commissioner is satisfied that the confidentiality would inevitably be affected if the Council disclosed the withheld information.
17. Since the four tests have been satisfied, the Commissioner finds that regulation 12(5)(e) of the EIR is engaged as disclosing the withheld information would adversely affect Ordnance Survey's commercial interests. He has gone on to consider the associated public interest test.

Public interest test

18. The Council has acknowledged that releasing the requested information would help it to comply with its transparency and accountability agenda.
19. However, in relation to the public interest in maintaining the exception, the Council has argued that, whilst the principal reason for withholding the information was to protect Ordnance Survey's commercial interests, disclosure would also require the Council to breach its contract with Ordnance Survey. The Council has noted that this would be likely to result in Ordnance Survey revoking the Council's licensing or refusing to renew it in future. It has argued that this would have a huge impact on the Council's ability to map geospatial information which in turn would

reduce its ability to deliver frontline services or identify potential efficiency savings for the public.

20. Furthermore, the Council has argued that the license agreement in place with Ordnance Survey specifies that the information used is confidential and should not be released by licensees except in specific circumstances i.e. under a license agreement signed by the individual/organisation. Therefore, releasing the requested information would not only negatively impact the Council's relationship with Ordnance Survey but also relationships with other organisations who would see that the Council had broken a license agreement and released confidential information into the public domain. This would be highly likely to damage the reputation of the Council and weaken its negotiating position when negotiating other licences thus preventing effective public services from being delivered or best value for money being achieved.
21. In addition, the Council argued that releasing this data would set a precedent that further requests made to the Council or any other public authority for data an organisation charges for, but is shared under a license agreement, could be requested, and have to be released under an EIR or FOI request. This would dissuade companies from entering into license agreements with the Council and other public authorities as they would not want their charged-for information being provided for free due to it harming their commercial interests.
22. The Council explained to the Commissioner that the data requested is intrinsically linked to the maps on which it is built/presented as they refer to mapping references that would not otherwise be available. Whilst the data has been created by the Council the map used is the creation and property of the Ordnance Survey and, therefore, they are the holder of the intellectual property rights for the requested information and the Reuse of Public Sector Information does not apply to the information requested.
23. The Council have confirmed to the complainant that the data can be shared but it must be done so under a license agreement signed by the individual/organisation as per the stipulations of the Council's license agreement with the Ordnance Survey. Details of how this can be requested can be found here: [Services - Suffolk Landscapes](#)
24. Having considered the relevant public interest arguments, the Commissioner can find no specific factors in favour of disclosure which would counterweigh the public interest in protecting the commercial confidentiality identified in this case. Whilst he recognises why the complainant is seeking the information he is satisfied that, on the facts of this case, the council is entitled to withhold the information under

regulation 12(5)(e) and that the public interest favours maintaining the exception.

25. Based on previous Decision Notices the Commissioner accepts that disclosure of information in violation of a user agreement may limit the access of public authorities to Ordnance Survey's services in the future, which would not be in the public interest. The Commissioner is also satisfied that the Council has provided an alternative, reasonable route by which the complainant can access the information required. This is consistent with his position in previous decision notices IC-168884-H4J31¹ and IC-155305-B7K0².
26. This means that the Commissioner's decision, whilst informed by the "presumption in favour of disclosure" under the EIR (Regulation 12(2)), is that the exception provided by Regulation 12(5)(e) was applied correctly to the withheld information.

¹ [ic-168884-h4j3.pdf \(ico.org.uk\)](https://ico.org.uk/decision-notice/168884-h4j3)

² [ic-155305-b7k0.pdf \(ico.org.uk\)](https://ico.org.uk/decision-notice/155305-b7k0)

Right of appeal

27. 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

28. 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.
29. 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

Michael Lea
Group Manager
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