



Neutral citation number: [2023] UKFTT 00984 (GRC)

Case Reference: EA/2022/0360

**First-tier Tribunal
General Regulatory Chamber
Information Rights**

Determined, by consent, on written evidence and submissions.

Considered on the papers on 6 September 2023.

Decision given on: 30 November 2023

Before

**TRIBUNAL JUDGE Stephen Cragg KC
TRIBUNAL MEMBER Paul Taylor
TRIBUNAL MEMBER Dan Palmer-Dunk**

Between

NOCKOLDS SOLICITORS LIMITED

Appellant

and

**(1) THE INFORMATION COMMISSIONER
(2) THE CIVIL AVIATION AUTHORITY
(3) STANSTED AIRPORT LIMITED**

Respondents

Decision: The appeal is Dismissed.

Substituted Decision Notice: No substituted decision notice.

REASONS

MODE OF HEARING AND PRELIMINARY MATTERS

1. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 Chamber's Procedure Rules.
2. The Tribunal considered an agreed open bundle of evidence, a closed bundle and submissions from the parties..

BACKGROUND

3. On 30 April 2021 the Appellant requested information of the following description from the Civil Aviation Authority (CAA):-

“We understand that Cole Jarman acting on behalf of [Stansted Airport Ltd] STAL provided the Environmental Research and Consultancy Division of the CAA with information to be inputted into the ANCON model to allow a noise assessment to be carried out...

...Please therefore provide us with the inputs into this model that Cole Jarman and their client STAL provided to the CAA. In particular we require the number of aircraft movements per hour throughout the day in each of the three assessment conditions referred to in the Cole Jarman analysis ie. no scheme, switched on and intensified switched on. Please also provide the L night figures and the N70 contour map after the works.”

4. CAA issued a formal response on 5 July 2021. It refused to provide the requested information, relying on regulation 12(5)(e) and regulation 12(5)(f) of the Environmental Information Regulations 2004 (EIR) to withhold it. The Appellant

requested an internal review on 9 July 2021. They were sceptical that the information the public authority had identified was the correct information. The public authority sent the outcome of its internal review on 30 September 2021. It accepted that the original information it had identified did not fall within the scope of the request, but it had now identified the correct information. However, it relied on the same EIR exceptions to withhold this information.

5. The Appellant requested a further internal review on 15 October 2021. The public authority completed a further review and responded on 22 November 2021. It upheld its original position. The Appellant complained to the Commissioner.

THE DECISION NOTICE

6. In a decision notice dated 17 October 2022 the Commissioner first noted that there was a dispute about whether the CAA holds the information, which was explained and decided by the Commissioner as follows:-

10. The public authority has argued that it holds information relevant to work carried out in 2016/17, but this is not the information originally sought by the request. It has stated that it does not hold information relating to 2018/19 – which is what was requested.

11. The Commissioner agrees with the public authority that the original request of 30 April 2021 sought details of work carried out in 2018 or 2019 – and the complainant emphasised in their correspondence of 9 July 2021 that this was the information the request was seeking, not work carried out in 2016/17....

13. However, the Commissioner also notes that, in their correspondence of 15 October 2021, the complainant changes the focus of their request from 2018/19 to 2016/17. ... the Commissioner ...considers that this is what they have in fact done.

14. In submitting a fresh request, the complainant has placed a fresh set of obligations upon the public authority – to consider whether it holds any information in relation to 2016/17. It is clear that the public authority does hold this information and it falls clearly within the scope of the request of 15 October 2021

7. The Commissioner accepted that the EIR applied because the information sought was about a ‘factor’ (in this case, noise) that effects the elements of the environment.

However, as noise is an ‘emission’, the Commissioner considered regulation 12(9) EIR prevented the public authority from relying on either regulation 12(5)(e) or regulation 12(5)(f) of the EIR to withhold the information.

8. Despite this, the Commissioner noted that:-

15. In its submission to the Commissioner, the public authority now introduced a further exception on which it wished to rely – regulation 12(5)(b) of the EIR.

16. The public authority explained that the document referred to ...formed part of a piece of work done in preparation for litigation and was therefore covered by litigation privilege. Whilst the public authority itself is not and will not be part of any proceedings, it considered that it was nevertheless obliged to respect the privilege.

17. The public authority also provided copies of correspondence it had had with one of the parties to the litigation. In this correspondence, the third party confirmed that the withheld information formed part of a piece of work done in anticipation of litigation.

18. The public authority argued that disclosing this information would have an adverse effect on the course of justice as it would breach the fundamental principle of legal professional privilege – on which the English justice system is based. It also argued that disclosure would insert unfairness into proceedings by forcing one of the parties to hand over information that formed an important part of its case.

19. The Commissioner accepts that the withheld information does engage legal professional privilege as the evidence suggests that it was produced with the intent of being used in litigation.

20. The Commissioner notes that there are certain rules to be followed in litigation which allow the various parties access to some of each other’s information – but with certain conditions attached. Disclosing the information under EIR would ride roughshod over those carefully calibrated rules and inject an unfairness into proceedings. The EIR should not be used as a “back door” to access information that parties in litigation have a right to keep private.

9. The Commissioner concluded that disclosure of the withheld information would adversely affect the course of justice and therefore regulation 12(5)(b) EIR was engaged. The Commissioner therefore had to consider whether the public interest test nevertheless favoured disclosure:-

22. The Commissioner is also satisfied that, in the circumstances of this case, the balance of the public interest favours maintaining the exception. There is a considerable body of case law which emphasises the very strong public interest in preserving legal professional privilege in particular and fairness in the justice system generally.

23. The Commissioner notes that the complainant may well be entitled to receive this information via the usual court disclosure rules in the future and sees no compelling reason why the legal privilege should be overridden.

24. Whilst the Commissioner has also considered the presumption in favour of disclosure, he considers that, such is the importance of protecting legal privilege, this is insufficient to tip the balance in favour of disclosure.

LEGAL FRAMEWORK

10. The relevant parts of regulation 12 EIR read as follows:-

12.— Exceptions to the duty to disclose environmental information

(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if—

(a) an exception to disclosure applies under paragraphs (4) or (5); and
(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

(2) A public authority shall apply a presumption in favour of disclosure.

(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

(4) ...

(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—

...

(b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature”.

11. Where information is subject to legal professional privilege (LPP), the exemption in regulation 12(5)(b) EIR is likely to be engaged: *DCLG v IC* [2012] UKUT 103 (AAC). The Upper Tribunal (UT) agreed with arguments that ‘...it would be possible to conclude that the course of justice would not be adversely affected if disclosure

were to be directed only by reason of particular circumstances, (eg that the legal advice is very stale), such that there would be no undermining of public confidence in the efficacy of LPP generally’ and ‘whether [regulation]12(5)(b) is engaged, in the case of information protected by LPP, must be decided on a case by case basis’. The Appellant does not dispute that LPP, and specifically litigation privilege can engage the reg.12(5)(b) exemption. The Commissioner’s guidance explains¹ that in relation to litigation privilege (which is claimed here, as opposed to advice privilege):-

Litigation privilege applies to confidential communications made for the purpose of providing or obtaining legal advice about proposed or contemplated litigation. There must be ongoing litigation or a real prospect or likelihood of litigation, rather than just a fear or possibility. For information to be covered by litigation privilege, it must have been created for the dominant (main) purpose of giving or obtaining legal advice, or for lawyers to use in preparing a case for litigation. It can cover communications between lawyers and third parties so long as they are made for the purposes of the litigation.

Litigation privilege can apply to a wide variety of information, including advice, correspondence, notes, evidence or reports.

12. In *Bellamy v the Information Commissioner and the Secretary of State for Trade and Industry* (EA/2005/0023, 4 April 2006) the Information Tribunal described LPP as:

...a set of rules or principles which are designed to protect the confidentiality of legal or legally related communications and exchanges between the client and his, her or its lawyers, as well as exchanges which contain or refer to legal advice which might be imparted to the client, and even exchanges between the clients and [third] parties if such communications or exchanges come into being for the purposes of preparing for litigation.

13. If LPP is applicable to the withheld information, there is case law which deals with the subsequent application of the public interest test to such information, developed in relation to section 42 of the Freedom of Information Act 2000 (FOIA), which contains a specific exemption from disclosure where LPP is applicable. Thus, in relation to the application of the public interest test in s42 FOIA cases, in *DBERR v O’Brien v IC* [2009] EWHC 164 QB, Wyn Williams J gave the following important guidance:-

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-42-legal-professional-privilege/>

41. ... it is for the public authority to demonstrate on the balance of probability that the scales weigh in favour of the information being withheld. That is as true of a case in which section 42 is being considered as it is in relation to a case which involves consideration of any other qualified exemption under FOIA . Section 42 cases are different simply because the in-built public interest in non-disclosure itself carries significant weight which will always have to be considered in the balancing exercise once it is established that legal professional privilege attaches to the document in question.

53.....The in-built public interest in withholding information to which legal professional privilege applies is acknowledged to command significant weight. Accordingly, the proper approach for the Tribunal was to acknowledge and give effect to the significant weight to be afforded to the exemption in any event; ascertain whether there were particular or further factors in the instant case which pointed to non-disclosure and then consider whether the features supporting disclosure (including the underlying public interests which favoured disclosure) were of equal weight at the very least.

14. Further, in *Corderoy and Ahmed v Information Commissioner, A-G and Cabinet Office* [2017] UKUT 495 (AAC)), the Upper Tribunal noted as follows in emphasising that the s42 FOIA exemption is not a blanket exemption:-

68. The powerful public interest against disclosure ... is one side of the equation and it has to be established by the public authority claiming the exemption that it outweighs the competing public interest in favour of disclosure if the exemption is to apply. However strong the public interest against disclosure it does not convert a qualified exemption into one that is effectively absolute.

THE APPEAL AND THE RESPONSES

15. On 10 November 2022, the Appellant appealed to the Tribunal against the decision notice. On 14 December 2022, the Tribunal directed the CAA be joined to the appeal as second respondent.

16. The Grounds of Appeal deal with a preliminary issue which is whether the original request asked for information relating to 2018/2019 or 2016/2017. The Appellant claims it was always the case that information from 2016/2017 was sought. We will deal with this point below.

17. Otherwise the Grounds of Appeal in this case explain that the Appellant acts for a group of residents local to Stansted Airport in relation to possible claims they may have under the Land Compensation Act 1973 (LCA 1973) due to various works carried out at the airport by Stansted Airport Limited (STAL).
18. The Appellant appealed on the grounds that regulation 12(5)(b) EIR is not engaged because (i) the requested information is not covered by litigation privilege; and (ii) no evidence has been produced to show that the course of justice would be adversely affected if it were disclosed.
19. The Appellant argues that there was no real prospect or likelihood of litigation at the time that the request for information was made, as there is a distinction between a claim for compensation under the LCA 1973, and the referral of such a claim to the Upper Tribunal. The latter would constitute litigation but not the former.
20. It is argued that STAL was committed to resolving claims without the need for legal action, and to date none of the potential claims have been referred to the Upper Tribunal. The Grounds state:-

To understand whether there was a real prospect or likelihood of litigation some further historical context is appropriate. In June 2016 STAL published its Guide to Residents inviting affected property owners to submit compensation claims many of which were handled by agents acting on behalf of the claimants. It was acknowledged that local residents may have a statutory right to compensation under the Land Compensation Act 1973, and to determine whether such a right existed and what the level of compensation should be STAL conducted a detailed process of investigating and reviewing the documentary evidence submitted by claimants.

In April 2017 STAL commissioned the CAA to use its ANCON model to produce some noise analysis which then formed the basis for STAL's response to the hundreds of compensations claims it had received. STAL provided the raw data to the CM which was input into the model and it is this information which is the subject of our information request.

During the period from 2016 to 2018 STAL provided regular updates on the land compensation issue to meetings of the STACC, which is a committee established in accordance with Government guidelines whose members include representatives of County, District and local councils as well as other local interest groups. Relevant extracts from those reports and the minutes of meetings are

quoted in the attached paper showing that (i) STAL was committed to resolving issues and agreeing settlements locally without the need for legal action and (ii) progress towards this outcome was being achieved.

This independent and contemporaneous evidence reveals an absence of any real prospect or likelihood of litigation at the time STAL commissioned the noise analysis from the CM in April 2017, and therefore according to the ICO guidance the information STAL provided for this purpose cannot be held to be covered by litigation privilege as now asserted by the CM.

21. Further, it is argued that the CAA was not in a lawyer-client relationship with STAL and as such communications between the two are not covered by LPP. If that was right then the public interest test is of no relevance as the exemption is not engaged. In any event there was ‘justifiable suspicion’ about the accuracy of the requested information which supports the public interest in transparency. Lastly, it was said that the court disclosure rules would only be applicable in the event of litigation, so the possibility that the information could be disclosable through those rules was irrelevant in the absence of litigation.

22. The Commissioner submitted that the circumstances and purpose for which the information was withheld from disclosure under reg. 12(5)(b) EIR (the course of justice exception), will determine whether it is capable of attracting LPP. The Commissioner maintained that the withheld information in the closed bundle was covered by litigation privilege since it was created for the purpose of providing or obtaining legal advice about proposed or contemplated litigation and there is no evidence that privilege has been waived by the time of CAA’s response to the request on 5 July 2021 (see further below). The Commissioner noted that the Tribunal must consider the public interest test at the time of CAA’s response dated 5 July 2021 in accordance with the Upper Tribunal’s decision in *Montague v Information Commissioner* [2022] UKUT 104 (AAC) at §§86-89.

23. The Commissioner also submitted that in the context of the EIR, LPP will only have been lost if there has been a previous disclosure to the world at large and the withheld information is no longer confidential, as opposed to a restricted disclosure

to a limited audience for a specified purpose. The Commissioner noted that STAL acknowledges at paragraph 2.3(h) of its response (referred to below) that certain information was disclosed to claimants in the context of litigation to explain STAL's position on noise in response to their claims as part of ongoing settlement negotiations. The Commissioner's view was that this limited disclosure did not represent an unrestricted disclosure of the withheld information to the world at large. Accordingly, the Commissioner maintained that the withheld information was exempt from disclosure under reg. 12(5)(b) EIR at the time of CAA's response dated 5 July 2021.

24. STAL has been joined as a Respondent in this appeal. STAL's response says that it 'has sought to evidence and substantiate its claim that the noise data was commissioned in contemplation of litigation and, as such, that litigation privilege does, in fact, apply to the same'. The submissions state that:-

It is accepted that STAL was "committed to agreeing settlements locally without the need for litigation", but it is denied that this means that there was no real prospect or likelihood of litigation in 2017 (i.e., when the data was commissioned by Cole Jarman on behalf of STAL); litigation can be, and often is, in contemplation or in progress whilst settlements are being negotiated and agreed. Indeed, if litigation was not in contemplation, then such "settlements" would not be necessary...

...litigation privilege also applies (where appropriate) to communications between the client of a lawyer (i.e., STAL) and a third party (i.e., the Civil Aviation Authority), in addition to communications between lawyers and third parties.

...the Appellant seeks to draw a distinction between a claim for compensation under the Land Compensation Act 1973 (the "LCA 1973") and a Reference made to the Upper Tribunal (Lands) Chamber (the "Tribunal"). There is no such distinction to be drawn. A claim is brought under the LCA 1973 for land compensation. The venue in which such a claim is determined in the absence of a resolution being reached is the Tribunal. As such, there is no separate or alternative claim brought in the Tribunal; the claim brought in the Tribunal is brought under the LCA 1973. Indeed, once a Reference has been brought in the Tribunal, litigation is no longer 'in contemplation', but is by that point 'in progress'.

...it is admitted that, to date, the only claim referred to the Tribunal is the claim in respect of the property known as Cootys, Burton End, Stansted, Essex. This claim was referred to the Tribunal prior to the data (which is the subject of the Decision) being commissioned by STAL. It is also pertinent that the Claimant in that

Reference to the Tribunal was represented by the Appellant (as continues to be the case).

...In terms of the timeline of events, the factual position is as follows:

- (i) Notices of Claim were served by various claimants on STAL from February 2014 onwards. This included two Notices of Claim served by the Appellant on behalf of their clients Nicholas John Belcher and Michael George Belcher. Both such claims remain ongoing as at the date of this Reply;
- (ii) In June 2016, a Guide to Residents was published by STAL to take into account a recent decision of the Tribunal that affected the basis on which a claim under the LCA 1973 should be brought;
- (iii) By February 2017, approximately 144 claims had been notified to STAL;
- (iv) The data was commissioned by Cole Jarman on behalf of STAL in April 2017 following receipt of the numerous claims for compensation under the LCA 1973 and for the sole purpose of responding to those claims;
- (v) The last Notice of Claim received by STAL in respect of these claims was in July 2018. At that point, a total of 501 claims had been brought as against STAL under the LCA 1973; and
- (vi) By June 2019, the Appellant had been instructed on behalf of a number of claimants to progress their claims for compensation under the LCA 1973. As at today's date, 31 claims remain outstanding and ongoing. Indeed, a further standstill agreement has been entered into between the clients of the Appellant and STAL to extend the limitation period for any claims to be referred to the Tribunal.

...by February 2017, approximately 144 claims for compensation had been notified to STAL under the LCA 1973 and the data was commissioned by Cole Jarman on behalf of STAL in April 2017 following receipt of those claims. Accordingly, the data was commissioned in contemplation of litigation.

...The fact that certain information was disclosed to claimants to explain STAL's position on noise in response to those claims simply shows that litigation privilege was voluntarily waived on a limited basis by STAL and only for the purpose of the Cole Jarman report. Such waiver was made in response to the receipt of the claims for compensation and with the intention of seeking to resolve the claims for compensation as part of the ongoing settlement discussions with a variety of claimants. The main purpose of the commissioning of the data, and the disclosure of the Cole Jarman report, was to respond to the claims that had been brought. As such, the data was prepared in contemplation of litigation.

...the Appellants have been instructed to bring claims for compensation against STAL pursuant to the LCA 1973 since at least February 2014 and have continued to act on behalf of claimants in respect of those claims since that time and to date.

...Whether or not a party denies liability is not relevant to the applicability of litigation privilege; the fact that resolutions to claims have been agreed in respect of the vast majority of the claims brought, and the requirement for STAL to state its position as regards any liability to pay compensation under the LCA 1973, demonstrates that litigation is, and was at the relevant time, in contemplation.

25. The Tribunal has been provided with a statement from Darren Rhodes, Chief Technical Noise Advisor at the CAA. He explains that CAA is the regulator of civil aviation within the United Kingdom established by Parliament, with the function to maintain and provide expertise on aircraft noise matters.

26. Mr Rhodes sets out some background about the carrying out of noise assessments and the relationship between CAA and the designated airports (including Stansted) in relation to this. Mr Rhodes sets out the following in relation to the requested information in the current case. He explains that:-

11. On 7 April 2017 ERCD received an email from STAL which contained two attachments. The email was marked "Privileged, confidential and in contemplation of litigation". The first attachment was a letter from STAL to ERCD dated 6 April 2017 (which is set out in the closed bundle. The 6 April 2017 STAL letter asked us to accept the terms of the letter, and to confirm this by returning the attached copy of the letter to STAL with the endorsement completed. On the 10 April 2017, ERCD sent STAL a signed response to accept their terms

16. In response to the Cole Jarman briefing note requesting ERCD to calculate noise exposure on behalf of STAL, on the 11 April 2017, ERCD sent a work proposal and consultancy contract to STAL (Annex 4). STAL responded by email on the 13 April 2017 confirming acceptance of ERCD's proposal and instructing ERCD to proceed.

17. On 27 April 2017 CAA sent a letter to STAL marked "Privileged, confidential and in contemplation of litigation" (Annex 5), providing the results of the noise exposure assessment requested in the Cole Jarman briefing note, in terms of the areas exposed to certain levels of noise for the different scenarios requested. The letter was supported by diagrams depicting noise exposure on Ordnance Survey maps.

27. In relation to the disclosure of the information, Mr Rhodes states:-

18. Disclosing confidential information provided to ERCD or information subject to legal professional privilege could have adverse impacts on ERCD's commercial activities. Disclosure may result in clients considering changing supplier, resulting in a change of noise data and calculation program and leading to inconsistency in the assessment of aircraft noise. Whilst there is a high degree of harmonisation between aircraft noise models, the models are sensitive to input data and assumptions. Changing supplier could perversely harm the quality and consistency of the outputs that are put out to public consultation by airports, and/or lead to work being undertaken by private organisations not subject to public disclosure obligations.

19. Disclosure could also have adverse impacts on regulatory activities, where ERCD often enters into non-disclosure agreements with manufacturers and other international organisations in support of setting international standards to control aircraft noise.

DISCUSSION

Preliminary issue

28. We agree with the Commissioner that the original request was correctly interpreted to relate to information for 2018/2019 and not 2016/2017. This can be seen from the Appellant's correspondence of 9 July 2021 which emphasised that the information sought was for the later period. It was then the case, however, that the Appellant changed the focus of their request from 2018/19 to 2016/17, in the letter of 5 October 2021, such as to amount to a new request of that date, to which the decision notice in this case relates. It is clear that the CAA does hold this information and it falls clearly within the scope of the request of 15 October 2021.

Regulation 12(5(b)) EIR

29. In our view, the information sought by the Appellant is covered by STAL's LPP. Support for this is provided by the briefing note itself which was marked 'privileged, confidential and in contemplation of litigation', which was also confirmed by STAL's letter to the CAA dated 6 April 2017. This stated that the instructions

contained within it had been prepared for the dominant purpose of litigation which STAL reasonably contemplated would be prepared against it.

30. STAL also stated that the note was provided to the CAA on the footing that the CAA would respect its confidentiality and litigation privilege. The CAA agreed to this condition on 10 April 2017, and that agreement was underlined by relevant clauses in the subsequent consultancy contract.
31. That is not, of course, the end of the matter, as simply claiming privilege does not mean that privilege applies. However, we have set out above STAL's account in submissions as to the reasons for obtaining the report, that indeed there was litigation in contemplation at the time, and we accept this account. As both the CAA and STAL explain that, at the time Cole Jarman Ltd asked the ECRD to undertake noise modelling in April 2017, STAL was already in receipt of numerous claims for compensation under the CLA 1973.
32. STAL accepts that it was committed to agreeing settlements locally without the need for litigation, but we accept its analysis that this did not mean that there was not a real prospect or likelihood of litigation in 2017 (i.e., when the data was commissioned by Cole Jarman on behalf of STAL). As STAL says (and we accept) litigation can be, and often is, in contemplation or in progress whilst settlements are being negotiated and agreed, and that if litigation was not in contemplation, then such 'settlements' would not be necessary.
33. One aspect of the Appellant's case is that there is a distinction under the LCA 1973 between a notified claim and a referred claim, suggesting that litigation only occurs if a notified claim is referred to the Upper Tribunal. In our view, however, the scope of LPP extends not only to claims which have been referred but claims which could reasonably in due course be referred. As STAL explains in its submission the procedure is that a claim is brought under the LCA 1973 for land compensation. If that claim is not resolved, then such a claim is determined in the Upper Tribunal. As such, there is no separate or alternative claim brought in the Tribunal: a claim is made under the LCA 1973 and if it is not resolved then the case can be determined by the Tribunal under the LCA 1973.

34. The Appellant also argued that the Commissioner erred in concluding that disclosure of the requested information would insert unfairness into the proceedings because the CAA is not in a lawyer/client relationship with STAL, therefore communications between them are not covered by LPP. However, in our view if the requested information is covered by LPP, then disclosure by the CAA pursuant to the EIR would breach STAL's privilege and thereby potentially affect STAL's ability to litigate claims in future, should that prove necessary.
35. In our view then, the exemption in regulation 12(5)(b) EIR is engaged, and disclosing this information would have an adverse effect on the course of justice as it would breach the fundamental principle of LPP. We must go on to consider the public interest test.
36. We agree with the Commissioner that the balance of the public interest favours maintaining the exception. We have set out the case law above which establishes that there is an in-built weightiness, when considering the public interest, in favour of withholding the information to maintain LPP. This does not convert the exemption in reg 12(5)(b) EIR into an absolute exemption, but the Tribunal must look to see if there is anything in particular which would outweigh this public interest.
37. We accept the Appellant's point that, in the circumstances of this case, there may not come a time when the Appellant 'may well be entitled to receive this information via the usual court disclosure rules in the future' although this is possible. Nevertheless, the Appellant has not put forward strong reasons why the public interest is such as to require LPP to be breached. The Appellant does state that there was 'justifiable suspicion' about the accuracy of the requested information which supports the public interest in transparency, but the Tribunal is in no position to form a view on that, and in any event even if there was such justifiable suspicion this would not seem to us to be a strong enough public interest reason to outweigh the public interest in maintaining LPP.
38. As this is a case invoking the EIR the Tribunal must also apply a presumption in favour of disclosure, as set out in reg 12(2) EIR. However, even considering this

presumption in our view the public interest in favour of withholding the information far outweighs the public interest in disclosure.

CONCLUSION

39. On the basis of the above, the Tribunal dismisses the appeal.

Stephen Cragg KC

Judge of the First-tier Tribunal

Date: 17 November 2023

Date Promulgated: 30 November 2023

