

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

### **Decision notice**

**Date:** 10 September 2015

**Public Authority:** Peterborough City Council

**Address:** Town Hall  
Bridge Street  
Peterborough  
PE1 1HQ

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

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1. The complainant has requested a valuation report prepared by a company of chartered surveyors for Peterborough City Council in relation to the potential sale of a specific site. Peterborough City Council disclosed some information and withheld some under regulations 12(5)(e) (confidentiality of commercial information) and 12(5)(f) (voluntary supply of information).
2. The Commissioner's decision is that Peterborough City Council has applied regulation 12(5)(e) appropriately to the withheld information.
3. The Commissioner does not require Peterborough City Council to take any further steps.

#### **Request and response**

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4. On 2 June 2014, the complainant wrote to Peterborough City Council (PCC) and requested information in the following terms:

*"1. Please provide details of any valuations the council or anybody acting on its behalf has made or obtained in connection with the aforementioned area of land within the last 7 years, including when valuations were made, who made the valuation, and how much the land was valued at.*

*2. Please provide details of any legal entity that has made a bid within the last 7 years on the aforementioned area of land or with whom*

*discussions have been had with a view to that body purchasing, leasing or otherwise utilising said land for development purposes.*

*3. Please provide details of any agreements between the Council and any third party within the last 7 years to develop the aforementioned area of land together with minutes of any Council meetings at which such developments have been discussed.*

*4. Please provide minutes of all Council meetings at which any proposals for use of the said land have been discussed together with any documents considered at those meetings."*

5. PCC responded on 2 July 2014. It provided the complainant with information and also confirmed what boundaries it had considered in relation to the request.
6. The complainant responded on 2 July 2014 and clarified the specific area of land in which he was interested. PCC responded on the same day, providing a link to information.
7. On 4 July 2014 the complainant contacted PCC. He explained that he considered that it had misunderstood the area of land he was interested in, as it had given him the wrong information. The complainant confirmed the piece of land in which he was interested. PCC responded, explaining that it was going to conduct a review. There was a series of exchanges between the complainant and PCC and, on the 29 August 2014, the complainant requested an internal review of his request.
8. Following an internal review PCC wrote to the complainant on 25 September 2014. It stated that it was withholding the requested information under section 43 of the Freedom of Information Act 2000. PCC also explained that even though some of the information was two years old and this meant that the financial information was potentially out of date, it did not mean that the methodology used was any less significant to the matters for consideration at the time of the request. It also provided the complainant with a redacted copy of the report.
9. During his investigation, the Commissioner contacted PCC and explained that he considered that the request should have been considered under the Environmental Information Regulations (EIR). PCC responded to the complainant on 28 January 2015 explaining that it had now considered his request under the EIR. It confirmed that it was withholding the redacted information under regulations 12(5)(e) (confidentiality of commercial information) and 12(5)(f) (voluntary supply of information).

## **Background**

10. PCC commissioned Barker Storey Matthews, a firm of chartered surveyors, to provide a valuation report regarding a specific site. The report contains information about a number of factors PCC would consider when valuing the site, including financial information and redevelopment options. The report was completed on 26 November 2012.
11. PCC offered the site for sale in October 2014 by way of an informal tender basis, with a closure date of 16 January 2015 and a decision on the winning bidder to be made on 11 March 2015. A charitable organisation (for which the complainant works) was one of the bidders.
12. After making representations to PCC, it was agreed that it would be granted a further six months (until 30 September 2015) to raise additional funds and provide a business case for PCC to consider, if it was going to sell the site at a discounted rate to the charitable organisation, as opposed to the highest bidder.

## **Scope of the case**

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13. The complainant contacted the Commissioner on 23 December 2014 to complain about the way his request for information had been handled. He pointed out that PCC had confirmed that some of the information was two years old and this meant that the financial information was potentially out of date. The complainant explained that he considered that at the very least, the potentially out of date information should be disclosed to him.
14. The complainant also wanted the Commissioner to consider the valuation report and confirm whether alleged valuation of the land of between £830,000-£1,000,000 was correct.
15. It is not the role of the Commissioner to confirm whether information provided by a public authority is correct or not. His role is to consider whether a public authority has handled a request for information in line with the appropriate information access regime, in this case, the EIR.
16. During the Commissioner's investigation, PCC confirmed that at the time of the request, discussions were ongoing regarding the site in question. PCC also explained that it considered that information regarding interest rates and building rates per square foot would have undoubtedly changed, but that the general methodology and information contained within the report still remains "in date" and applicable.

17. The Commissioner notes that PPC has disclosed a redacted version of the report to the complainant. He will therefore consider whether PCC has applied regulations 12(5)(e) and 12(5)(f) appropriately to the redacted information.

## **Reasons for decision**

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### *Is the information environmental information?*

18. Information is 'environmental information' if it meets the definition set out in regulation 2 of the EIR.
19. The Commissioner has considered the nature of the information sought by the complainant - a valuation report about a specific site.
20. Regulation 2(1)(a) covers the state of the elements of the environment, including water, soil, land and landscape. Regulation 2(1)(c) provides that information is environmental where it is 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 2(1)(a) and (b) as well as measures or activities designed to protect those elements".*
21. Having considered the report, the Commissioner is satisfied that the redacted information is a measure under regulation 2(c) as it relates to information about a number of factors PCC would consider when valuing the site and possible redevelopment options. This in turn will involve an activity likely to affect several of the elements of the environment referred to in regulation 2(1)(a) including "land".
22. The Commissioner therefore considers that the EIR is the correct access regime under which to deal with this request.
23. The Commissioner will go on to consider whether PCC has applied regulations 12(5)(e) and (f) appropriately to the redacted information.

### **Regulation 12(5)(e)**

24. Regulation 12(5)(e) of EIR provides:

*"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."*

25. In order for regulation 12(5)(e) of the EIR to apply, PCC must demonstrate that:
- the information is commercial or industrial in nature;
  - the information is subject to confidentiality provided by law;
  - the confidentiality provided is required to protect a legitimate economic interest; and
  - the confidentiality would be adversely affected by disclosure.
26. This exception is subject to the public interest test as set out in regulation 12(1)(b): *"in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information"*.

**Is the information commercial in nature?**

27. The redacted information relates to a specific site, how it has been valued and alternative proposals regarding its future usage. It contains financial information together with a number of other factors PCC will consider when valuing the site. It also includes information relating to other projects on which Baker Storey Matthews have worked.
28. The Commissioner is satisfied that the redacted information is commercial in nature.

**Is the information protected by confidentiality provided by law?**

29. The Commissioner considers "provided by law" includes confidentiality imposed on any person under the common law of confidence, contractual obligation, or statute.
30. PCC explained that clause 15 of Baker Storey Matthews' terms and conditions creates an expectation that the information contained in the report would remain confidential and cannot be disclosed without the valuer's written approval of the form and context in which the information would appear.
31. The Commissioner considers that this is sufficient to satisfy the requirement for the information to be protected by confidentiality. It may appear that accepting such a clause as evidence that the information is confidential allows public authorities to contract out of their obligations under the EIR. However, to engage the exception a public authority must satisfy the third test provided by regulation 12(5)(e), ie a public authority must be able to demonstrate that the confidentiality is protecting a legitimate economic interest.

**Does the confidentiality protect a legitimate economic interest?**

32. The Commissioner is satisfied that the redevelopment of a site is a legitimate economic activity. In this case, it is the legitimate economic interest of Baker Storey Matthews, as PCC explained that the withheld information contained valuation criteria, assumptions Baker Storey Matthews have made on the application of the criteria and other projects with which it had been involved.

**Would disclosing the information adversely affect its confidentiality?**

33. Although this is a necessary test of the exception, once the first three tests have been satisfied the Commissioner considers it is inevitable that this element will also be satisfied. Disclosure of confidential information would inevitably harm the confidential nature of that information by making it public.
34. PCC explained that at the time of the request, discussions were taking place regarding the future of the site and the timing and nature of the requested information would give the complainant a commercial advantage
35. The Commissioner is therefore satisfied that the exception is engaged in relation to the redacted information.
36. The Commissioner will go on to consider the public interest considerations for and against disclosure.

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

37. The Commissioner notes that at the time of the request, discussions were still taking place regarding the future of the site in question. PCC explained that the redacted information contains information about a number of factors it will be considering when valuing the site.
38. PCC also pointed out that disclosure of the redacted information at the time of the request would mean the complainant would have an unfair commercial advantage, given that the charitable organisation he works for had until 30 September 2015 to raise more funds and submit a business plan regarding the potential purchase of the site.
39. Furthermore, PCC argued that disclosure of the redacted information would subsequently impact on its ability to ensure that a fair and competitive process was followed, in the event of the site being offered for sale.

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

40. The Commissioner considers that there is a public interest in overall transparency and accountability, particularly in the area of the potential sale or development of a site.
41. PCC acknowledged that disclosure of the requested information could assist public understanding of how public funds are spent.
42. The complainant pointed out that the site in question was owned by the public and was being used for charitable purposes. He also explained that he considered, given that PCC had confirmed to him that some of the information was potentially out of date, that it should be disclosed to him.

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

43. The Commissioner has considered the public interest arguments.
44. The Commissioner accepts that the public should have access to information which enables them to understand more clearly what will happen to the site in question.
45. However, the Commissioner notes that at the time of the request, PCC was still considering options regarding the site in question and that a charitable organisation had been allowed until September 2015 to raise extra funds with a view to the possible purchase of it.
46. The Commissioner also notes the complainant's comment regarding the disclosure of potentially out of date financial information.
47. The Commissioner considers that there is a strong public interest in allowing public authorities to consider all options when looking at the sale of a site. He also notes that PCC has disclosed some of the report to the complainant.
48. Furthermore, the Commissioner considers that, even if the financial information is potentially out of date, disclosure whilst the negotiations are still ongoing would impact on the fair and competitive process that was being followed during the ongoing commercial negotiations.
49. Taking the above into account, the Commissioner considers that the balance of the public interest lies in maintaining the regulation 12(5)(e) exception.
50. The Commissioner considers that regulation 12(5)(e) has been applied appropriately to the redacted information. Therefore, he has not go on to consider the application of regulation 12(5)(f) to it.

## Right of appeal

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51. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

52. 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.
53. 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 .....**

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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