

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

Decision notice

Date: 22 November 2016

Public Authority: London Borough of Lambeth
Address: Olive Morris House
Brixton Hill
London
SW2 1RD

Decision (including any steps ordered)

1. The complainant has requested a copy of the financial model that was used to calculate and provide the figures in a viability assessment produced for the Cressingham Gardens regeneration options. The Council provided some redacted datasheets containing assumptions and appraisal outputs relating to the viability assessment. It stated however that it would be manifestly unreasonable, on the basis of burden, to comply with the request for the financial model itself and therefore regulation 12(4)(b) of the EIR applied. The Commissioner has found that regulation 12(4)(b) is engaged and has decided that in all the circumstances the public interest in disclosure is outweighed by the public interest in favour of maintaining the exception. She does not therefore require any steps to be taken as a result of this notice.

Request and response

2. On 3 July 2015 the complainant wrote to the Council and requested information in the following terms:

Please provide the financial model (e.g. Excel) that was used to calculate and provide the figures in the viability assessment for the Cressingham Gardens regeneration cabinet report schedules for July 13th 2015.

3. The Commissioner wrote to the Council on 27 January 2016 to advise that the complainant had contacted her about the Council's failure to

respond formally to the request. This triggered the Council's internal review process, the outcome of which was provided to the complainant on 17 February 2016.

4. As part of the internal review, the Council acknowledged the complainant's clarification that she was not necessarily interested in the viability testing model but, as a means of compromise, would potentially accept details of the numbers, calculations and assumptions used to underpin the July Cabinet report. The Council stated that the intellectual property of the model itself belonged to the contractor, Airey Miller. The inputs and outputs, on the other hand, were the intellectual property of the Council and it was the input/output data sheets that had been considered.
5. The Council explained that, for each of the scenarios considered in the cited viability report, the accompanying data sheets that had been provided comprised a list of assumptions and the appraisal outputs. Some of the data were disclosed, with the remainder redacted in accordance with regulations 12(5)(e) (confidentiality of commercial or industrial information) and 12(5)(f) (interests of the person who supplied information) of the EIR. For completeness, a copy of the viability report¹ that had been presented to Cabinet was also provided.

Scope of the case

6. The complainant initially contacted the Commissioner to ask her to determine whether the Council had correctly withheld in the data sheets the figures relating to the different development scenarios proposed for the regeneration of Cressingham Gardens.
7. A decision of the Commissioner on whether the legislation has been applied correctly must take into account the specific terms of the request and the circumstances as they stood at the time a request was made. In other words, the Commissioner will be required initially to determine what information was caught by the scope of a request before deciding whether that information is disclosable.
8. In order to investigate the complainant's concern, the Commissioner asked the Council to provide detailed submissions relating to its

¹ <https://moderngov.lambeth.gov.uk/documents/s76329/Appendix%20A%20-%20Cressingham%20Gardens%20v2a.pdf>

application of the EIR. In doing so, the Council provided further clarification on its position having revisited the specific terms of the request.

9. The Council continued to argue that regulations 12(5)(e) and 12(5)(f) covered the redacted figures contained in the sheets supplied to the complainant. Notwithstanding this, the Council went on to express the view that the original request, properly construed, was for the figures used to calculate the NPVs (net present values) in the scenarios that were presented to Cabinet in July 2015. The Council explained that in order for a third party to be able to replicate from the data sheets that have been disclosed the NPVs as presented in the Cabinet report, it would be necessary to have, in addition to the data sheets in unredacted form, access to the entire model that has been used for calculating the viability information. According to the Council, it was not possible to separate out, in a discrete way, additional variables from the model that showed how the NPVs were calculated.
10. With regard to the contents of the model, the Council contended that (a) it contained information that would extend significantly beyond the scope of the request in that not all parts of the model were concerned with the NPVs of the options presented to Cabinet; and (b) it would be manifestly unreasonable (within the meaning of regulation 12(4)(b) of the EIR) for the Council to have to review the entire content of the bespoke model in a granular way in order to apply the EIR, which would include a process of identifying what information could and equally could not be disclosed.
11. In light of the introduction of regulation 12(4)(b) of the EIR, the Commissioner approached the complainant in order to confirm how she wished to proceed. This included the advice that the complainant may wish to submit a new request if she was only concerned with the disclosure of the redacted figures contained in the data sheets released to her. In response, the complainant affirmed her desire to be provided with the entire financial model as per the original request. It has therefore followed that the Commissioner has been required to consider whether the Council correctly relied on regulation 12(4)(b) of the EIR.
12. The Commissioner's analysis of whether the Council has shown that the request is manifestly unreasonable is set out in the body of this notice.

Reasons for decision

Background and the nature of the requested information

13. The viability report cited in the request explains that in 2012 Cressingham Gardens, an estate located in Tulse Hill and built in the second half of the twentieth century, was identified as being appropriate for regeneration. This was on the basis that a number of the properties were known to be in poor condition.
14. Following a period of consultation with local residents, five options for the estate were explored; two represented significant regeneration while the other three retained and refurbished all, or nearly all, of the existing properties. The report states that the refurbishment options were found not to be fundable and therefore the Council continued by looking at the regeneration scenarios. One of these scenarios represented partial regeneration of the estate and the other complete regeneration. Viability assessments were undertaken for both of these options to enable a comparison between their feasibility and to enable the Council to consider the degree to which they would deliver on the Council's Delivery Strategy objectives.
15. The Council resolved on 21 March 2016 to take forward the option of complete regeneration, which has led to intense and well-organised opposition from some local residents.
16. The Council explains that when carrying out an estate regeneration project, it is effectively in the same position as a private sector developer, in that it will need to assemble the necessary land interests and bring the project forward. This differs from a development agreement where a private sector partner delivers a project that will benefit both parties.
17. The requested information in this case is the bespoke financial model ('the Bespoke Model') developed by Airey Miller for the Council's estate regeneration programme. The Council advises that the complainant was provided with datasets showing the majority of the inputs, including the projected costs and revenues that would be required to produce an estimate of the net present value ('NPV') of each scenario. The NPV is broadly the product of the difference between projected costs and revenues.
18. To calculate the NPV for a project, a computer model is needed. In the case of Cressingham Gardens, the modelling represents large complex spreadsheets that consider the cash flow of the project over 60 years. It requires various inputs, such as sales values and construction costs, and generates outputs, including NPV. A person who has access to the basis inputs could construct their own model, or use an off-the-shelf version, to come up with a basic estimate of the NPV of a project.

19. The Council is currently in the process of establishing a special purpose vehicle – provisionally called “Homes for Lambeth” (‘HFL’) – to progress estate regeneration and housing delivery. This will be a commercial enterprise which, while the shares will be held by the Council, is expected to operate as an independent entity. The Council has informed the Commissioner that the request under consideration relates to one of the estate regeneration projects that the Council will need to deliver through HFL. The financial assumptions and approaches that the Council is using will therefore be adopted by HFL as it progresses the projects.

Regulation 12(4)(b) – manifestly unreasonable requests

20. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
21. The Commissioner considers that the inclusion of ‘manifestly’ in regulation 12(4)(b) indicates Parliament’s intention that, for information to be withheld under the exception, the information request must meet a more stringent test than simply being ‘unreasonable’. ‘Manifestly’ means that there must be an obvious or tangible quality to the unreasonableness of complying with the request.
22. The exception will typically apply in one of two sets of circumstances; either where a request is vexatious or where compliance with a request meant a public authority would incur an unreasonable level of costs, or an unreasonable diversion of resources. It is for the latter reason that the Council has sought to apply regulation 12(4)(b) in this case.
23. Unlike FOIA and specifically section 12, the EIR does not contain a provision that exclusively covers the cost and time implications of compliance. The considerations associated with the application of regulation 12(4)(b) of the EIR are, instead, broader than with section 12 of FOIA. This means that there are other considerations that should be taken into account when deciding whether the exception applies to environmental information. These include the following:
 - Under the EIR there is no statutory equivalent to the “appropriate limit” – the cost limit beyond which a public authority is not obliged to comply with a request – described at section 12 of FOIA.
 - The proportionality of the burden that compliance would place on the public authority’s workload, bearing in mind the size of the public authority and its ability to allocate resources to dealing with an information request.

- The importance of the requested information, and the underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue.
24. The Commissioner considers that public authorities may be required to accept a greater burden in providing environmental information than other information. Unlike section 12 of FOIA, regulation 12(4)(b) of the EIR is also subject to the public interest test.
25. In order to test whether the Council was entitled to rely on regulation 12(4)(b), the Commissioner has asked the Council to reply to a series of questions relating to the claim that complying with the request would be unreasonably burdensome. As a means of illustrating the Council's position, the Commissioner sets out below each of the questions asked alongside extracts from, or summaries of, the Council's response.
- *Set out in greater detail the process of unpacking the financial model for the purposes of consideration.*
26. The Bespoke Model is common to all estates and housing developments projects, but it has been 'tweaked' on a project by project basis to reflect the particular characteristics of individual (re)development projects. It differs from commercially available 'off the shelf' development case flow models in three key respects: it models projected sales and rent receipts over a 60 year period; it is developed specifically for the Council for HFL, and not for any other party, and thus reflects costs and internal arrangements that are particular to the Council's requirements; and, it provides Council officers with a highly sophisticated, interactive, tool – enabling users of the Model to (say) change the number of units and/or the dwelling type mix (private/rented) and/or the dwelling size mix that are envisaged for any particular estate. In turn, this enables the user to see what, if any, difference particular changes would make to the financial position of the Council.
27. The Council explains that the Bespoke Model is held by Airey Miller and is written in Excel. The Excel file is approximately 59 MB in size. Airey Miller has explained that, if printed out, the Excel file would take up around 1,800 x A4 pages (that is without the formulae also being 'unpacked' and printed out. The Excel file contains some 44 tabs (sheets); the largest number of rows in a sheet is 941 and the largest number of columns in a sheet is 275.
- *Describe what the financial model information would look like once it was unpacked – ie the form in which the requested data would be presented and the way in which the complainant could use this to understand how the viability figures were calculated.*

28. According to the Council, the spreadsheet will contain descriptions of cells with numerical values in the cells, numerical/mathematical formulae that connect the cells, along with a small amount of narrative. If the spreadsheet were to be 'unpacked' so as to present the information would take a variety of forms, according to whether inputs, outputs or the linking information that ties the inputs to the outputs is being considered. There is no one single type or format which this 'unpacked' information will take. Some information will be narrative in form and some will be numerical, either values or formulae or both.
29. The Council states that a non-expert requester would not, without the assistance of a person who is knowledgeable about and skilled in the operation of a financial model in the nature of the Bespoke Model and preferably the Bespoke Model itself, be able to understand how the values in the cells are calculated or the rationale for the ways in which the cells are connected. The Council says that this is not said to be dismissive of the capabilities of a non-expert requester, but is reflective of the reality of the highly complex nature of the information.
 - *For clarity, please set out in more detail the categories of information in the bespoke model that would not be captured by the request and confirm if and how this could be separated from the requested information*
30. The inputs to the Bespoke Model relate essentially to time, cost and value. The Council considers that if a requester were to be entitled to the full picture of exactly how the NPVs were calculated by the Bespoke Model, the requester would have to be given content that is contained within the Bespoke Model itself. That is, all of the inputs to the Bespoke Model supported by the commercial rationale for why they have been chosen, and full details of the values/formulae contained in the Bespoke Model that are used to calculate the NPVs from the inputs. In addition, it would be necessary to have to provide all the supporting information (outside the Excel spreadsheet) that bears on the calculations of the NPV.
31. As a means of illustration, the Council clarified that if the complainant was merely to be told that the input value for variable A is £x (which is what she has already been told as regards some of the input variables) the complainant will not from that information alone be able to discern why the Bespoke Model treats variable A as £x.
32. The Bespoke Model is a complete tool. It has been specifically written to be interactive. It cannot be run in Excel if it is broken up into separate parts, as its integrity would be destroyed and it would stop working. In order to be run in its electronic form, that is, to be operated as a model, the whole Excel file would have to be provided.

- *Expand on the claim that the 'modelling of the HLF programme as a whole and that of individual projects is inextricably linked' – ie in what way would the requested data carry the fingerprint of the bespoke Excel model procured by the Council?*
33. The Council has argued that to comply with the request would not mean simply disclosing information that 'bears the fingerprints' of the Bespoke Model but would invariably mean releasing the core contents of the Model itself.
- *Explain the way in which the financial model could be exploited by other parties to the commercial detriment of HFL, making specific reference to the information contained in the model itself – ie how, if revealed, parts of the information would risk serious harm to the HFL's future ability to 'undertake key activities such as raising finance, entering land deals and procuring works.'*
34. HFL's business plan will in essence be the Bespoke Model. The Bespoke Model sets out in great detail exactly how the business will operate, taking into account the tax and other implications of the flows of money between the various subsidiary companies. In order to operate in the commercial market place, HFL will need to:
- Get one or more private sector development or financial partners involved by way of investment finance. In the view of the Council, there is a serious risk of prospective private sector partners being deterred from involvement if the perception in the market is that the Council is a 'leaky sieve' because it has already made public the full detail of the proposed business plan.
 - Raise private finance. The Bespoke Model makes detailed assumptions about the nature and rate of private financing.
 - Procure contracts for demolition and construction/refurbishment and for ongoing maintenance works, depending on the detail of the development programme that is finalised in due course. The inputs to the Bespoke Model are based on detailed assumptions that have been made by the Council about the likely cost of those works and would reveal the Council's expectations about the basis of any tender submissions.
 - Assemble the necessary land interests. The Bespoke Model includes within it the detailed assumptions of the costs of buying properties or land to enable projects to proceed.
 - Obtain the necessary planning consent. HFL will need to have the commercial freedom to negotiate with the local planning authority in

due course without the constraint of the assumptions made in the Bespoke Model being able to be raised against it by the authority.

35. The Council further emphasised the following points: (a) although the Bespoke Model is a 'living' tool, in its present form it already contains the financial blueprint for the entire HFL project. Any refinements following the regular reviews that take place would be at the micro-level of detail. (b) The position is quite different to disclosure of viability studies, which are static assessments and do not in any event reveal the modelling of the developer's entire business.
- *Set out the basis on which the Council decided that the task of deciding which, if any parts, of the requested information could be disclosed would 'take days, probably running into weeks, to attempt, if it could satisfactorily be done at all.'*
36. The Council has advised that the estimate is based on the view of the senior officer of the Council dealing day to day with the estate regeneration project and the primary author of the Model at Airey Miller. The author has estimated that it would take approximately a week of his time, on a full time basis, to review all parts of the Bespoke Model and the supporting information to identify what, if any, parts of that could be disclosed and to provide an explanatory narrative, since in the absence of that the requester in this case would have no reasonable prospect of understanding the material and what had and had not been disclosed. The cost to the Council of Airey Miller's employee's time to undertake the relevant exercise was estimated to be a total exclusive of VAT of £3,750.
37. Any material proposed for disclosure would then need to be discussed with the aforementioned senior officer at the Council, and more senior officers would need to be briefed accordingly, because any disclosure decision would need to be taken by the Council and not by its consultants. For his part, the senior officer considers that it would take approximately a week of his time to consider the release of the Bespoke Model and supporting information (and that is without regard to the time cost that would arise in trying to mitigate the consequences of disclosure of the Model, were that to be directed). The Council argues that dealing with a request for disclosure of the Bespoke Model (quite apart from the cost of managing any consequential consequences) would thus represent a significant diversion of resources away from the tasks for which the Council is engaging Airey Miller, as well as away from the core functions of relevant Council officers.
- *With regard to the Council's arguments relating to the diversion of resources, please describe how the estate regeneration team within the Council is structured and state who within the team*

the Council expects would have to take on the role of assessing the requested information.

38. The Council states that at present the Housing Regeneration Team has an Assistant Director of Housing Regeneration and an Estate Regeneration Programme Manager. A further 20 employees report to these officers. The personnel at Airey Miller involved with the Bespoke Model included the following: Managing Partner, Senior Partner, Project Director, Associate Partner, Quantity Surveyor and Assistant Consultant. An explanation of how the request would need to be considered in this context is set out in the previous section.
39. The Council considers that the number of individuals involved, and the range of their responsibilities, is indicative of the importance to the Council of the estate regeneration strategy and the critical contribution to the delivery of that strategy of the Bespoke Model.
- *It would therefore be useful if you could expand on the view that even taking into account the value of the requested information it would still be appropriate to render the request manifestly unreasonable.*
40. The Council does not dispute that the regeneration strategy has the potential to directly affect the homes of Council tenants and/or long leaseholders and that this is obviously an issue of great importance to those who may be affected. However, the Council maintains the view that the application of the public interest balance would nonetheless still render the request for the Bespoke Model manifestly unreasonable. This is for the following reasons:
- The resource diversion in dealing with the requested information would be very significant.
 - As set out in the Council's earlier submissions, the Council's proposals have been the subject of extensive consultation. Opportunities have been provided for third parties to challenge the Council's intended strategy.
 - The requester has already been provided with sufficient information to enable the reasonable conduct of a 'sense check' of the Council's figures as presented to Cabinet in July 2015.
 - The requested information would be unlikely to be capable of meaningful interrogation by a non-expert requester without training and/or guidance from the creator of the Bespoke Model. There can be no obligation on the Council to provide that.

The Commissioner's findings on whether the exception applies

41. The Commissioner accepts that the time and costs of considering if the information requested is excepted from disclosure can be a contributory factor when deciding if regulation 12(4)(b) of the EIR applies. This is also the case with section 14(1) of FOIA, which covers vexatious requests, but not section 12 because this limits the activities that can be considered as part of a costs estimate. Broadly speaking, the Commissioner's approach to the inclusion of redactions costs in regulation 12(4)(b) and section 14 will be the same.
42. At paragraph 70 of the Commissioner's guidance² on dealing with vexatious requests, she explains that section 14(1) may apply where a public authority is able to make a case that the amount of time required to review and prepare the requested information for disclosure would impose a grossly oppressive burden on the organisation. The guidance continues in the following paragraph by saying that there is a high threshold for refusing a request on such grounds and an authority is most likely to have a viable case where:
- The requester has asked for a substantial volume of information, and
 - The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO, and
 - Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.
43. The Commissioner considers that the term 'grossly oppressive' has the same connotation as 'unreasonable' in the sense of complying with a request.
44. In many cases the application of regulation 12(4)(b) will be considered where a request covers a substantial bundle of information. This is different in that the Bespoke Model is a self-contained electronic system. Nevertheless, based on the Council's explanation, the Commissioner is satisfied that the volume of data and information built in to the Bespoke Model which would need to be assessed is considerable.

² <https://ico.org.uk/media/1198/dealing-with-vexatious-requests.pdf>

45. She has also found that the Council has real concerns about the disclosure of sensitive information contained in the model. From a narrow perspective, the Council has already provided arguments demonstrating why it considers that the release of the financial assumptions calculated using the Bespoke Model would have an adverse effect on its ability to analyse the Cressingham Gardens regeneration proposals, citing regulations 12(5)(e) and 12(5)(f) as the basis for withholding figures in the datasheets provided to the complainant. From a wider perspective, the Commissioner considers that the Council has also cogently explained why it is assumed that the disclosure of the fundamental characteristics of the Bespoke Model would have a harmful effect on its wider business operations.
46. The Commissioner considers that this approach finds some support in *London Borough of Southwark v Information Commissioner and Lend Lease and Glasspool* (EA/2013/0162, 9 May 2014)³. In that case the Information Tribunal considered Southwark's decision only to disclose a partial version of a viability report produced in relation to the proposed redevelopment of the Heygate Estate. The Tribunal determined that regulations 12(5)(e) and 12(5)(f) were engaged and went on to assess the public interest test. In carrying out this exercise, the Tribunal considered that some of the information was less commercially sensitive and should be disclosed. However, this finding did not extend to an operating model and commercial projections, which the Tribunal decided should be withheld.
47. The Tribunal explained at paragraph 23 that the model in question was 'a financial model developed by Lend Lease Corporation for use as an analytical tool on large projects. The model allows for different scenarios to be run and tested. It is a "live" piece of work which will alter with time as assumptions change.' On the issue of disclosure of the model, the Tribunal expressed its acceptance at paragraph 55 that the development model was a trade secret and the 'evidence about the nature of the model and the pleasure and profit other developers might derive from its publication'. For this reason, the Tribunal's judgment was that the public interest favoured withholding the information.
48. The Commissioner considers there is a strong argument for finding that the Bespoke Model, when considered in isolation, would similarly be covered under regulation 12(5)(e) of the EIR. On this basis and assuming that less sensitive information could straightforwardly be

³[http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1279/London%20Borough%20of%20Southwark%20EA.2013.0162%20\(09.05.14\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1279/London%20Borough%20of%20Southwark%20EA.2013.0162%20(09.05.14).pdf)

extracted from the model, the Commissioner considers it is reasonable to conclude that the second condition is met.

49. With regard to the third condition above, the Commissioner is also satisfied that in order to test properly what information was confidential and what was not it would have to consider in a granular way each of the component parts that make up the Model and the inputs upon which the viability assumptions were made. As the Council has explained, the Model is a complete tool and its use is dependent on the interaction between the systems that link the inputs and outputs.
50. The Commissioner considers that the combination of these factors is sufficient to demonstrate that compliance with the request would be unreasonable. Regulation 12(4)(b) of the EIR will only be found to be engaged, however, if there is an obvious or tangible quality to the unreasonableness that means the request is 'manifestly unreasonable' and not only 'unreasonable'.
51. In some cases the value of the information to the public may mean that compliance, even though burdensome, could not be considered manifestly unreasonable. A balancing exercise therefore needs to be undertaken which takes account of, on the one hand, the significance of the information and, on the other, the severity of the effect on the public authority of complying with the request.
52. There is no doubt that the requested information is important. With regard to Cressingham Gardens, the Commissioner recognises that any decision made on the redevelopment options will have a profound effect on the local area. As such it is entirely understandable that those individuals that may be affected by the plans would want to know more about how the Council had generated its assumptions about the viability of the proposals. With this information, the public may be able to interrogate more successfully the data underpinning the proposals. The Commissioner recognises the Council's argument that the everyday person would struggle to use and interpret the Model and the information it generates. Nevertheless, she considers that this does not essentially weaken the value of the Model as a tool. This value also extends to the use of the Model for future developments, decisions in respect of which will inevitably shape regeneration plans for local areas.
53. With regard to the question of whether compliance would be proportionate in the circumstances, the Commissioner has taken into account the fact that the Housing Regeneration Team is well equipped in terms of the number of staff. It is also noticeable that the brunt of the work associated with the request-handling would seem to fall primarily on the Council's external advisers and a limited selection of senior officers within the Council. It could therefore be argued that the

diversion of the Council's resources could not in itself support the application of the exception.

54. The Commissioner also considers, however, that the nature of the unreasonableness becomes more pronounced when the severity of the harm being cited by the Council is borne in mind. It is claimed by the Council that disclosure would not only impair its ability to proceed with the Cressingham Gardens regeneration plans by disclosing commercially sensitive information but would effectively weaken its capacity to establish the viability of development projects and negotiate with private sector parties – allowing access to the Bespoke Model would effectively take away a critical part of the toolkit that the Council intends to use for development decisions. In the view of the Commissioner, these concerns not only correspond with the function of the Bespoke Model but do not seem over-stated given the Council's intended use of the Model.
55. Insofar as the Council has a reasonable expectation - assuming therefore that the Model could be broken down into an understandable form – that a considerable part of the Model is excepted information, the Commissioner considers that this strengthens its position that to go through a process of separating out any disclosable information would not only be unreasonable but would be manifestly unreasonable. Furthermore, while the diversion of resources may not necessarily be a decisive factor either way, the Commissioner would accept that the actual costs to the Council of using the external advisers for assistance with the request should not be ignored.
56. The Commissioner has therefore decided that regulation 12(4)(b) of the EIR is engaged and has gone on to consider the public interest test.

The balance of the public interest

57. As explained in the introduction to the public interest in her guide to regulation 12(4)(b)⁴, the Commissioner expects that many of the relevant issues will have already been considered when deciding if the exception is engaged. This is because engaging the exception includes some consideration of the proportionality and value of the requests. Nevertheless, the public interest test must be applied and under regulation 12(2) the EIR provides for an express presumption in favour of disclosure.

⁴ <https://ico.org.uk/media/1615/manifestly-unreasonable-requests.pdf>

58. In finding that the exception was engaged, the Commissioner recognised that there was a strong public interest in the information. Previous decisions of the Information Tribunal have emphasised the importance of public participation in, and engagement with, planning decisions and have stated that this is reliant on the public having access to the viability information being considered by a planning authority.
59. An important factor in this case, however, is that the request does not only ask for the data upon which any decisions of the Council were based – in respect of which a list of assumptions and appraisal outputs has been provided – but extends to the calculation model that is common to other housing development projects. This would greatly increase the complexity of complying with a request for information, the essential confidentiality of which the Council has explained is required for its core business operations.
60. For this reason, the Commissioner has decided that in all the circumstances the public interest in disclosure is outweighed by the public interest in maintaining the exception.
61. The Commissioner notes that when refusing a request for environmental information under regulation 12(4)(b) on the grounds of burden, a public authority will normally be expected to provide the applicant with appropriate advice and assistance. This will often take the form of advising the applicant how the request might be refined to make it more manageable.
62. This expectation has not been specifically addressed by the Council. However, in response to the complainant's clarification of the nature of the information she might be prepared to accept if it could not comply with the full scope of the original request, the Council's disclosure of the redacted datasheets demonstrated the sort of information it could reasonably provide. As such, the Commissioner has therefore found that for practical purposes the advice and assistance requirement has been disposed of in this case.

Right of appeal

63. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

64. 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.
65. 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

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