

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

Date: 22 February 2018

Public Authority: Vale of Glamorgan Council
Address: Civic Offices
Holton Road
Barry
CF63 4RU

Decision (including any steps ordered)

1. The complainant has requested information from the Vale of Glamorgan Council concerning its sale of Haydock House, Holton Road, Barry. The Council has refused to disclose the requested information in reliance of Regulations 12(5)(e) and 13 of the EIR.
2. The Commissioner's decision is that Vale of Glamorgan Council has correctly applied Regulations 12(5)(e), 13 and 12(5)(b) to the information it is withholding from the complainant.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. The complainant has submitted two requests for information to the Vale of Glamorgan Council which relate to the Council's sale of Haydock House, Holton Road, Barry.
5. The complainant's first request was made on 27 May 2016 was dealt with under reference RFI 16 4160. His second request was made on 26 July 2016 and was dealt with under reference RFI 16 4246.
6. The terms of the complainant's first request are:

"I am formally requesting environmental information in relation to Haydock House, Holton Road, Barry. For ease of reference is the

building previously in council ownership under planning reference 2013/01249/FUL and described on the following web link: -

<http://www.valeofglamorgan.gov.uk/en/working/regeneration/Barry-Regeneration-Advisory-Group/Current-Projects/Haydock-House,-Holton-Road,-Barry.aspx>

1. Can you provide any documents where Vale of Glamorgan Council or their subcontractors informed any third party organisation or company that the building known as Haydock House had concrete cancer or any other structural defects?
2. Can you provide any documents where Vale of Glamorgan Council or their subcontractors informed Tablic Ltd and/or RDT Chartered Surveyors that the building known as Haydock House had concrete cancer or any other structural defect?
3. In relation to the planning permission for the Haydock House development - Can you confirm whether or not in the sale of Haydock House to Tablic Ltd there was an inclusion of consent to develop the building for mixed use, using the plans submitted and approved under planning application No. 2013/01249/FUL?
4. Can you provide any documentation (e.g. such as a valuation report, or stock disposal) report that determined the value of Haydock House in order to facilitate the sale of the Haydock House to Tablic Ltd or any other third party?
5. Can you provide any documentation pertaining to structure of Haydock House that led to a decision to dispose of the stock and authorised the sale, transfer of ownership of the building to Tablic Ltd?
6. Can you provide a copy of the Haydock House - sales contract between Vale of Glamorgan and Tablic Ltd that transferred the ownership of the building from the Council to this third party?"
7. The Council responded to the complainant's request on 26 July 2016 as follows:
 1. The Council is not aware of any such documents. A non-intrusive condition survey was provided to the purchaser, however it was for the purchaser to obtain any intrusive surveys and satisfy themselves as the condition of the property prior to purchase.
 2. The Council is not aware of any documents being provided to the companies you refer to, neither of which were party to the sale contract with the Council.

3. The planning record is available on the Councils website. Nevertheless, the Council did not dispose of the property known as Haydock House to the company you refer to.

<http://vonline.planningregister.co.uk/default.aspx?AspxAutoDetectCookieSupport=1>

4. No. The Council did not dispose of the property to the company you refer to and any documentation provided as part of the sale was between the Council and the third party involved in that sale.
5. No. The Council did not dispose of the property known as Haydock House to the company you refer to.
6. No. The Council did not dispose of the property known as Haydock House to the company you refer to.
9. On 26 July, the complainant submitted his second request to the Council. He modified his request by adding the following terms to the initial 6 elements of his request of 27 May 2016:
 1. "Please provide a copy of the survey and any other documents pertaining to the condition of the building provided to the purchaser.
 2. Same question but exchange the company name to 4 Corners Ltd or any other company or the purchaser.
 3. Same question but exchange the company name to 4 Corners Ltd or any other company or the purchaser. A simple Yes or no confirmation sentence is required.
 4. Same question but exchange the company name to 4 Corners Ltd or any other company or the purchaser. I do not accept that as a valid reason and therefore reassert my rights under the act for this documentation, you can redact any personal information in the document as required. Please review the act and comply or provide the reasons in relation to the act as to why you are not able to provide this documentation to enable an appeal and if unsuccessful will escalate to the ICO for a decision
 5. Same question but exchange the company name to 4 Corners Ltd or any other company or the purchaser.
 6. Same question but exchange the company name to 4 Corners Ltd or any other company or the purchaser."

10. The Council responded to the complainant's modified request on 22 August 2016. The Council directed the complainant to the website URL which it had previously provided in respect of his question 3.
11. The Council then issued a refusal notice to the complainant which explained the Council's application of Regulation 12(5)(e) to commercially sensitive information and Regulation 13(1) to information which is considered to be the personal data of which the applicant is not the data subject.
12. On 14 September, the complainant wrote to the Council to complain about its refusal of his request RFI 16 4246. The complainant stated that he does "not accept the Council disposed of a public asset and there is not documentation to support this decision...", and that, "the building appears to have been disposed of on a non-for-profit basis... [and] therefore cannot be considered profitable i.e. commercial". The complainant asserted that the building would likely have appeared on the Council's Asset List if the list is up-to-date and would be publicly available information. He also asserted that Council's application of Regulation 13(1) of the EIR was sufficient reasons for withholding information which can be redacted from any sensitive documents.
13. Following an intervention by the Information Commissioner's Office, the Council wrote to the complainant on 25 January 2017 to provide him with its internal review of his request RFI 16 4246. The Council's reviewer identified four documents which are relevant to the complainant's request:
 1. Property section condition survey;
 2. Type 2 asbestos materials survey;
 3. A marketing recommendations report; and
 4. Accessibility audit.
14. The Council confirmed that all of these documents relate to the property which has now been sold and is in private ownership.
15. The Council acknowledged that prospective purchasers may have been provided with some or all of the documents prior to the sale of the property. It noted that the position had now changed due to the property having been sold and is now in the ownership of a third party.
16. The Council concluded that disclosure of the documents may affect the interest of the third party and determined that Regulation 12(5)(e) was correctly applied. The Council also determined that Regulation 13(1) had been correctly applied in respect of any information which constitutes the personal data of a third party and it referred to the correspondence

contained within the Council's legal file which it considered were confidential.

17. Finally, the Council advised the complainant that he could obtain details of registered transactions under the Land Registry Rules by contacting the Land Registry at its Swansea address.

Background information

18. The Council has advised the Commissioner that the complainant's request relates to its sale of a property known as Haydock House. This property was previously occupied by part of the Council's Social services Department.
19. The property was marketed by agents on an open tender basis, with the best bid being accepted.
20. It is a legal requirement under the Local Government Act for Local authorities to obtain best value in relation to the sale of their assets.
21. The Council has assured the Commissioner that the transaction concerning Haydock House met the requirement of the Local Government Act.

Scope of the case

22. The complainant contacted the Commissioner 14 December 2016 to complain about the way his request for information had been handled.
23. Having reviewed the complainant's case, the Commissioner determined that she should focus her investigation on whether the Council is entitled to withhold the four documents listed at paragraph 13 (above) in reliance on the exceptions provided by Regulations 12(5)(e) and Regulation 13.

Reasons for decision

Regulation 12(5)(e)

24. Regulation 12(5)(e) of the EIR allows a public authority to refuse to disclose recorded information where the 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. For the 12(5)(e) exception to be appropriately applied, the Commissioner considers that the following conditions need to be met:
- The information must be commercial or industrial in nature;
 - It must be subject to confidentiality which is provided by law;
 - That confidentiality must protect a legitimate economic interest; and;
 - The confidentiality be adversely affected by the disclosure of the information.
26. To assist the Commissioner in making her decision, the Council provided the following documents which it now considers fall within the terms of the complainant's request:
- Property Section condition survey
 - Type 2 asbestos material survey
 - A marketing recommendations report
 - Accessibility audit
 - Form of Land Registry Transfer TR1
 - Contract for sale dated 12 March, 2014
 - Supplemental agreement relating to the sale of Haydock House dated 28 May, 2014
 - Commercial property standard enquiries with regard to Haydock House.
27. Following the Commissioner's enquiry, the Council determined that the commercial property standard enquiry form, the Land Registry Transfer, the Contract for Sale and the Supplemental Agreement were also relevant to the complainant's request. This is because the complainant had asked for information in relation to any representations to the purchaser.
28. The Council has advised the Commissioner that the additional information listed above is contained the legal file associated with Haydock House.
29. In addition to providing the Commissioner with copies of the withheld information, the Council also advised her of the identity of the purchaser of Haydock House.
30. The Council concedes that some of the information concerning the marketing of Haydock House would have been available to the public prior to its sale. However, now that the sale has been completed the Council considers that it is no longer appropriate for the information to be placed into the public domain by virtue of the exceptions to disclosure it now relies on.

31. It is the Council's position that Haydock House is a commercial property and therefore the information requested by the complainant is commercial in nature. This is because it is associated with the sale of this commercial property and includes details of that transaction.
32. The Council has drawn to the Commissioner's attention to Volume 8(1) of Halsbury's Laws of England, which at paragraph 543 states:

"As with barristers, the relationship of solicitor and client is one to which confidence attaches as a necessary or traditional incident"
33. The footnote to the above provides that "Confidentiality can be implied where it would be expected to be assumed by those involved – *Gotha City V Sotheby's [1998] 1 WLR 114 CA*".
34. The Council considers that confidentiality is owed to the purchaser of Haydock House to protect the purchaser's legitimate economic interest and to assist the Commissioner the Council has cited the case of *B v Auckland District Law Society*, where the Privy Council held that legal professional privilege is a public interest fundamental to the administration of justice and should be overridden by competing public interests only where these are provided either expressly or by necessary implication by statute.
35. Having examined the withheld information, the Commissioner readily accepts that it is commercial in nature. She finds that the withheld information contains financial information concerning the sale of Haydock House, details of the contract for the sale and information about the state of the property. In the Commissioner's opinion all of the withheld information is capable of being characterised as commercial in nature.
36. The Commissioner is satisfied that the withheld information is subject to an expectation of confidence that would be adversely affected if the information was to be disclosed. For this reasons, the Commissioner has decided that the exception to disclosure provided by Regulation 12(5)(e) is engaged.
37. The Council's reliance on Regulation 12(5)(e) of the EIR is subject to consideration of the public interest test.

The public interest test

38. The Council acknowledges that disclosure of the withheld information would promote both openness and transparency in respect of its dealings.
39. Likewise, the Commissioner will always give significant weight to the public interest where disclosure of information provides accountability

and transparency for decisions taken by public authorities, particularly where the decisions relate to the expenditure of large amounts of public money or, as in this case, the disposal of publicly owned property.

40. In this case the withheld information concerns the disposal by sale of a Council owned asset. The disclosure of some of the information, though by no means all of it, would promote transparency in respect of the sale of Haydock House and this would allow the public to judge whether the Council has achieved best value as per the requirements of the Local Government Act.

The public interest test – factors favouring the continued withholding of the requested information

41. The Commissioner notes that the Council's website provides the public with a complete rationale for the proposed sale of Haydock House together with records of the Council's decisions. This information can be found at:

http://www.valeofglamorgan.gov.uk/en/our_council/Council-Structure/minutes_agendas_and_reports/reports/cabinet/2013/13-02-25/space_project.aspx

http://www.valeofglamorgan.gov.uk/en/our_council/Council-Structure/minutes_agendas_and_reports/minutes/cabinet/2013/13-02-25.aspx at minute C1229

http://www.valeofglamorgan.gov.uk/en/our_council/Council-Structure/minutes_agendas_and_reports/reports/cabinet/2014/14-03-24/Space-Project---Progress-Report..aspx and

http://www.valeofglamorgan.gov.uk/en/our_council/Council-Structure/minutes_agendas_and_reports/minutes/cabinet/2014/14-03-24.aspx at minute C2252

42. Likewise, information concerning the transaction of Haydock House is available from the Land Registry.
43. In the Commissioner's opinion, the amount and quality of publicly available information concerning Haydock House goes a long way in satisfying the public's legitimate interests in its sale.
44. Since the sale of Haydock House, the information which the complainant seeks now concerns a property which is now owned by a business owned, in turn, by a third party individual. Here the Commissioner is obliged to acknowledge the existence of the duty of confidence which is owed to the purchaser and she must also be cognisant of their economic interests which would undoubtedly be prejudiced if that information was to be disclosed.

45. Having balanced the two sets of public interest factors, the Commissioner is minded to give greater weight to the duty of confidence owed to the new owner of Haydock House and the need to protect their economic interests. Therefore the Commissioner's decision is that the Council is entitled to withhold the requested information in reliance on Regulation 12(5)(e) of the EIR.

Regulation 13

46. The Council has confirmed its reliance on Regulation 13(1) of the EIR in respect the withheld information. It has advised the Commissioner of the identity of the identity of the buyer of Haydock House and this is confirmed in some of the withheld documents.
47. The Council asserts that the requested information relates to a property which has been transferred to an individual person. That being the case, the Council considers that all of the withheld information now constitutes the personal data of the purchaser and consequently it holds the position that Regulation 13 applies to that information.
48. Regulation 13 of the EIR provides an exception to disclosure of personal data where the applicant is not the data subject and where disclosure of the personal data would contravene any of the data protection principles.
49. In order to engage regulation 13, the information sought by the applicant must satisfy the definition of personal data provided by section 1(1) of the Data Protection Act 1990 ("the DPA").
50. Section 1(1) of the DPA defines personal data as:

"data which relate to a living individual who can be identified (a) from those data, or (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller."
51. Here, the Council argues that the first data protection principle would be breached if it disclosed the information which the complainant seeks.
52. The first data protection principle states:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

 - (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."

53. The Council asserts that its disclosure of the requested information would be contrary to the law of confidence and would therefore breach the lawfulness requirement of the first data protection principle.
54. Additionally, the Council holds the view that disclosure would also breach the fairness element of the first principle. It points to the fact that the sale of Haydock House was made to an individual in his individual capacity, and since the sale was conducted by the buyer's solicitors, it is the Council's opinion that an expectation exists that this information would not be disclosed to the public.
55. To confirm its application of Regulation 13, the Council spoke with the purchaser's representative who advised the Council that it would be neither fair nor appropriate for the requested information to be placed into the public domain.
56. Notwithstanding its position on the first data protection principle, the Council was asked whether any of the conditions of Schedule 2 of the Data Protection Act could be satisfied to allow the disclosure of the requested information.
57. The Council agreed with the Commissioner's suggestion that condition 6 of Schedule 2 would be the most appropriate to consider in the circumstances of this case. Condition 6 of Schedule 2 states:

"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject."
58. Having considered the applicability of condition 6, the Council concluded that, in respect of the individual's expectation of privacy and in relation to the circumstances of the transaction, the Council considers that the disclosure of the requested information would be unwarranted by reason of the buyer's rights, freedoms and legitimate interests.
59. The Commissioner has considered the Council's representations and accepts that all of the withheld information should be considered in its entirety as the buyer's personal data. The Commissioner makes this determination on the basis that the documents now, since the sale of the property, have biographical significance to the purchaser and therefore the Commissioner accepts that the withheld information now satisfies the definition of personal data provided by section 1 of the Data Protection Act.
60. The confidential nature of some of the information contained within the withheld documents leads the Commissioner to agree with the Council

that it would be unfair to purchaser of Haydock House for the Council to disclose the information requested by the complainant.

61. The Commissioner's decision is that the Council is entitled to rely on Regulation 13 of the EIR.
62. In reviewing the Council's responses to the complainant, the Commissioner noted the Council's reference to information contained in its legal files. This reference alerted the Commissioner to the potential for the Council to also rely on Regulation 12(5)(b) – where disclosure may prejudice the course of justice. Accordingly, the Commissioner was obliged to ask the Council questions concerning the possible application of this exception.

Regulation 12(5)(b) – the course of justice...

63. Regulation 12(5)(b) provides an exception from the duty to disclose information where the disclosure would adversely affect "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". The Commissioner accepts that the exception is designed to encompass information that would be covered by legal professional privilege.
64. In the decision of *Archer v Information Commissioner and Salisbury District Council* (EA/2006/0037) the Information Tribunal highlighted the requirement needed for this exception to be engaged. It explained that there must be an "adverse" effect that would result from the disclosure of the requested information. Another Tribunal decision – *Hogan and Oxford City Council v Information Commissioner* (EA/2005/0026 and EA/2005/030), the Tribunal interpreted the word "would" as being "more probable than not".
65. In the case of *Bellamy v Information Commissioner and Secretary of State for Trade and Industry* (EA/2005/0023) the Information Tribunal described legal professional privilege as, "a fundamental condition on which the administration of justice as a whole rests". The Commissioner accepts that disclosure of legal advice would undermine this important common law principle. She further accepts that disclosure would in turn undermine a lawyer's capacity to give full and frank legal advice and would discourage people from seeking legal advice.
66. The Council responded to the Commissioner's questions by confirming that the information contained in its legal files was a communication to its own legal advisor and therefore it is subject to the course of justice exception.

67. The Council advised the Commissioner that the legal file shows the purchaser was represented by a firm of solicitors and the Council was represented by own internal solicitor.
68. The Council advised the Commissioner that communication, which is the subject of this exception, is subject to legal advice privilege. The Council confirmed that the communication was made for the sole or dominant purpose of obtaining legal advice from its legal advisor in their professional capacity.
69. The Council also confirmed that the communication has not been made available to the public or any third party without restriction and therefore the privilege has not been lost.
70. The Commissioner accepts that the communication engages the exception provided by Regulation 12(5)(b) and therefore she must now consider the public interest test to determine whether the Council is able to maintain this exception.

The public interest test

71. The Commissioner considers that some weight must always be given to the general principle of achieving accountability and transparency through the disclosure of information held by public authorities. This assists the public in understanding the basis and how public authorities make their decisions. This in turn fosters trust in public authorities and may allow greater public participation in the decision making process.
72. In this case, disclosure of the requested information would help the public to understand some of the issues considered by the Council in respect of its disposal of Haydock House.
73. In her previous decisions the Commissioner has expressed the view that disclosure of information relating to legal advice would have an adverse effect on the course of justice through a weakening of the general principle behind the concept of legal professional privilege. This view has also been supported by the Information Tribunal.
74. The Commissioner's published guidance on legal professional privilege states the following:

"Legal professional privilege is intended to provide confidentiality between professional legal advisors and clients to ensure openness between them and safeguard access to fully informed, realistic and frank legal argument, including potential weaknesses and counter arguments. This in turn ensures the administration of justice."
75. Where a public authority is faced with a legal challenge, or a potential legal challenge (as in this case), it is important that the authority can

defend its position properly and fairly. The Commissioner considers that there will always be a strong argument in favour of maintaining legal professional privilege as it is a long-standing, well established and important common law principle. The Information Tribunal affirmed this in the *Bellamy* case when it stated:

"...there is a strong element of public interest inbuilt into privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt interest...It is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case..."

76. This does not mean that the counter arguments favour public disclosure need to be exceptional, but they must be at least as strong as the interest that privilege is designed to protect.
77. The Commissioner considers that the Council should be able to defend its position against any claim made against it, without having to reveal its position in advance, particularly as challenges may be made by persons who themselves are not required to disclose their positions. That situation would be unfair.
78. The Commissioner appreciates that there is a general public interest in public authorities being as accountable as possible for the decisions they make.
79. However the Commissioner has decided that the public interest arguments which favour withholding the requested information are greater than those which its favour disclosure.
80. In this case, there is clearly a strong personal interest in having access to the withheld information. However, this does not mean that there is a wider public interest.
81. Here, the Commissioner is satisfied that the public interest is best served by maintaining the Council's position to withhold the communication contained in its legal file. She takes this position on the grounds that the public interest in maintaining legal professional privilege is a particularly strong one.
82. To outweigh the inherent strength of legal professional privilege would normally require circumstances where there are substantial amounts of public money are at stake; where the decision would significantly affect large numbers of people; or where there is evidence of misrepresentation, unlawful activity or a significant lack of appropriate authority.

83. In the circumstances of this case, the Commissioner does not consider that there are any factors that would equal or would outweigh the particularly strong public interest inherent in this exception.
84. The Commissioner has decided that the Council is entitled to rely on Regulation 12(5)(b) to withhold the email requested by the complainant.

Other matters

85. The Council has explained to the Commission why it failed to inform the complainant that it holds documents relevant to his requests, until it provided this confirmation at internal review.
86. The Council explained that [the complainant's] first request, under RFI 16 4160, was a specific question asking for documents informing third parties rather than documents in relation to the substantive issue. Notwithstanding this, the Council responded by providing the complainant with a non-intrusive condition survey.
87. The effect of the complainant's second request, under RFI 16 4246, was to increase the nature of the request to "Please provide a copy of the survey and any other document pertaining to the condition of the building provided to the purchaser". It was in response to that enquiry that the Council applied the exemption under Regulation 12(5)(e).
88. The complainant asserted to the Commissioner that the Land Registry entry for the property does not match the information which the Council provided in respect of the party who bought the property. The Council explained this by advising the Commissioner that, "Once a property is sold / transferred to an individual it is entirely up to an individual whether they sell or transfer that property to third parties. Any issues as to what is on the Land Registry Title should be referred to the Land Registry by [the complainant]".

Right of appeal

89. 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

90. 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.

91. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF