

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

### **Decision notice**

**Date:** 4 December 2020

**Public Authority:** Hastings Borough Council  
**Address:** Queens Square  
Hastings  
TN34 1TL

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

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1. The complainant requested a copy of two letters, plus any other information held by Hastings Borough Council (the council) which had been recorded under a specified reference number.
2. The council refused the request under regulation 12(5)(b) of the EIR. During the Commissioner's investigation, the council withdrew its reliance on regulation 12(5)(b), now stating that it believed regulation 12(5)(e) of the EIR to be engaged.
3. The Commissioner's decision is that the council is entitled to rely on regulation 12(5)(e) as its basis for withholding the requested information. She has also determined that the public interest weighs in favour of withholding the information in this instance.
4. However, the Commissioner has found that the council has breached regulation 14(2) by failing to issue a refusal notice within 20 working days. In addition, the council has also breached regulation 11(4) by failing to provide its internal review response within the required 40 working days.
5. The Commissioner does not require the council to take any steps as a result of this decision notice.

## Request and response

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6. On 14 October 2019, the complainant wrote to the council and requested information in the following terms:

*'Coffey have produced reports for HBC using a reference number of 02255Ax*

*I am aware that*

*02255AA is Coffey 1 from May 2014*

*02255AB is Coffey 2 from Jan 2016*

*02255AC is Coffey Geotechnical review provided with application 1036*

*02255AE is Footpath options report 2016*

*02255AG is Interim report November 2017*

*02255AH is the Inspection report May 2019.*

*There are clearly other reports with the reference numbers 02255AD and 02255F.*

*Please supply me under EIR with the following for the reports with reference number 02255AD and 02255F.*

- 1. The title, date, author and description of the report*
- 2. A full copy of the report.'*

7. On 14 November 2019, the council provided a response to the complainant's request. It advised that the reference 02255AD related to a report dated 23 June 2015, entitled '*Proposal for Investigation and Assessment*'.
8. With regard to reference 02255AF, the council indicated that this was a letter, and confirmed that the information contained therein was to be withheld under regulation 12(5)(b) of the EIR. It went on to say that it had also considered the public interest test and was satisfied that this weighed in favour of withholding the exception in this instance.
9. On 15 November 2019, the complainant contacted the council and asked for an internal review. The council then provided its response on 23 January 2020.
10. The council now informed the complainant that it had identified two letters (rather than the previously stipulated one) which were relevant to reference 02255AF. It provided the complainant with the dates and titles of both, which confirmed that both related to a local caravan park

(the site). The council advised that the name of the author(s) was to be withheld as it regarded this to be personal data which, if disclosed, would breach the data protection principles set out within the General Data Protection Regulation (GDPR).

11. The council advised the complainant that it held on record formal notification that any correspondence relating to communications with the owners of the caravan site, and their agents, should not be disclosed; it stated that it had a '*moral compass*' to adhere to these instructions. The council confirmed that the contents of both the letters were to be withheld in their entirety under regulation 12(5)(b) of the EIR.

### Scope of the case

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12. The complainant contacted the Commissioner on 17 April 2020, to complain about the way his request for information had been handled. He advised that the reason for making this request was to establish and obtain copies of information held concerning the landslip and drainage.
13. The complainant stated that the reference 02255AD and 02255AF had identified gaps in the range of known reference numbers for Coffey Reports held by the council. He went on to say that the council's response to his request about the information held relating to reference 02255AD confirms that it relates to a report that he is already aware of. As a result, he does not require the Commissioner to investigate the council's handling of this part of his request.
14. With regard to reference 02255AF, the complainant asked that the Commissioner investigate a number of points which she has summarised as follows:
  - Does reference 02255AF relate to only two letters as stated by the council, or is there additional information held?
  - Is there a separate report on which the letters are based upon? If so, the complainant would like a copy of that report.
  - Is it the case that Coffey authored these letters and are they legal letters i.e., can such information fall under the exception set out under regulation 12(5)(b) of the EIR?
  - Is the council correct to withhold the two letters in their entirety?

15. Whilst it has been noted that the council withheld some personal information relating to the two letters (the name of the author(s) of the letters), as the complainant has not contested this, the Commissioner does not intend to give further consideration to this point.
16. As part of the Commissioner's investigation, the council was asked to provide more information about its handling of that part of the complainant's request that related to reference 02255AF. The Commissioner also provided the council with some advice about regulation 12(5)(b); she asked that the council consider this before confirming whether it was still satisfied that the withheld information was subject to this exception.
17. In response, the council confirmed that, upon review, it was no longer relying on regulation 12(5)(b). However, it stated that it now wished to apply regulation 12(5)(e) to the information held relevant to reference 02255AF.
18. Given this, the Commissioner does not intend to consider the third bullet point of paragraph 14 in this decision notice, which questioned whether the letters could be subject to legal privilege, any further.
19. Having considered the complainant's concerns and the council's representations provided during the investigation, the Commissioner regards the scope of her investigation to be as follows:
  - Whether the council has identified all the information held that is relevant to reference 02255AF.
  - Whether the council is now entitled to rely on regulation 12(5)(e) as its basis for withholding this information.
  - Whether the council has complied with the procedural aspects of the EIR, as requested by the complainant.

## **Reasons for decision**

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### **Is the information environmental information?**

20. Information is 'environmental information' and must be considered for disclosure under the terms of the EIR, rather than the Freedom of Information Act 2000 (FOIA), if it meets the definition set out in regulations 2(1)(a) to 2(1)(f) of the EIR.

21. Regulation 2(1)(c) of the EIR says that any information on measures such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements or factors of the environment listed in regulation 2(1)(a) and 2(1)(b) will be environmental information. One of the elements listed under 2(1)(a) is land.
22. The information withheld by the council which is relevant to reference 02255AF concerns communications sent between parties about a particular site licence. The Commissioner is satisfied that the conditions of this licence have an effect on the land and its use, and that all the relevant information fits squarely into the definition of environmental information set out within regulation 2(1) of the EIR.

### **Regulation 5(1) – right of access to information**

23. Regulation 5(1) of the EIR requires a public authority holding environmental information to make it available on request.
24. In this case, the complainant has questioned whether the two letters referred to by the council are all that is held that is relevant to reference 02255AF. In particular, he has asked whether a report is also associated with both this reference, and/or these two letters.
25. In cases such as this where there is some dispute as to whether the information which has been considered is all that is held that is relevant to the request, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
26. The council confirmed in its internal review response that the information it held consisted of two letters which were sent by Coffey to the council. It confirmed the titles of these letters to be as follows:
  - *'Draft New Caravan Site Licence for Rocklands Caravan Park'* (dated 13 April 2016); and,
  - *'Rocklands Caravan Park, response to letter from Gaby Hardwicke Solicitors'* (dated 19 April 2016).
27. Having considered the content of these two sets of correspondence, the Commissioner is of the opinion that they do not provide any indication that there is any additional information which is likely to be relevant to the reference 02255AF.
28. In addition, an invoice dated 25 April 2016, which the Commissioner is aware is already in the complainant's possession, sets out the charges incurred by the council for the work carried out in relation to reference

02255AF and is for the project: '*Rockland's Licence Advice*'. The service summary contained within the invoice details the work done as follows:

1. *Review and comment on Draft License and Responses*
  2. *Review and Response to Gaby Hardwicke Solicitors letter.*
29. The Commissioner is satisfied that there is no indication from the content of either of the letters, nor the invoice, that there was additional information created which would fall under reference 02255AF. Indeed, she is of the view that the invoice for work carried out in relation to reference 02255AF is a strong indicator that the two letters are the only work carried out under this reference.
30. With regard to the complainant's question set out in bullet point 2, paragraph 14, of this decision notice, the Commissioner cannot, with any certainty, provide a definitive answer as to whether the information held within one, or both, of the letters could have been subsequently included within any later report. However, she does not regard this to be relevant to her consideration of matters. This is because she is satisfied that an answer to such a question would not fall within the scope of the request under consideration.
31. In summary, the Commissioner is satisfied that the two letters referred to by the council in its internal review response are, on the balance of probabilities, the only information that exists that is subject to the reference 02255AF.

### **Regulation 12(5)(e)-commercial confidentiality**

32. The Commissioner identified at an early stage of her investigation that the information relevant to reference 02255AF also formed part of the withheld information that she considered within decision notice FER0819616.<sup>1</sup> In that case, the Commissioner decided that the council was entitled to withhold the information under regulation 12(5)(e) of the EIR.
33. It should be noted that the request that was considered under FER0819616 captured more information than just the two letters which are under consideration in this case. Therefore, the complainant may

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617317/fer0819616.pdf>

not be aware that the information he has requested has already been considered by the Commissioner.

34. In any event, there is one significant difference between this request and that which was considered in decision notice FER0819616, that being the date that they were submitted to the council.
35. The complainant's request was submitted to the council on 14 October 2019, the request considered within decision notice FER0819616 was dated 30 November 2016. Given this, the Commissioner accepts that, with the passage of time, it should not be assumed that regulation 12(5)(e) must still be engaged in respect of the information currently under consideration.
36. As a result, the Commissioner intends to consider whether there are any factors which would lead her to conclude that regulation 12(5)(e) is no longer engaged in respect of the two letters that relate to reference 02255AF.
37. Regulation 12(5)(e) of the EIR states that a public authority can refuse to disclose information, if to do so would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
38. The construction of the exception effectively imposes a four-stage test and each condition as set out below must be satisfied for the exception to be engaged:
  - Is the information commercial or industrial in nature?
  - Is the information subject to confidentiality provided by law?
  - Is the confidentiality required to protect a legitimate economic interest?
  - Would the confidentiality be adversely affected by disclosure?
39. For clarity, if the first three questions can be answered in the positive, the final question will automatically be in the positive. This is because, if the information was disclosed under the EIR, it would cease to be confidential.

### **Is the information commercial or industrial in nature?**

40. When deciding whether all four conditions set out in paragraph 38 of this decision notice have been satisfied, the Commissioner has had some regard to decision notice FER0819616 (where the two letters relevant to this case also formed part of the withheld information). She believes it to be important to note that, in that case, certain comments made by the First-tier (Information Rights) Tribunal in the case of Hastings

Borough Council v IC EA/2017/00843 <sup>2</sup>(the Tribunal case) were seen to be pertinent to the decision as to whether regulation 12(5)(e) was engaged. The Tribunal case directly relates to decision notice FS50650700<sup>3</sup>, issued by the Commissioner on 28 March 2017.

41. In decision notice FER0819616, the Commissioner was of the opinion that the Tribunal's definition of what is commercial information was relevant to, and could be extended to include, the withheld information that was under consideration in that case.
42. Given the above, the Commissioner sees no logical reason why she should change her view to that set out in decision notice FER0819616 in relation to whether the withheld information is commercial for the purposes of the EIR in this instance. This is because she does not regard the passage of time to be a factor which may affect this condition of the test.
43. As a result, the Commissioner concludes that the information that has been withheld in this instance can be considered to be commercial for the purposes of the EIR.

#### **Is the information subject to confidentiality provided by law?**

44. With regard to this element of the exception, the Commissioner will consider if the information is subject to confidentiality provided by law, which may include confidentiality imposed under a common law of confidence, contractual obligation or statute.
45. The Commissioner has not been made aware of any statutory duty of confidence in this instance. She has therefore gone on to consider the common law of confidence, which has two key tests:
  - Does the information have the necessary quality of confidence? This involves confirming the information is not trivial and not in the public domain.
  - Was the information shared in circumstances importing an obligation of confidence? This can be explicit or implied.

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<sup>2</sup>[http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2167/Hastings%20Borough%20Council%20EA.2017.0084%20\(26.03.18\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2167/Hastings%20Borough%20Council%20EA.2017.0084%20(26.03.18).pdf)

<sup>3</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013849/fs50650700.pdf>



46. As was stated in decision notice FER0819616, the information that has been withheld relates to a site licence which will impose certain conditions as to how the site owners run their business, and use their land; the Commissioner considers that such information, in the main, is not trivial.
47. The complainant has argued that whilst the information may be in relation to the site licence, it cannot be about it, but rather it must be about drainage and geotechnical issues (because it was authored by Coffey). The complainant indicates that he believes that this would have an effect on the level of confidentiality afforded to the withheld information.
48. In response, the Commissioner would confirm that she is satisfied that both sets of correspondence were formulated in response to the issuing of the site licence. She therefore does not agree with the complainant's assertion that information that relates to geotechnical matters cannot be directly about the licence.
49. The Commissioner is mindful that in case FER0819616, all the information that had been withheld (including the two letters) was, at the time of the request, still being considered as part of an ongoing process, that being to issue a new licence for the site. This had a bearing on the Commissioner's view as to whether it was reasonable for all parties to have expected that the relevant communications about the draft licence would be treated in confidence.
50. In this case, the request was made well over a year after an agreement had been reached between parties and the licence had been issued (and made publicly available). In addition, over 18 months had passed since the Tribunal case decision was published.
51. The Commissioner has therefore given consideration as to whether, with the passage of time, the information is still subject to a common law of confidence.
52. The council has confirmed that the letters were prepared specifically for the caravan site licence appeal, and that they relate to the negotiations which took place that were between the site owners and the council only. The council goes on to say that there is no public consultation when a site licence is to be issued, that negotiations are conducted in private, and they are considered to be confidential. It also states that it has been asked not to disclose communications between parties that relate to the site licence.

53. In paragraph 24 of the Tribunal case, reference is made to '*implicit duties of confidence being the norms of many situations.*' It is the Commissioner's view that the confidentiality expected between parties in relation to certain aspects of the caravan site licence process provides for a more open, free and, in some cases, frank and honest discussion and this makes for a more effective process.
54. The council has advised that it has considered whether the information could be provided to the complainant in a redacted format. It states that the information should be withheld in its entirety as it contains technical information on the stability of the land and was evidence to be used in a forthcoming appeal.
55. However, as stated previously, it is pertinent to note that, at the time of the request, the appeal process itself was complete, and agreement had been reached on the conditions of the licence. Therefore, this argument presented by the council, in isolation, does not carry much weight in this particular case.
56. The Commissioner accepts that there is a possibility that small elements of the content of the two letters may be already in the public domain. However, having considered the context in which such information is held, that being in the form of advice to the council about how it should manage certain issues relating to the licence and appeal, and also the negotiations with the site owners representatives and legal team, the Commissioner accepts that any disclosure would provide more information than just the content itself. It would reveal what was being discussed and negotiated between all parties.
57. It is the Commissioner's view that it was not unreasonable for all parties to have expected that communications about the site licence would be treated in confidence. This includes not only information that may have been provided by the site owners and their representatives, but also extends to any discussions/communications between the council and its own advisors. She is also of the opinion that this expectation of confidence would not have diminished in the time period she is considering.
58. The Commissioner is therefore satisfied that the information contained within the two letters that have been withheld in this case is not trivial in nature, it is not already in the public domain and has the necessary quality of confidence. She has therefore gone on to consider whether the third criteria is met in relation to the withheld information.

**Is the confidentiality required to protect a legitimate economic interest?**

59. In the Commissioner's view, in order to satisfy this element of the test, disclosure of the confidential information would have to adversely affect a legitimate economic interest of the person (or persons) the confidentiality is designed to protect.

60. The Commissioner considers it to be necessary to establish that, on the balance of probabilities, some harm would be caused, rather than might be caused, as a result of disclosure.

61. As was the case in decision notice FER0819616, the Commissioner regards it to be relevant to give consideration to paragraph 27 of the Tribunal case when considering this element of the test; this said the following:

*'The legitimate economic interest which the confidentiality protects is that of the owners to run their business free of any unlawful interference, to have confidential exchanges with their insurers and with the council in the context of negotiations which may break new ground in the application of environmental considerations to site licencing'.*

62. Later in the same paragraph the Tribunal says:

*'We must have regard to the terms of regulation 12(5)(e) and assess whether the commercial confidentiality at issue is "provided by law to protect a legitimate economic interest." There is no legitimate economic interest in running an unsafe site or a site that causes and may continue to have an adverse environmental impact. There is a legitimate economic interest in trying to reach an agreement on site regulation which meets both legitimate environmental concerns and the fair treatment of an established business.'*

63. The Commissioner regards the withheld information to directly relate to the underlying aim to '*reach an agreement on site regulation*' that the Tribunal regarded to be of some importance in its consideration of the application of regulation 12(5)(e). Indeed, the information was created as a consequence of the formulation of the site licence and the subsequent appeal.

64. Once again, the key point for the Commissioner to consider is whether the time that has passed since this information was created means that she will take a different view to that set out in case FER0819616, i.e. would she now consider that the commercial confidentiality which was required to protect the site's legitimate economic interest no longer applies. In this instance, the Commissioner is satisfied that the passage of time does not change the position in relation to this factor.

65. The council has made reference to alleged harassment caused to the site owners by a local campaign group, Save Ecclesbourne Glen (SEG). The complainant was acting on behalf of SEG when making this particular request. The council states that the actions taken by SEG have had a detrimental effect on the site owners and their business and it regards this to be a factor that supports its decision to withhold the requested information. The Commissioner is aware that the campaign group refutes these claims of harassment.
66. The Commissioner does not regard it to be necessary to consider whether the allegations of harassment are valid or not. However, she is of the view that there is enough evidence to indicate that some of the publicity relating to the landslips and the site has presented the site in a negative light. That being said, negative publicity does not necessarily provide sufficient grounds for withholding the information. Such publicity may be warranted, it may not; that is not the issue to be determined by the Commissioner. It is only considered to be of relevance in the context of whether the release of the withheld information would cause harm to the legitimate economic interests of the site owners.
67. The council has mentioned that it is still receiving a number of information requests from SEG, stating that the group continue to request details that relate to the site, the Glen and the landslips which affected land on both of these areas. The council has said that it has real concern about the impact that this is having on the site owners and that it is necessary to maintain the confidentiality of this information; it believes the disclosure of the content of the letters at the time that the request was received would still affect the business. The council goes on to say that, due to the ongoing campaign about issues relating to the site, there has been an increased loss of growth, a reduction in bookings, and a substantial diminution in the value of the site owners business.
68. The Commissioner remains unpersuaded that it can be said with any absolute certainty that the actions of SEG have been the sole cause of any reduction in bookings and the value of the site business. However, she does support the comments made by the Tribunal about this issue:

*'While there is clear evidence of economic harm caused to the business, teasing out the contributions of the landslide (with consequent reduction in the number of pitches) and the campaigning about the landslide as the causes of that harm presents some challenges. However, it is clearly foreseeable that further disclosure would have resulted in more adverse publicity and some economic harm would flow from that.'*

69. Having taken all factors into account, the Commissioner is satisfied that there is sufficient evidence for her to conclude that, despite the time that has passed since the completion of the licence appeal, there is still a realistic possibility that the disclosure of the withheld information would harm the legitimate economic interests of the site owners. In addition, she accepts that the disclosure of the withheld information would also still result in the '*adverse publicity*' referred to by the Tribunal and that '*some economic harm would flow from that.*'
70. The Commissioner therefore concludes that the third part of the test as set out in paragraph 38 of this decision notice is met.

### **Would the confidentiality be adversely affected by disclosure?**

71. Although this is a necessary element of the exception, should the first three tests set out in paragraph 38 be met, the Commissioner considers it inevitable that this element will also be satisfied. In her view, disclosure of truly confidential information into the public domain would inevitably harm the confidential nature of that information by making it publicly available and would harm the legitimate economic interests that have been identified.

### **The public interest test**

72. As the exception under regulation 12(5)(e) is engaged, the Commissioner has gone on to consider whether the public interest in the disclosure of the requested information outweighs the public interest in maintaining the exception. When carrying out the test, the Commissioner must take into account the presumption towards disclosure provided in regulation 12(2).
73. In its representations to the complainant, the council advised that it considered the factors in favour of disclosure to be transparency and accountability.
74. The complainant states that the reason for his request was to establish and obtain copies of information held concerning the landslip and drainage.
75. The Commissioner is aware that SEG still believes that it is important for the public to have a full understanding of any factors which may relate to, or have an affect on, that area of land in Ecclesbourne Glen which was damaged by landslips.

76. The council argued that the factors against disclosure of the information were as follows:

- *Maintaining commercial confidences*
- *The correspondence contains confidential information*
- *The significance and sensitivity of the information*
- *Consideration and options and the exchange of views with a 'safe space'*
- *Maintaining the confidentiality of discussions in the interest of good governance and the perceived threat to candour and boldness in the giving of advice*
- *The caravan site licence is a private matter between the local authority and owners of Rocklands Caravan Park.*

77. The council also states that the public are not interested in the issue, stating that it has now been ongoing for over seven years and that there are only a handful of campaigners who are interested and continue to request information. The council goes on to say that the public interest has been fully tested by the Tribunal when it reached its decision.

78. In response, the Commissioner believes it important to consider the point that, when deciding whether to apply an exception, public authorities must assess all the circumstances of the case at hand, and not simply make blanket rulings.

79. Furthermore, there is always a general public interest in disclosure, deriving from the fundamental purpose of the EIR. There is also some public interest in disclosing information to present a full picture. The complainant indicates that this was a motivating factor when making this request.

80. However, the Commissioner does also accept that the factors that determine the weight of the arguments for and against disclosure can include how far disclosing the information would serve the public interest, and what information is already in the public domain.

81. The Commissioner is aware that public authorities will place certain information about the licensing process in the public domain. As she understands it, *the 'Caravan Sites and Control of Development Act 1960'*<sup>4</sup> sets out the main provisions with regards to the licensing and control of caravan parks. Section 25 of this statute provides that a licensing authority must provide a public register that contains a record

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<sup>4</sup> <https://www.legislation.gov.uk/ukpga/Eliz2/8-9/62>

of the licences which it has issued. It does not extend this to a copy of the licence itself, or any associated documents which form part of the decision making process.

82. Nevertheless, the Commissioner is aware that many public authorities will, for the purpose of openness, transparency and accountability, make licences available upon request. This will provide the public with an awareness of the conditions of the licence and what the licence holder is required to do in order to comply. If a member of the public has concerns about any of the stipulations of such a licence they can, in the first instance, contact the council about this.
83. The Commissioner accepts that there is a strong public interest in understanding the causes of the landslips and the future management of the land at Ecclesbourne Glen. In addition, whilst it may possibly be the case that there is evidence that the land has now shown signs of stabilisation, it is important that the public has confidence that sufficient steps have been taken to minimise the possibility of any future landslips occurring. She is also fully aware that there has been some public concern about the operation and management of the site itself.
84. The Commissioner appreciates that certain members of the public may have strong views on matters relating to the site, and the landslips, and she notes that, rightly or wrongly, there appears to be a lack of trust between parties about how some matters have been dealt with. This has consequently led to a large number of information requests being submitted to the council.
85. However, when considering the important factors of transparency and accountability, the Commissioner is of the view that a significant amount of information about Ecclesbourne Glen, the landslips/ land stability and the site has been placed in the public domain. This has provided a good understanding of what information is held by the council about the potential causes of the landslips, and the options available for the future management of the affected land. There is also planning information (including planning applications and permissions) which relate to the site that is publicly available. In addition, the site licence which the information requested relates to has also been made available to the public.
86. Whilst certain parts of the licensing process should be open and transparent and should provide for matters to be subject to public scrutiny, the Commissioner believes some importance must be placed on allowing parties to be able to communicate in confidence in respect of certain aspects of this. It is, in her view, an intrinsic part of the process and if this were not possible it would undermine the licensing process and affect the public authority's ability to fulfil its statutory obligations

effectively. The Commissioner also believes that whilst it is right and proper that the public are provided with information which will increase their understanding of the causes of the landslips, and any remedial action which is to be taken, this does not provide a right of access to all the information held by the council about the site and its business. The site owners right to privacy is also an important factor for consideration, and this does not necessarily weaken over time.

87. In addition, the Commissioner understands that licence regulations allow for alterations to be made to a licence at any time. It is not unreasonable to assume that further site licences will be issued in the future. The Commissioner does not wish to understate the importance of this being done in an effective manner; she is mindful that the disclosure of information which is held that is linked to negotiations and discussions which have taken place to reach agreement on the current licence could undermine any future negotiations which may be found to be necessary. It could also lead to a general loss of trust between licence holders and the council which, in turn, would have an impact on the latter's ability to fulfil its statutory functions effectively.
88. The Commissioner accepts that the arguments for transparency and accountability carry some weight in support of disclosure. However, in this particular instance, she is not persuaded that any value that may be derived from the disclosure of the withheld information would outweigh the potential harm which would be caused to the site owners right to run their business with some degree of privacy.
89. Taking into account all relevant factors, the Commissioner is satisfied that, despite the passage of time since the site licence was issued, the disclosure of the requested information would not be in the public interest. The harm disclosure would cause to the site owners weighs the balance heavily in favour of withholding the information in this instance. Given this, the Commissioner concludes that the council was correct to have withheld the relevant information.

## **Procedural matters**

### **Regulation 14(2) - refusal to disclose information**

90. Regulation 14 (2) of the EIR states that a refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.
91. In this instance the complainant submitted his request on 30 November 2016, and the council provided its response on 14 November 2019, and therefore outside the 20 working days. As a result, the Commissioner must find that the council has breached regulation 14(2) of the EIR.



**Regulation 11 – representations and reconsideration (internal review)**

92. Regulation 11(4) is relevant in this case; this requires a public authority to inform the requester of the outcome of the internal review as soon as possible and not later than 40 working days after that date on which an internal review was requested.
93. The complainant submitted his internal review request on 15 November 2019, but the council did not provide its response until 23 January 2020. Given this, the Commissioner also finds that the council has breached regulation 11(4) of the EIR.

## Right of appeal

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94. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

95. 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.
96. 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**