

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

### **Decision notice**

**Date:** 9 July 2012

**Public Authority:** Aldenham Parish Council  
**Address:** The Radlett Centre  
1 Aldenham Avenue  
Radlett  
Hertfordshire  
WD7 8HL

#### **Decision**

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1. The complainant has requested information relating to the possible development of Salters Field.
2. Aldenham Parish Council (the "council") dealt with the request under the Freedom of Information Act 2000 (FOIA) and withheld the requested information because it was "commercially sensitive". The council's internal review upheld its initial handling of the request.
3. The Commissioner's decision is that the requested information is environmental information and that the council should have handled the request under the EIR rather than the FOIA. He has also decided that the council failed to demonstrate that the information engages the exception relating to the confidentiality of commercial or industrial information and failed to issue a valid refusal notice.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose the withheld information to the complainant.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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6. On 13 December 2011, the complainant wrote to the council and requested information in the following terms:
  - "1) Details of any open marketing exercise undertaken by the council for the sale and or grant of a lease or other legal interest in Salters Field and the identity of all expressions of interest / bidders.*
  - 2) The basis upon which the council first engaged with and continues discussions with this third party.*
  - 3) If no competitive tendering exercise was or is being conducted – please supply the name of the third party and copies of all correspondence and email between the two parties and additionally any exchange of correspondence between Aldenham Parish Council and Hertsmere Borough Council on the subject over the period whilst discussions have taken place with the third party or 5 years whichever is the longer period.*
  - 4) Minutes of any council meetings concerning Salters Fields over the period referred to in 3 above."*
7. The council responded on 11 January 2012. In relation to part 4 of the request, it provided copies of relevant minutes that were in the "public domain". In relation to request parts 1-3, the council confirmed that it "...cannot answer this point as this matter is commercially sensitive."
8. Following an internal review the council wrote to the complainant on 6 February 2012. It stated that it was upholding its initial handling of the request.

## Scope of the case

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9. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
10. The Commissioner confirmed with the complainant that the scope of his investigation would be confined to a consideration of the council's response to parts 1-3 of the request. However, during the course of his investigation, the council provided the Commissioner with further information falling within the scope of request part 4 and confirmed that it was relying on the exemption in section 43(2) in withholding this information from the complainant. The Commissioner has issued a

separate decision notice in relation to these matters (ICO reference: FS50436026).

11. Of the additional information provided in relation to request part 4, the Commissioner has identified a number of documents which he considers contains environmental information which falls to be considered under the Environmental Information Regulations 2004 (EIR). The Commissioner advised the council of his view and the council has provided further submissions in this regard. This decision notice is confined to a consideration of the council's handling of those parts of request 4 which the Commissioner has concluded identify environmental information.

## Reasons for decision

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### Is it Environmental Information?

12. The Commissioner has considered whether the following withheld information constitutes environmental information:
  - *"Planning for the future of King George V area – notes from meeting held at 10.00am on Thursday 24 February 2010..."*
  - *"Planning for the future of King George V area – notes from a meeting held at 10.30am on Tuesday 12 April 2011..."*
  - *"Planning for the future of King George V area – notes from meeting held at 4pm on Wednesday 10 August 2011..."*
  - *"Amended (3) Heads of Terms, Appendix 4, May 2011"*
  - *"Draft Heads of Terms 14 July 2011, Appendix 5"*
13. Regulation 2(1) of the EIR defines what 'environmental information' consists of. The relevant part of the definition are found in 2(1)(a) to (c) which state that it is as any information in any material form on:
  - '(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*
  - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases*

*into the environment, affecting or likely to affect the elements of the environment referred to in (a);*

*(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements...'*

14. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner's opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor, etc. in question.
15. In this instance, the Commissioner has viewed the withheld information and notes that it contains details of prospective actions to be taken in relation to planning matter. He has concluded that such information, if held, would be likely to constitute a measure as defined in regulation 2(1)(c) of the EIR.
16. The Commissioner has gone on to consider whether the council's handling of the request complies with the provisions of the EIR.

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

17. Regulation 12(5)(e) of the EIR states:

*"(a public authority may refuse to disclose information to the extent that its disclosure would adversely affect-) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;"*

18. The Commissioner interprets the wording of 'would adversely affect' in regulation 12(5) to set a relatively high threshold in terms of likelihood which has to be met in order for any of the 12(5) exceptions to be engaged. In other words it is not sufficient that disclosure may or could have some level of adverse effect, but rather that disclosure 'would' have an adverse affect. In the Commissioner's opinion this means that the likelihood of an adverse affect must be more substantial than remote.
19. In its submission to the Commissioner the council confirmed that it was withholding the information because the "confidentiality of commercial or industrial information outweighs the public interest in disclosing the information."

20. In a separate decision notice which addresses the council's handling of the other elements of this request under the FOIA, the Commissioner comments on the burden, which he considers rests with public authorities, to demonstrate that there is a causal relationship between disclosure and an identified prejudicial effect<sup>1</sup>.
21. In this instance, the Commissioner notes that the council has failed to describe what adverse effects would result from disclosure of the information.
22. In cases where an authority has failed to explain the nature of an implied adverse effect and failed to demonstrate the causal link between any such adverse effect and the disclosure of information, the Commissioner considers that he is not obliged to generate relevant arguments on an authority's behalf.
23. In the absence of any submissions in this regard the Commissioner must conclude that the exception is not engaged.
24. As he has concluded that the exception does not apply the Commissioner has not gone on to consider the public interest arguments.

#### **Regulation 14 – refusal to disclose information**

25. Where a public authority is relying on an exception to withhold requested information, regulation 14(3) requires that it should issue a refusal notice specifying the reasons for doing so within 20 working days of the date of a request.
26. The Commissioner finds that the council failed to comply with regulation 14 of the EIR in that it failed to fully inform the complainant within 20 working days of the exception within the EIR upon which it was relying to withhold information.

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<sup>1</sup> ICO reference: FS50436026.

## Right of appeal

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27. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

28. 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.
29. 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**