

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

Date: 13 May 2013

Public Authority: Leeds City Council
Address: Civic Hall
Calverley Street
Leeds
LS1 1UR

Decision (including any steps ordered)

1. The complainant submitted a request to Leeds City Council (the Council) for a copy of the contract between it and an external contractor in relation to the provision of street lighting. The Council disclosed a copy of the contract but explained that certain parts had been redacted on the basis of regulation 12(5)(e), the confidentiality of commercial information exception. The Commissioner has concluded that the redacted information is exempt from disclosure on the basis of regulation 12(5)(e). However, the Commissioner has also concluded that the Council breached regulations 7(1) and 11(4) because it failed to respond to the request within 40 working days and also failed to complete its internal review within the same timeframe, ie 40 working days.

Request and response

2. On 15 August 2011 the complainant wrote to the Council and requested a copy of the 'Street Lighting – OBC [Outline Business Case]' and a copy of the 'Street Lighting – Final Contract'.¹
3. The Council contacted the complainant on 13 September 2011 and explained that it needed further time to consider the part of the request which sought a copy of the Final Contract ('the contract') in question. The Council provided the complainant with a copy of the OBC he had requested on 14 September 2011.
4. On 19 October 2011 the Council provided the complainant with a substantive response in relation to the part of his request that sought a copy of the contract. The Council provided the complainant with a copy of the requested contract but explained that some of the information had been redacted on the basis of regulation 12(5)(e) of the EIR, the confidentiality of commercial information exception.
5. The complainant contacted the Council on 12 January 2012 in order to ask for an internal review of the decision to only provide him with a redacted copy of the contract.
6. The Council informed the complainant of the outcome of the internal review on 24 April 2012. The review upheld the decision to redact certain parts of the contract on the basis of regulation 12(5)(e). The Council explained to the complainant that if he remained dissatisfied with its handling of his request he had the right to complain to the Commissioner.
7. The complainant contacted the Council on 22 October 2012 and explained that he remained dissatisfied with its decision to only release a redacted version of the contract and that he intended to lodge a complaint with the Commissioner.

¹ The contract in question was between the Council and Tay Valley Lighting (TVL) which is owned by Scottish and Southern Energy (SSE). TVL was awarded the 25 year contract by the Council under the Private Finance Initiative (PFI) and it began in 2006.

Scope of the case

8. The complainant contacted the Commissioner on 25 October 2012 in order to complain about the way his request for information had been handled. The complainant raised the following points of complaint:
- He argued that as the requested information related to 'emissions', by virtue of regulation 12(9) the Council could not rely on regulation 12(5)(e) to withhold the redacted information.
 - Alternatively, he argued that disclosure of the redacted information would not harm either the Council's, or its contractor's, economic interests.
 - Alternatively, the complainant argued that even if the redacted information was exempt from disclosure on the basis of regulation 12(5)(e), the public interest favoured disclosure of the redacted information.
 - Furthermore, the complainant was dissatisfied with the length of time it took the Council to respond to his request as well as the length of time it took to conduct the internal review. He was also dissatisfied that the Council's responses failed to specifically explain why each of the redactions had actually been made.

Reasons for decision

The definition of environmental information

9. Regulation 2(1) of the EIR provide a definition of environmental information. Regulations 2(1)(a) to (c) state that 'environmental information' is information 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;'

10. In the Commissioner's opinion the requested information falls within the definition of regulation 2(1)(c) because it is information on an activity, namely the provision and maintenance of street lighting and illuminated traffic signage, which is likely to affect factors covered by (b), in particular light, and the impact that this particular factor is also likely to have on the atmosphere, an element in (a).
11. For clarity, the Commissioner does not consider that requested information can be defined as environmental information under regulation 2(1)(a). Under this regulation, the information must be on the state of the elements. Although the focus of the information is on the provision of street lighting, the Commissioner does not consider that any of the requested information can be said to actually be information on the state of the atmosphere as result of the street lighting provided by the contract.
12. Similarly, the Commissioner does not consider that the requested information can be defined as environmental information under regulation 2(1)(b). Under this regulation, the information must be on a factor and the factor (not the information itself) must affect, or be likely to affect, the elements in (a). Again, although despite the subject matter of the request, the Commissioner does not consider that any of the requested information is actually information that can be said to be on a factor listed in (b), in particular, the requested information could not be said to be information on lighting. That is to say, although the contract discusses in detail the provision of the street lighting, the contract focuses on the financial and commercial aspects of such a provision rather than the technical aspects of the lighting provided.

Regulation 12(9)

13. The complainant argued that the Council had failed to take into account the effect of regulation 12(9) of the EIR. This states that a public authority cannot rely on the exceptions contained at regulations 12(5)(d) to (g) to withhold information which 'relates to information on emissions'.
14. In the Commissioner's opinion regulation 12(9) will only take effect for information that is directly **on** or about emissions; it will not take effect for information more indirectly linked to emissions (eg information on a

measure or activity affecting emissions). In other words, in order for regulation 12(9) to be relevant, information must fall directly within the definition of environmental information under 2(1)(b). For the reasons discussed above the Commissioner does not consider that the requested information falls within the definition of environmental information set out at regulation 2(1)(b). Therefore the Commissioner does not consider that regulation 12(9) can come into effect in this case and thus the redacted information is potentially exempt from disclosure on the basis of regulation 12(5)(e).

Regulation 12(5)(e) – confidentiality of commercial information

15. This regulation states that a public authority may refuse to disclose information to the extent that its disclosure would affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
16. In order for the exception to be engaged, four criteria must be met:
 - The information is commercial or industrial in nature.
 - Confidentiality is provided by law.
 - The confidentiality is protecting a legitimate economic interest.
 - The confidentiality would be adversely affected by disclosure.
17. The Commissioner has set out below the Council's submissions to justify why this exception is engaged, then summarised the complainant's counter arguments, before going on to set out his position in relation to this exception.

The Council's position

18. With regard to the first criterion, the Council explained that it was clear that the withheld information was commercial in nature given that it formed part of a contract between itself and TVL regarding the provision of street lighting.
19. With regard to the second criterion, the Council noted that for the confidentiality to operate the information must have been imparted in circumstances which created an obligation of confidence and the information must have the necessary quality of confidence. The Council explained that clause 44.1 of the contract set out that the only information contained in the contract which would be treated as confidential is that contained within schedule 23. The Council explained that the contractor regarded this information as commercially sensitive, and therefore the information was not trivial. Furthermore, the Council

explained that the redacted information was not readily available by other means.

20. With regard to the third criterion, the Council explained that the confidentiality was necessary to protect a legitimate economic interest because disclosure of the redacted information would harm both the economic interests of TVL and the economic interests of the Council.
21. With regard to the economic interests of TVL, the Council explained that disclosure of the redacted information would reveal details of TVL's methods of working (ie the services that TVL will provide and how it will provide them), its hourly rates, pricing information (which would reveal details of built in profit) and other factors unique to TVL. Disclosure of this information, which was central to TVL's business, would disadvantage TVL in any future competitive procurement. This was because, firstly, it would place the buyers of TVL's services in an advantageous position in any negotiations with TVL and secondly, it would provide TVL's rivals with a competitive advantage over TVL in any bidding process for other PFI street lighting contracts.
22. In order to demonstrate the likelihood of prejudice to such negotiations occurring, the Council explained that TVL had entered into contracts with a number of other public authorities to supply street lighting services since this request was first submitted and are currently tendering to supply such services to Cornwall Council, Harrogate Borough Council and Kirklees Council amongst others. However, there were a large number of other potential contracts that TVL/SSE would seek to tender on. TVL emphasised that even if the precise way in which the Council procured their street lighting service was not replicated by other public authorities, it was of the view that the redacted information remained commercially sensitive whatever method of procurement was followed.
23. As is noted below, the complainant argued that harm was unlikely to occur to TVL's interests because a) there are only a small number of street lighting PFI bidders and each company is likely to know the costs of its competitors; b) SSE holds a dominant position in this field because it already holds contracts for 9 of the existing 29 street lighting PFIs; and c) the contract is 6 years old and prices contained within it are out of date.
24. In response, the Council explained that TVL did not in fact know how its competitors' price and cost work. Furthermore, the number of bidders has increased over time as the street lighting market was recognised as a good market to get into. TVL explained that many of its competitors would not be considered to be traditional street lighting

contractors and, apart from PFIs, they have not had any other direct dealings with this sector. However, with the current financial constraints impacting on the construction sector some of these companies are diversifying into street lighting and are seen as a potential threat to TVL in their more traditional market.

25. Furthermore, the Council explained that it did not agree with the suggestion that TVL's relative success in securing PFI contracts leads to the conclusion that disclosure of the redacted information would not harm TVL's economic interests. Rather, by virtue of its success, this leads to the conclusion that economic harm to TVL is likely to be greater.
26. The Council emphasised that the winning tender for many contracts are decided on more criteria than just the lowest price; the quality and content of the service to be provided are usually a key criteria in assessing the winning tender. In the circumstances of this case the Council explained that TVL had been informed by clients that it is the documents which set out its methods of working that have been the deciding factor in it winning certain contracts.
27. The Council explained that the complainant had taken a rather narrow view of TVL's/SSE's market position; the redacted information did not just affect PFI contracts but relates to street lighting contracts in general. In relation to PFIs, TVL/SSE are contracted to service 34.3% of apparatus with the next largest contractor servicing 22.3% of apparatus. TVL did not consider this to be a dominant position. In terms of the overall market for UK street lighting maintenance contracts, excluding PFIs, TVL/SSE only have 9.8% of the market.
28. The Council explained that whilst TVL may have been more successful than its competitors in securing PFI contracts, the industry remained highly competitive. Moreover, whether TVL is dominant or not, it still has to compete for every contract.
29. The Council explained that although the contract was 6 years old, the prices contained within it were still relevant as a historic calculation could ascertain current market valuation and their release would therefore still have a significant impact on any future procurement exercise undertaken by TVL, or indeed on, the Council.
30. With regard to its own economic interests, the Council advanced the following arguments. Firstly, as it had made a contractual commitment to the redacted information being withheld, unless required by law, disclosure of this information without a clear legal obligation to do so would potentially leave the Council in breach of contract. This would

leave the Council facing costly dispute resolution process and/or compensation payments to TVL.

31. Secondly, as disclosure of information would result in the Council being in breach of contract this would damage the Council's reputation in the wider market and could lead to bidders for other Council procurements either being reluctant to take part or to 'risk pricing'. Both of these scenarios would reduce the value the Council is able to achieve in its procurements. In support of the likelihood of such a scenario occurring, the Council emphasised that in its correspondence with the TVL it was clearly agreed by both parties that the redacted information was commercially sensitive and should be withheld. Therefore, the Council argued that if it were to release the redacted information it would naturally reduce third parties' trust as it would suggest that highly sensitive parts of contracts that the Council entered into would be disclosed despite them being previously agreed to as confidential.

The complainant's position

32. The complainant argued that it was unlikely that disclosure of redacted information would harm TVL's economic interest given that:
- The contract is 6 years old and any prices contained are out of date.
 - The 'field' of street lighting PFI bidders contains a few companies who are likely to know what the costs of 'competitors' are. The complainant also noted his understanding that the labour force is flexible and mobile and moves from company to company.
 - SSE already holds a dominant position in this field. SSE has contracts for 9 of the existing 29 street lighting PFIs.
 - This contract has been signed for 6 years and is not now subject to bidding concerns prior to signature.

The Commissioner's position

33. With regard to the first criterion, the Commissioner's view is that for the information to be commercial in nature it will need to relate to a commercial activity, either of the public authority or of a third party. A commercial activity will usually involve the sale or purchase of goods and services, usually for profit. Given the nature of the requested information, namely a contract between the Council and TVL governing the provision and maintenance of street lighting and illuminated traffic signage, the Commissioner is satisfied that the redacted information is commercial in nature.
34. With regard to the second criterion, the Commissioner accepts that confidentiality provided by law can include a confidentiality imposed on

- any person by the common law duty of confidence, contractual obligation, or statute. In terms of any contractual obligation, the Commissioner would advise public authorities that intend to enter into such self-imposed obligations to ensure that the information has the necessary quality of confidence (ie it is not trivial and not in the public domain), as well as confirming that the contract creates an obligation of confidence.
35. In the circumstances of this case the Commissioner accepts that, in light of clause 44.1 of the contract, that TVL had an explicit expectation that the information listed in schedule 23 (which includes the redacted information) would not be disclosed. Furthermore, the Commissioner agrees with the Council that given the nature of the redacted information it has the quality of confidence given that it is not publically available and clearly more than trivial. Therefore, the Commissioner accepts that the second criterion is met.
 36. With regard to the third criterion, the Information Rights Tribunal confirmed that to satisfy this element of the test, disclosure of the confidential information would have to adversely affect a legitimate economic interest of the person the confidentiality is designed to protect. It is not enough that disclosure might cause harm to an economic interest; rather a public authority needs to establish that disclosure **would** cause harm. That is to say, the likelihood of harm occurring is more probable than not.
 37. The Commissioner recognises that legitimate economic interests could relate to retaining or improving market position, ensuring that competitors do not gain access to commercially valuable information, protecting a commercial bargaining position in the context of existing or future negotiations, avoiding commercially significant reputational damage, or avoiding disclosures which would otherwise result in a loss of revenue or income.
 38. Having considered the Council's submissions, and the content of the redacted information, the Commissioner is satisfied that disclosure of the information would harm TVL's economic interests. The Commissioner has reached this conclusion for the following reasons:
 39. In terms of the parts of the information that relate to TVL's pricing, the Commissioner notes that it is broadly accepted that a situation of information asymmetry - where one party to a commercial transaction has more (or better) information than the other - is highly likely to distort the competitive buying process to the extent that the party in a position of having less (or worse) information is commercially disadvantaged. Therefore, the Commissioner considers that it is

reasonable to argue that if such information was disclosed TVL's competitors would be placed at an advantage in any future bidding process as they would be aware of the prices that TVL had charged for previous services in the past. Similarly, if potential buyers of TVL's services knew of the prices that TVL had charged for such services in the past, again this would place TVL at a disadvantage in any negotiations. Although the contract was, as the complainant notes, 6 years old at time his request was submitted, the Commissioner is persuaded by the Council's argument that the pricing information is still sensitive.

40. In terms of the information that relates to TVL's methods of working and which detail factors which are unique to TVL, the Commissioner again accepts that it is logical to argue that if such information was disclosed this would place TVL's competitors at a significant advantage. This is because, as the Council noted, the winning tender for many contracts are decided on more criteria than just the lowest price; the quality and content of the service to be provided are usually a key criteria in assessing the winning tender. Given the feedback that TVL has had in relation to its methods of working, ie they have been the deciding factor in it winning a number of contracts, it is very clear to the Commissioner that if TVL's competitors were able to access such information this would place them a notable commercial advantage over TVL.
41. Furthermore, the Commissioner accepts that the likelihood this harm occurring to TVL's interests is one that meets the threshold of 'would' in light of the following factors: It is clear that at the time of the request TVL was actively competing for further street lighting contracts and thus the chances of the harm described above is one that is not merely hypothetical. The likelihood of any harm occurring is also increased given that disclosure of the information has the potential to harm TVL's position not just in relation to PFI contracts but also in relation to all street lighting contracts. The Commissioner also considers that the likelihood of harm is increased given the competitive nature of the market as described in the Council's submissions. Finally, the Commissioner would agree with the Council's assessment that TVL would not appear to have a dominant position in the PFI street lighting market, and in any event, he endorses the Council's position that TVL's perceived success in securing past contracts increases, rather than decreases, the likelihood that disclosure of the redacted information would harm TVL's interests.
42. In terms of the harm to the Council's own economic interests, the Commissioner is prepared to accept that given TVL's explicit expectation that the redacted information would be treated

confidentially, it is not implausible to argue that disclosure of this information could result in the Council facing a costly dispute resolution process and/or compensation payments if the redacted information was disclosed. However, in the Commissioner's opinion it is a little circular to argue that the confidentiality clause was designed to protect the Council from costly disputes if it breached that confidentiality and thus he does not accept that this argument can be used to engage the exception. (However, the Commissioner accepts that this argument can still be relevant in terms of the public interest in maintaining the confidentiality).

43. Nevertheless, the Commissioner accepts the logic of the Council's argument that disclosure of the redacted information would make it more difficult for the Council secure best value for money in future negotiations and further that such a consequence would harm its economic interests.
44. The Commissioner is therefore satisfied that the third criterion is met because disclosure of withheld information would harm the economic interests of both the Council and TVL.
45. With regard to the fourth criterion, in the Commissioner's opinion once the first three criteria are met it is inevitable that the fourth criterion will also be met. This is because 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 also harm the legitimate economic interests that have already been identified.

Public interest test

46. Regulation 12(5)(e), like all of the exceptions contained within the EIR, is a qualified exception and therefore the Commissioner must consider whether the public interest in maintaining the exception outweighs the public interest in disclosing the redacted information.

Public interest in favour of disclosing the redacted information

47. The complainant explained that the purpose of his request was to establish whether the scheme provided value for money at present, and if not, what steps can be taken to ensure that it does. Release of the financial arrangements within the contract was therefore critical so that a balanced view of whether the scheme is failing or succeeding could be made.

48. The complainant emphasised that there had been a significant public and media interest in the contract, especially in terms of the environmental impact of the scheme and how the costs of the scheme affected this impact. The complainant argued that because the Council and TVL had refused to disclose information which confirmed whether or not the costs incurred were justified - either in terms of the alleged environmental friendliness of the scheme or that such costs were actually directed towards actual carbon savings – the public were not able to make a judgment as to whether the contract had been implemented with due diligence.
49. In terms of the environmental impact, the complainant argued that the Council had failed to incorporate substantial public concerns in respect of the environmental impact of the chosen technology.
50. The complainant argued that in withholding the redacted information the Council had emphasised the economic needs of TVL over the economic interests of the public.
51. The complainant argued that withholding the redacted information puts the contract beyond the scrutiny of the public and councillors and as a result the Council has failed to promote accountability and transparency in the spending of public money. Consequently, the public cannot assess whether the contract offers best value and is financially beneficial to the Council and/or whether it is affordable.

Public interest in favour of maintaining the confidence

52. The Council acknowledged that there would be a public interest in the disclosure of information which led to a greater awareness of environmental matters, free exchange of views and more effective participation in environmental decision making. However, the Council argued that it was difficult to see how disclosure of the redacted information would further these particular interests.
53. The Council argued that it was not in the public interest to harm its economic interest in terms of future procurement exercises; that is to say it was in the public interest for the Council to secure best value for money.
54. The Council noted that disclosure would be likely to have serious and real ramifications in terms of its relationship with TVL and that the public interest was best served by a smooth and efficient provision of services.

55. The Council emphasised that significant amounts of information about the scheme had been placed into the public domain, via reports to the Council's Executive Board, the redacted version of the contract, and via individual meetings and correspondence with member of the public about the scheme.
56. In light of the complainant's suggestion that withholding the redacted contract in response to his request had put scrutiny of the contract beyond councillors, the Commissioner asked the Council to clarify whether councillors had, or indeed would be able to, view an unredacted copy of the contract. In response the Council explained that throughout the procurement process the PFI Project Board were required to report progress to the Executive Board of the Council at key stages and to request the required approvals to allow the Council to enter into the contract. Furthermore, reports were presented to the Environment and Community Safety Board in relation to the environmental impacts of the scheme. A full member briefing seminar was also held, and as works progressed, individual member briefings were held for those members who agreed to them. The Council explained that in addition to the above, councillors with responsibility for this area of the Council's work, eg the relevant Executive Member and the Council Leader, would have had access to the unredacted contract if requested. The Council explained to the Commissioner that it was not aware of an instance of a Councillor requesting but being refused access to an unredacted version of the contract.
57. The Council emphasised that following the Veolia case, the First Tier Tribunal (Information Rights) held that the disclosure of confidential information by a public body engages the European Convention on Human Rights (ECHR) rights of the holder of the confidence.² Consequently, the presumption in favour of disclosure of all environmental information held by public bodies must now be read subject to an exception in the case of any information which is held by the public body subject to a legal duty of confidentiality. Where environmental information is held by a public body which is subject to a legal duty of confidentiality, there is recognised to be a strong public interest in the maintenance of valuable confidential information. The Council argued that in this case it did not believe that there were sufficient arguments to justify overriding this duty of confidence.

² Veolia ES Nottinghamshire Ltd v Nottinghamshire County Council [2010] EWCA CIV 1214 and Staffordshire County Council v IC & Sibelco (UK) Ltd EA/2010/0015.

Balance of the public interest test

58. Before considering the weight that he considers the various public interest arguments attract, the Commissioner wishes to emphasise that he does not accept the Council's position that in light of the Veolia case, and approach of the Tribunal in Staffordshire that there can be no presumption in favour of disclosure where the information at issue is held in confidence.
59. Rather, the Commissioner's view is that the Court of the Appeal's decision in the Veolia case was simply that ECHR rights in relation to the disclosure of confidential information required a balancing exercise in all the circumstances of the case. For example, para 128:

'In my judgment it would be desirable if it were possible to state a bright-line test such that confidential information would always trump the public interest test (or not), save possibly in exceptional circumstances... However, that is not the way that the ECHR works, and the second paragraphs of those articles which allow for justification are well-known to require a fact-sensitive and nuanced approach to individual cases in which the private and public interests involved have to be balanced in the interests of proportionality.'

60. An absolute right of access such as that under the Audit Commission Act 1998 was therefore inappropriate. However, the Court said nothing to alter the way in which the public interest should be assessed under the EIR. Essentially the existing public interest balancing exercise under the EIR will satisfy the need for a "fact-sensitive and nuanced" proportionality balance.
61. Consequently, on this point the Commissioner prefers the approach taken by the First Tier (Information Rights) Tribunal in the *Nottinghamshire County Council v Information Commissioner, Veolia ES Nottinghamshire Ltd & UK Coal Mining Ltd* which is that the relevant ECHR provisions 'result in the same kind of proportionality balancing exercise that is already inbuilt within the exceptions and exemptions within FOIA and EIR' (para 74.)³ Therefore, in the Commissioner's opinion regulation 12(2) of the EIR - which states that in considering

³ [Nottinghamshire County Council v Information Commissioner, Veolia ES Nottinghamshire Ltd & UK Coal Mining Ltd \(EA/2010/0142\)](#)

the exceptions a public authority shall apply a presumption in favour of disclosure - will continue to apply.

62. Nevertheless, the Commissioner is satisfied that the public interest in this case favours maintaining the exception. The Commissioner has reached this conclusion for the following reasons:
63. The Commissioner recognises and respects the complainant's concerns in relation to both the costs of the scheme and the environmental impact of the technology employed by TVL. The Commissioner accepts that such concerns should not be dismissed lightly given the significant costs of the scheme, concerns as discussed in the press regarding potential overspends⁴, and indeed the length of the contract, namely 25 years. However, in the Commissioner's opinion given that the redacted information is very much focussed on the technical commercial arrangements between the Council and TVL, in the Commissioner's opinion the degree to which disclosure of the redacted information would, or could, genuinely inform the public about some of the environmental concerns raised by the complainant is limited. Nevertheless, the Commissioner recognises that parts of the withheld information would allow the complainant, or indeed other interested members of the public, a greater ability to scrutinise the commercial basis of the contact between the Council and TVL and to that extent would, as the complainant argues, make the Council more transparent in relation to how public money is spent.
64. However, the Commissioner does not accept the complainant's line of argument that by refusing to disclose an unredacted copy of the contract under the EIR, the Council is effectively putting the contract beyond the scrutiny of its councillors. As is clear from the Council's submissions to the Commissioner, councillors were kept fully briefed on the scheme and relevant councillors would, if they wished, have been able to examine an unredacted version of the contract. As evidenced by the Council's submissions on this point, there are already procedures and mechanisms in place by which scrutiny of contracts by councillors takes place. Nevertheless, the Commissioner wishes to emphasise that the existence of scrutiny by councillors does not mean that the public interest is reduced either as the EIR provide an additional form of scrutiny.

⁴ <http://www.bbc.co.uk/news/uk-england-leeds-15219798>

65. With regards to the public interest in favour of maintaining the exception, the Commissioner does not consider that it is in the public interest that third parties have their economic interests harmed simply because they have entered into contracts with a public authority body. Furthermore, the Commissioner considers that it is firmly in the public interest that the Council's ability to secure value for money in future procurement exercises is not undermined. The Commissioner considers that significant weight should be given to these factors.
66. Moreover, the Commissioner considers that there will always be some inherent public interest in maintaining the principle of confidentiality and the relationship of trust. In the particular circumstances of this case the Commissioner considers that this argument should be given additional weight given that the Council has demonstrated how disclosure of the withheld information would undermine its relationship not only with TVL but also with other parties in the future.
67. In light of this weight, and the fact that the extent to which disclosure of the redacted information would genuinely serve the public interest arguments in favour of disclosure are limited, the Commissioner has concluded that the public interest favours maintaining the exception. In reaching this conclusion the Commissioner wishes to emphasise that he is not dismissing the validity of the complainant's central argument – namely that there is a public interest in a public authority being transparent about how it spends public money. However, a balance has to be struck between how transparent a public authority can be about its commercial dealings before such transparency begins to actually undermine the public interest given the harm that such disclosures can cause to a public authority's economic interests. In the circumstances of this case, and for the reasons discussed above, the Commissioner does not consider that complete transparency, ie disclosure of an unredacted contract, is in the public interest.

Regulations 5 and 7 – time to respond to a request

68. Regulation 5(2) requires a public authority to respond to a request no later than 20 working days after the date of receipt of the request. Regulation 7(1) allows a public authority to extend this 20 working day period to 40 working days if it considers that the complexity and volume of the information requested makes it impracticable to respond to the request within 20 working days. Nevertheless, if a public authority wishes to extend the time limit it must contact the requestor and inform them of this no later than the 20 working days after the date of the request.

69. In the circumstances of this case, the Council did contact the complainant within 20 working days of his request and informed him that it needed more time to consider his request: the request was submitted on 15 August 2011 and the Council contacted the complainant on 13 September 2011. However, the Council did not inform the complainant of the outcome of its deliberations until 19 October 2011 which exceeded the additional 20 working days it was allowed to take. The Commissioner has therefore concluded that the Council failed to comply with the requirements of regulation 7(1) by failing to respond to the request within 40 working days.

Regulation 11 – representations and reconsiderations

70. Regulation 11(4) requires a public authority to inform a requestor of the outcome of an internal review within 40 working days. In this case the complainant requested an internal review on 12 January 2012. However, the Council did not inform him of the outcome of the internal review until 24 April 2012. The Commissioner therefore finds that the Council breached 11(4) by failing to complete the internal review within 40 working days.

Regulation 14(3) – refusal to disclose information

71. Regulation 14(3) states that if a public authority seeks to refuse a request, it must specify the reasons not to disclose the requested information, including specifying which exceptions it is relying on, and the matters it considered in reaching its decision in respect of the public interest test.
72. The complainant explained that he was dissatisfied with the Council's refusal notice because it failed to specifically explain why each of the redactions had actually been made.
73. In the Commissioner's opinion the level of detail included in the refusal notice is sufficient to meet the requirements of regulation 14(3). This is because it describes the nature of the redacted information and explains why the Council believes that this information is exempt on the basis of regulation 12(5)(e). Although the notice does not refer specifically to each redaction in question, given the number of redactions the Commissioner notes that that this would have been practically very difficult and in his view not necessary to meet the requirements of regulation 14(3).

Right of appeal

74. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

75. 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.
76. 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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