

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

Date: 12 September 2013

Public Authority: New Forest National Park Authority
Address: Lymington Town Hall
Avenue Road
Lymington
SO41 9ZG

Decision (including any steps ordered)

1. The complainant, on behalf of a planning consultancy, submitted a request to New Forest National Park Authority (the NPA) for two documents about a particular planning appeal. The NPA refused to disclose this information on the basis of regulation 12(4)(b) (manifestly unreasonable) and regulation 12(4)(d) (material still in the course of completion, unfinished documents and incomplete data). The Commissioner has concluded that regulation 12(4)(b) is not engaged and although regulation 12(4)(d) is engaged the public interest favours disclosing the requested information.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose to the complainant a copy of the 'Rule 6 statement' and 'Statement of Case' which he requested on 20 July 2012.
3. 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

4. On 20 July 2012 the complainant submitted a request to the New Forest National Park Authority (the NPA) in which he asked for drafts of a 'Rule 6 statement' and 'Statement of Case' relating to a particular planning appeal.¹
5. The NPA responded on 17 August 2012 and explained that the request was being refused on the basis of two exceptions namely, regulation 12(4)(b) (manifestly unreasonable) and regulation 12(4)(d) (material still in the course of completion, unfinished documents and incomplete data). The NPA concluded that for both exceptions the public interest favoured withholding the information.
6. Another representative of planning consultancy A contacted the NPA to ask for an internal review of this decision on 29 August 2012.
7. Hampshire County Council carried out the internal review on behalf of the NPA and informed the complainant of the outcome on 1 October 2012. The review concluded that the requested documents were indeed exempt from disclosure on the basis of regulation 12(4)(d) and the public interest favoured maintaining this exception. In light of this finding the review did not go on to consider the application of regulation 12(4)(b).

Scope of the case

8. The complainant contacted the Commissioner on 27 November 2012 to complain about the way this request for information had been handled. In his letter of complaint, the complainant explained that in light of the comments contained in the internal review response, he could only conclude that the regulation contained at regulation 12(4)(b) was no longer being relied upon. In any event, he disputed the application of both exceptions and provided submissions to support his position. These submissions, along with the further submissions provided during the course of the Commissioner's investigation, are referred to below.

¹ The complainant submitted this request on behalf of a particular planning consultancy which is referred to as planning consultancy A for the purposes of this notice. This consultancy represented the individuals who had brought the planning appeal to which this request relates.

9. The Commissioner has established with the NPA that it remains of the view that the withheld information is exempt from disclosure on the basis of both exceptions originally cited in its refusal notice of 17 August 2012.

Reasons for decision

Regulation 12(4)(b) – manifestly unreasonable

10. This regulation of the EIR allows a public authority to refuse to comply with a request if it is deemed to be manifestly unreasonable. The factors that the Commissioner takes into account when determining whether a request is manifestly unreasonable are to a large degree the same factors which he would take into account in determining whether a request is vexatious under FOIA. However, regulation 12(4)(b) is a qualified exception and therefore subject to the public interest test.
11. Since the NPA refused this request, and indeed since the Commissioner commenced his investigation of this case, the Commissioner has updated his guidance regarding vexatious requests. Consequently, although the NPA provided submissions to support its reliance on regulation 12(4)(b) based upon the Commissioner's previous guidance on vexatious requests, the Commissioner has considered these submissions with reference to his updated guidance.²
12. This guidance explains that the purpose of section 14(1) of FOIA, and for the purposes of this case, regulation 12(4)(b), is to protect public authorities by allowing them to refuse any requests which have the potential to cause a **disproportionate** or **unjustified** level of disruption, irritation or distress.
13. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority. Where relevant, this will involve the need to take into account wider factors such as the background and history of the request.

² A copy of the Commissioner's latest guidance is available here:
http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

The NPA's position

Background and general context

14. In its submissions to the Commissioner the NPA explained that the complainant's previous dealings with it were directly relevant to its decision to refuse this request. It explained that since 2007 (when the complainant left the employment of the NPA) he continued to correspond with it on a number of matters in a personal capacity, in his work as a freelance planning agent and in connection with his work for the planning consultancy on behalf of which he had submitted this request. The NPA explained that the complainant's correspondence predominantly relates to planning development controls. The NPA explained that the complainant's contact with it had generated a significant volume of correspondence and encompassed a variety of forms:
- items of general correspondence and planning queries, including letters, emails and phone calls;
 - Information requests; and
 - Complaints regarding the NPA's handling of particular planning matters and about the conduct and actions of various members of staff.
15. The NPA explained that it continued to log items of written correspondence and this now amounted to 180 items received from the complainant (the Commissioner was provided with a copy of this log). However, the NPS emphasised that it should be noted that it had been difficult to log and handle the complainant's correspondence regarding complaints and information requests as he had made complaints about ongoing information requests and information requests about ongoing complaints. It argued that the volume and frequency of this correspondence had placed a significant burden on the NPA in terms of expense and distraction.
16. The NPA noted that the complainant had previously complained to the Commissioner about a decision by it to refuse a request on the basis of regulation 12(4)(b), and the Commissioner concluded that on that occasion this exception had been correctly applied.
17. Furthermore, the NPA argued that in the context of the complainant's other dealings with it, it was reasonable and legitimate for it to see this request, albeit one submitted on behalf of planning consultancy A, as a continuation of a pattern of behaviour of the *complainant*. In support of this approach, the NPA argued that the complainant could not be separated from this request and nor could the request be treated as purely made by planning consultancy A. The NPA explained that in his dealings with it the complainant has himself blurred the lines between

his private and business dealings; he had used both his personal email account and his email account with planning consultancy A. Moreover, the NPA explained that when the request was submitted, and when the internal review was sought, neither the complainant nor the planning consultancy were instructed to act on behalf of the individuals who had submitted the particular planning appeal. Therefore, the NPA argued that it could only conclude that the complainant was acting in his personal capacity in submitting this request.

Impact on the NPA

18. The NPA explained that it took the view that complying with this individual request in isolation would not impose a significant burden in terms of expense or distraction. However, it took the view that if the information was disclosed to the complainant, based upon his past behaviour, it is highly likely that he will challenge the opinions of the author and/or contents of the two requested documents and seek to open dialogue on a matter that is concluded. In other words, disclosure of the requested information would result in a great deal of further correspondence on this matter as well as encouraging the complainant to make further requests that are manifestly unreasonable in nature. The NPA emphasised that it was a small authority with limited resource and the complainant already took up a disproportionate amount of its time compared to other local planning agents.
19. The NPA accepted that the complainant did not use aggressive or abusive language in his correspondence. However, it noted that in the past he made complaints about members of staff at the NPA and such complaints (and associated information requests) had the effect of harassing the NPA and causes unwarranted anxiety to staff.

Lack of any serious purpose or value

20. The NPA explained that although the request was submitted on 20 July 2012, there had been some protracted email dialogue prior to the request about related matters. The NPA contacted the complainant on 8 August 2012 in order to confirm whether he wished to pursue the request given that the appellants had settled the claim for costs in full. The complainant confirmed on the same day that he did. At this point the NPA believed that the complainant no longer represented the appellants and it therefore took the view that not only had the matter been concluded (with the costs having been paid in full) but that the complainant no longer had a professional interest in the matter at the point when the complainant confirmed his desire to pursue the request.
21. At the point when the internal review was being undertaken, the NPA contacted the appellants and asked them to confirm when the complainant had ceased to represent them on this planning matter.

They confirmed that as of 1 August 2012, the complainant/planning consultancy A were no longer instructed to act on their behalf.

22. The NPA noted that the complainant has intimated that the reason he needed the requested documents was to establish whether the requested costs were in line with the time taken to prepare the documents. However, the NPA explained that as is standard practice the appellants, and planning consultancy A as their agents, had been provided with a breakdown of how the costs had been arrived at. The NPA explained that it could only assume that the appellants were satisfied with the sum involved as they settled the claim in full.
23. Consequently, the NPA took the view that since the costs were met in full, and that the complainant no longer had a professional involvement in the matter, then there was no serious purpose in him pursuing the matter. Rather, the NPA argued that this was evidence that the request was obsessive in nature and further evidence of the complainant's tendency to prolong correspondence on matters which have already reached a natural conclusion.

Weighing exercise

24. The NPA argued that it was entitled to conclude that this request was manifestly unreasonable given that the lack of any serious purpose or value to the request, and indeed the minimal public interest in disclosure of the information, when balanced against the detrimental impact on the public authority that complying with the request would have.

The complainant's position

Background and general context

25. In relation to this criterion, the complainant argued that the vital point that needed to be made was that this request was one submitted by planning consultancy A and was **not** a request submitted by him in his own right. The complainant argued that there was no link between work that he does in a private capacity and work for planning consultancy A. Therefore the complainant argued that it was entirely inappropriate for the NPA to link this request – made by planning consultancy A – to requests the complainant had made, in his own right, to the NPA in the past. The complainant therefore argued that the NPA's approach of arguing that this request was manifestly unreasonable because it represented a pattern of his behaviour in terms of his previous requests, complaints and correspondence was flawed; in other words his previous behaviour could not, in his opinion, be taken into account. The complainant emphasised, as the representative of the planning consultancy A noted in the request for an internal review, the consultancy itself had no history of submitting requests or complaints to the NPA. The complainant suggested that if planning consultancy A knew

that the NPA's handling of its request would have been influenced by the fact that the complainant was the author of the request then it would have simply got someone else to submit the request.

26. Furthermore, he emphasised that the NPA's suggestion that this cannot be treated as purely made by consultancy A is groundless. The clients in question have never been his clients, but the clients of the planning consultancy. In terms of the blurring of lines by using both email addresses, the complainant explained that he uses both emails simply because he works from home a significant amount of time where he cannot use the planning consultancy's email account.

Impact on the NPA

27. The complainant argued that there was no plausible basis to argue that complying with this particular request could cause the NPA disruption, irritation or distress. He suggested that the requested information was in the form of documents which he presumed were still held on the NPA's files and thus could be retrieved and disclosed with minimal effort. Furthermore, the complainant argued that he could not see how the documents prepared in relation to a planning appeal, itself a public process, could possibly have any sensitivity.

Lack of any serious purpose or value

28. The complainant emphasised that the Commissioner's guidance on vexatious requests explained that it was not necessary for a public authority to question the motives behind a request but rather to consider 'transparency for its own sake', which he suggested was exactly the issue at question in this case. The complainant argued that planning consultancy A had a contractual and professional obligation to its clients in relation to the work it does on their behalf. In this case, the work included the submission of a planning appeal and also advice on the application for costs. The complainant explained that it was the clients' decision to pay the NPA the sum it did, but that it did not conclude any obligations surrounding the client-company relationship, which it argued is still a live issue and which is no concern to the NPA. Moreover, the complainant suggested that whilst the NPA were of the opinion that as the costs had been met by the clients there was no need for planning consultancy A to pursue this matter, respectfully this was a matter for the planning consultancy to decide and it was no business of the NPA to have any say in how it dealt with its clients.
29. Furthermore, the complainant argued that the requested documents had now been paid for and it was entirely right that there should be transparency in the financial transaction which has taken place. The fact that disclosure of these documents also would assist a business-client relationship simply confirmed the reasonableness of the request.

30. The complainant emphasised that in terms of the timing of the request, even if one accepts that the planning consultancy's relationship with the clients ended on 1 August (which it did not accept), then the request was submitted on 20 July so if the request is properly assessed as at this date, then the consultancy still had a professional relationship which strengthens the serious purpose and value of the request.
31. Finally, the complainant argued that there was a public interest in the NPA being open and transparent about the evidence which underpins its request for costs. It was only the release of the requested information that could avoid the potential of anything being misconstrued as it will demonstrate the level of work done and the likely time to have been taken by the NPA.

The Commissioner's position

Background and general context

32. As is clear from the above there is a fundamental disagreement between the complainant and the NPA as to whether any links should be made between this request and the complainant's previous interactions with the NPA, and thus whether the complainant's previous interactions can be used to support the application regulation 12(4)(b). The Commissioner has considered this point very carefully and having taken into account both parties' submissions, he is more persuaded by the complainant's line of argument. Therefore, the Commissioner agrees with the complainant that it would not be appropriate for the NPA to take into account the complainant's previous history with it when applying regulation 12(4)(b) to this request. The Commissioner has reached this decision for the following reasons:
33. Based simply on an objective reading of the correspondence associated with this request it is difficult not to conclude that this particular request was submitted by the complainant on behalf of planning consultancy A, in pursuance of information associated with a matter which the planning consultancy, not the complainant directly, were instructed by the appellants. The fact that a director of the consultancy submitted the internal review request is sufficient evidence, in the Commissioner's opinion, that the requested information was being sought not by the complainant for his own interests, but actually for the interests of the planning consultancy. (As to whether those interests are indeed ones of substance are discussed below.)
34. Therefore, whilst the complainant clearly has a significant history of interaction with the NPA on matters which are on a related subject matter (i.e. planning), in the Commissioner's opinion it is possible to separate the complainant from the request. The Commissioner does not believe that this distinction is undermined, in the circumstances of this

particular request at least, by the fact that the complainant has in the past used his two email addresses interchangeably. This is because of the clarification provided by the complainant as to why he uses two separate email addresses interchangeably.

35. Fundamentally, and key to the Commissioner's decision is his opinion that it would be unfair to the planning consultancy if the complainant's history of interaction with the NPA was taken into account when determining whether this request was considered to be manifestly unreasonable. In essence, to take such an approach would penalise the planning consultancy and undermine its own right to ask for information under the EIR simply because it used the complainant, rather than another of its employees, to submit this request to the NPA.
36. In reaching this conclusion, the Commissioner wishes to emphasise that if the complainant had submitted this request in his own right then his previous history of interactions with the NPA would of course be directly relevant. Moreover in the Commissioner's view such a history of interaction would have provided the NPA with strong grounds for arguing that such a request would be manifestly unreasonable.
37. Furthermore, if the NPA had argued and provided evidence that planning consultancy A and the complainant were in fact acting in concert in pursuit of a joint campaign or objective (rather than that two were effectively one and the same person) the Commissioner would have taken this into account. However the NPA presented no such arguments or evidence to him.
38. If in the future, a pattern of similar requests were to be made by the complainant on behalf of the planning consultancy, the Commissioner may reconsider his assessment of the relevance of the complainant's own background in the light of any new evidence provided. However, in the circumstances of this particular request the Commissioner does not accept that the NPA has justified why the complainant's own prior interactions with the NPA can be used as evidence to argue that this request is manifestly unreasonable.

Impact on the NPA

39. In light of this finding, the Commissioner is not persuaded that responding to this request would be likely to cause the NPA a disproportionate or unjustified level of disruption, irritation or distress.

Lack of any serious purpose or value

40. With regard to the serious purpose of the request the Commissioner recognises that there seems to be some disparity between the NPA's position and the complainant's as to when the consultancy ceased representing the appellants (or indeed if they still are). The

Commissioner has seen the email from the appellants to the NPA confirming that as of 1 August 2012 neither the complainant nor the planning consultancy were representing them. The complainant would appear to be dispute this suggestion.

41. However, the request was submitted on 20 July 2012 and the Commissioner believes that the application of exceptions should be considered at the point at which a request was submitted. Therefore, at the date of this request the Commissioner accepts the appellants were still represented by the planning consultancy and thus the consultancy still had some professional interest in the matter.
42. Nevertheless, the Commissioner is of the view that even despite this professional interest, the actual value in the information being disclosed would appear to be limited given that at the point the request was submitted the appellants had paid the NPA's costs of the appeal. Moreover, the NPA had provided both the appellants and the planning consultancy with the breakdown of how the costs were arrived at. Consequently, from the Commissioner's perspective the planning consultancy would presumably have had some understanding at least of as how the NPA incurred the costs that it had even without the draft documents being disclosed. Furthermore, even if they continued to dispute the basis of such costs, given the appellants' decision to pay the costs, the accuracy or otherwise for such costs was clearly to some extent a moot point. Moreover, beyond the value of disclosing this information the interested parties, the Commissioner believes that the wider public interest in disclosing such information is very limited, beyond of course the generic public interest of a public authority

Weighing exercise

43. In conclusion the Commissioner believes that the serious purpose and value of this request is limited. Nevertheless, given that he has found that the complainant's own background with the NPA cannot be taken into account, and thus the impact on the NPA in answering this request is not one that can be considered to be disproportionate, the Commissioner cannot find that this request is one that is manifestly unreasonable. Consequently, the NPA cannot rely on regulation 12(4)(b) to refuse this request.

Regulation 12(4)(d) - information in the course of completion, unfinished documents and incomplete data

44. Regulation 12(4)(d) states that a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.

45. The NPA argued that the requested information clearly fell within the scope of this exception given that they were unfinished documents prepared by it as part of its preparation for the appeal which ultimately did not proceed. Furthermore it argued that it had no intention of finishing the documents.

46. In support of this position the NPA referenced the Commissioner's guidance on this exception, in particular paragraph 10 which states:

*'A document may be unfinished because it the authority is still working on it at the time of the request or because work on it ceased before it was finalised and there is no intention to finalise it. Furthermore, draft documents will engage the exception because a draft of a document is by its nature an unfinished form of that document. Furthermore, the Information Tribunal has found, in the Eddington case below, that a draft version of a document is still an unfinished document, even if the final version of the document has been published.'*³

47. The complainant argued that exception was not engaged. Rather, he argued that documents requested were effectively 'finished' for the purposes of this planning appeal. In support of this position he noted that the documents involved are the subject of the charge levied on the appellants as payment for the costs of the NPA to produce them. The appeal was withdrawn so no further work would, or indeed could, be done to them. He therefore argued that this was not a situation where a 'draft' document had been superseded by a 'final' version. Furthermore the complainant emphasised that that the Commissioner's guidance simply noted that a document only 'may' be considered unfinished if there was no intention to finalise it. The complainant suggested that this was one of those scenarios where the Commissioner would consider external events to have dictated the final status of, and condition of, the documents in question.

48. The Commissioner is not persuaded by the complainant's arguments. Rather, he is satisfied the requested information clearly comprises two documents that are in an unfinished state. The reason why they were incomplete and unfinished is obviously the fact that the appeal had been withdrawn by the consultancy's clients. However, the Commissioner does not accept the argument that because appeal was withdrawn and thus no further work would be undertaken on the requested information,

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http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Detailed_specialist_guides/eir_material_in_the_course_of_completion.ashx

this somehow elevates the documents to a 'finished' status. On any objective consideration of the facts of this case, the documents clearly remain unfinished and thus are exempt from disclosure under the EIR on the basis of regulation 12(4)(d).

49. Regulation 12(4)(d), 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 requested information. Regulation 12(2) of the EIR states that a public authority shall apply a presumption in favour of disclosure.

Public interest in favour of maintaining the exception

50. The NPA submitted the following arguments in favour of maintaining the exception:
51. Firstly, the documents are not complete nor have they been subject to final checking and as a result it is possible that they may not represent the NPA's final position.
52. Secondly, because of this status of the information, the NPA was concerned that the complainant may take exception to some of the wording of the documents and this will result in a further burden on it in terms of answering his inevitable further correspondence. The NPA noted that the complainant was an ex-employee of New Forest District Council (NFDC) which was previously the planning authority for this area, and although not referred to by name, the complainant was the NFDC officer who undertook some of the site visits in the 1990s that are referred to in the requested information.
53. Thirdly, the NPA argued that the site in question had a long history of planning issues and it is likely that further planning applications and/or enforcement action will occur at this site in the future. The NPA therefore argued that there was merit in its position regarding the site not being misinterpreted as a result of draft documents being disclosed.
54. Fourthly, there is no positive public interest in disclosing the requested information given that that the appellants have now withdrawn their appeal and paid the NPA's costs.

Public interest in favour of disclosing the requested information

55. The complainant argued that the appellants, members of the public, had been ordered to cover the NPA's costs of producing the requested information without knowing whether the amount of money claimed was fair. He argued that it must be in the public interest for the NPA to be absolutely transparent when dealing with financial transactions with members of the public. The complainant argued that there was no way

of knowing, other than disclosing the requested information, about the precise extent and nature of the work undertaken. Indeed it was only through not disclosing the requested information that there would be any potential for the situation to be misconstrued.

56. The complainant suggested that if the NPA had genuine concerns about some parts of the documents being misleading it could also redact those parts and/or set the content into context, with disclaimers if necessary.
57. He also argued that the consequences of what he would do with the information (i.e. contact the NPA further) were not relevant to the assessment of the public interest under regulation 12(4)(d). In any event, he suggested that *'If it helps I am willing to give an undertaking not myself to write to the NPA any further on the subject subsequent to receiving the information.'*

Balance of the public interest test

58. In considering the public interest test under regulation 12(4)(d) the Commissioner does not accept that it is appropriate to take into account the personal circumstances and potential reaction of the complainant to the disclosure of this information to such a specific extent as the NPA has done here in relation to its second argument. What is relevant under regulation 12(4)(d) is whether releasing unfinished documents into the public domain is likely to result in a disproportionate diversion of its resources in correcting any public misunderstanding arising from the documents being unfinished. If a public authority wishes to argue that a request should not be answered because of the future burden of dealing with follow up queries from the original requestor then such arguments should be made under regulation 12(4)(b) of the EIR. The Commissioner accepts that in the circumstances of this case he has rejected the NPA's position that the request is manifestly unreasonable. However, this does not mean that the argument that dealing with follow up requests from the complainant will result in a disproportionate burden being placed on the authority is one that can be imported into the public interest test under regulation 12(4)(d). The Commissioner therefore finds that the NPA's second argument for maintaining the exception should not be afforded any weight.
59. Furthermore, the Commissioner does not believe that the fourth argument advanced by the NPA adds any weight to the public interest in favour of maintaining the exception. Rather the absence of any apparent positive reasons to disclose the information is simply a reason why the public interest arguments in favour of disclosing the information may not be afforded any particular weight.
60. With regard to the NPA's concerns that disclosure of the documents could result in its final position being misrepresented, the Commissioner

is generally sceptical of such arguments and would adopt the position that it should generally be possible for the authority to put the disclosure into context. They should usually be able to provide an explanation if, for example, incomplete data contained errors or provisional estimates, or a draft differed significantly from a final version.

61. In the Commissioner's opinion this argument would only carry some weight if the information would create a misleading or inaccurate impression **and** there were particular circumstances that would mean it would be difficult or require a disproportionate effort to correct this impression or provide an explanation. Examples of this could include where the explanation could only be provided by an employee who has left the public authority, or the authority does not hold the final or corrected information.
62. In the circumstances of this case, the Commissioner recognises that the NPA does not have the final version of the requested documents. However, having considered the content of the documents themselves the Commissioner is of the view that the suggestion that disclosure of them would misrepresent its final position is somewhat speculative. Firstly, this is because some of the content of the two documents - albeit by no means all - is factual in nature and/or is already in the public domain via the planning portal on the NPA's website. Secondly, in the Commissioner's opinion the remainder of the information contains such a strongly and clearly argued statement of the NPA's position regarding the site, and why it was defending the appeal, that it seems very difficult to see how its position could be misinterpreted. Moreover, the NPA could still chose to set the requested information into context when it was disclosed, e.g. noting that it was incomplete and thus should not necessarily be taken as an indication of its final position regarding the appeal. Consequently, the Commissioner believes that only very limited and minimal weight should be accorded to the NPA's first argument.
63. In terms of the NPA's third argument in the Commissioner's opinion, the public interest arguments relevant to regulation 12(4)(d) can include, the potential for the information to be misleading (as discussed above); the need to protect a safe space for decision making; and the potential for disclosure of unfinished information to have a chilling effect on future contributions. In the Commissioner's view the NPA's concerns that disclosure of the requested information could prejudice its handling of future planning matters in relation to this site is not an argument that fits easily into these public interest considerations. Although there is considerable and obvious merit in not prejudicing future planning matters, this argument is more relevant to the exception contained at regulation 12(5)(b), which provides an exception to the disclosure of information that would, amongst other things, adversely affect the

course of justice. The Commissioner would interpret the phrase course of justice to encompass a planning authority's ability to consider planning applications and appeals. Therefore, the Commissioner is reluctant to accord any particular weight to the NPA's third argument on the basis that it is not one that it is inherent to the considerations of the public interest test under regulation 12(4)(d).

64. In any event, for the reasons discussed in the preceding paragraph, the Commissioner is sceptical of the requested information being genuinely misleading, which is, as he understands the NPA's position, a prerequisite of any harm occurring to future planning decisions regarding this site.
65. With regard to the public interest arguments in favour of disclosing the information, the Commissioner agrees with the complainant that there is a public interest in public authorities being open and transparent about the decisions that they make. Furthermore, the Commissioner accepts that disclosure of the requested information would provide any interested parties, i.e. the appellants, the complainant and the planning consultancy, with further information as to the basis of the appeal costs that had been sought by the NPA. However, the Commissioner struggles to see any wider public interest in such information being disclosed beyond serving the interests of these specific parties. Moreover, for the reasons discussed above in relation to regulation 12(4)(b), the Commissioner believes that there is arguably limited value in such information being disclosed to even these parties given the fact that costs have now been paid by the appellants.
66. Nevertheless, in light of the fact that the Commissioner believes that only one of the NPA's arguments in favour of maintaining the exception should be accorded any weight - the first argument regarding potential misrepresentation - and that the weight afforded to this argument is very minimal, taking into account the impact of regulation 12(2), the Commissioner has concluded that the public interest favours disclosing the requested information.

Right of appeal

67. 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

68. 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.
69. 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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