

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

Decision notice

Date: 23 January 2013

Public Authority: Selby District Council
Address: Civic Centre
Doncaster Road
Selby
North Yorkshire
YO8 9FT

Decision (including any steps ordered)

1. The complainant has requested information regarding a complaint made to Selby District Council (the Council) about the removal of trees from a particular address without the requisite planning permission. The Council originally dealt with these requests under FOIA. During the Commissioner's investigation of this case the Council accepted that it should have dealt with these requests under the EIR. At the point at which this notice is issued the Council has disclosed some information to the complainant but has withheld the remaining information on the basis of the following exceptions: 13(1) – personal data; 12(5)(b) – course of justice, law enforcement, investigations and proceedings; 12(5)(d) – information provided in confidence; and 12(4)(e) - internal communications. The Commissioner has concluded that the Council is entitled to withhold the remaining information. However, the Commissioner has concluded that the Council breached two procedural aspects of the EIR in its handling of these requests.

Request and response

2. On 20 December 2011, the complainant wrote to the Council and requested information about the removal of trees at a particular address by the landowner on 19 July 2011 'without applying for and receiving the requisite permissions required because the land is in a conservation area'. The request specifically sought:

1. All correspondence, including emails and reports between Selby District Council and the landowner.
 2. All correspondence, including emails and reports between Selby District Council and Escrick Parish Council.
 3. All correspondence, including emails and reports between officers of Selby District Council and between officers and Councillors of Selby District Council.
 4. The record of any meetings and telephone calls between Selby District Council and the landowner.
 5. The record of the decision not to proceed with prosecution and all documents and advice taken into account when the decision was made.
 6. The record of the decision about what trees should be planted to replace those removed and all the documents and advice taken into account when the decision was made.
3. The Council contacted the complainant on 23 January 2012. It explained that it held some of the information falling within the scope of his requests, including a record of a complaint in respect of the removal of the trees in question. However, the Council explained that this information was exempt under sections 30, 31, 40 and 41 of FOIA and that it needed further time to consider the balance of the public interest test. Nevertheless, in this response the Council explained it did not hold correspondence between officers of the Council and District Councillors (the second part of request 3) and nor did it hold any correspondence with Escrick Parish Council relating to this matter (request 2).
4. The Council contacted the complainant again on 26 January 2012 and disclosed some of the requested information. The Council explained that some of the information contained within these disclosed documents had been redacted. It also explained that communications between Council officers was by email or in person and details of such communications, along with information falling within the scope of the remaining requests, was being withheld. The response also noted that the withheld information included emails between Council staff and records of meetings and telephone calls between the Council and landowner. The exemptions that the Council was seeking to rely on to withhold the various pieces of information (and to make the redactions to the disclosed documents) were those cited in its previous letter of 23 January 2012; it explained why it had concluded that the public interest favoured maintaining these exemptions.

5. The complainant contacted the Council on 29 January 2012 in order to ask for clarification on a number of issues, a communication which the Council took to be a request for an internal review of its handling of these requests.
6. The Council informed the complainant of the outcome of the internal review on 3 August 2012. The review upheld the decision to withhold the remaining information on the basis of the four exemptions cited in the refusal notice.
7. The complainant subsequently contacted the Commissioner in relation to the Council's handling of his requests and details of this complaint are set out below. As part of his consideration of this complaint the Commissioner contacted the Council and informed it that in his opinion these requests should have been dealt with under the EIR rather than FOIA.
8. The Council agreed with this opinion and subsequently on 6 November 2012 it wrote to the complainant again and provided him with a further response to his requests this time under the EIR, rather than under FOIA. As part of this response, the Council provided further documents to the complainant, albeit in redacted form and confirmed that a number of documents were still being withheld in their entirety. The Council explained that it was seeking to rely on the following exceptions to withhold the various pieces of information: 13(1) – personal data; 12(5)(b) – course of justice, law enforcement, investigations and proceedings; 12(5)(d) – information provided in confidence; and 12(4)(e) - internal communications. The Council also noted the 'complaint file' in question contained some of the complainant's personal data and this had also been withheld on the basis of regulation 5(3) of EIR.

Scope of the case

9. The complainant contacted the Commissioner on 8 August 2012 in order to complain about the way his requests for information had been handled. At the point at which this decision notice is being issued, the Council's position has changed significantly since the complainant first complained to the Commissioner, i.e. the requests have now been considered by the Council under the EIR and further information has been disclosed.
10. Therefore the Commissioner has confirmed with the complainant that he wants this notice to consider the Council's decision to withhold all of the remaining information that has not been disclosed to date. The only exceptions to this are the parts of the information that have been

redacted because they contain the names and contact details of Council staff and the parts of the withheld information which constitute the complainant's own personal data.

11. The Commissioner has therefore considered the Council's reliance on the various EIR exceptions cited in its letter of 6 November 2012. However, the Commissioner wishes to highlight the fact that his role is limited to considering the applications of the exceptions as they applied at the time of the request, i.e. 20 December 2011.
12. The complainant also asked the Commissioner to consider the length of time it took the Council to conduct the internal review when it was considering this request under FOIA; the complainant noted that it only completed its internal review of 3 August 2012 following the intervention of the Commissioner. Furthermore, the complainant explained that he was concerned that the EIR 'internal review' of 6 November 2012 may have been conducted by the same individual who issued the Council's response of 26 January 2012 despite the Council's suggestion to the contrary.
13. The practicalities as to how an internal review is conducted, including who undertakes the review, are matters of good practice which are addressed in the code of practice issued under section 45 of FOIA. Therefore the Commissioner cannot include in a decision notice a formal finding about the complainant's concerns surrounding who undertook the internal review dated 6 November. However, the Commissioner has commented on the complainant's concerns regarding this issue in the Other Matters section at the end of this notice. The Commissioner has however reached a formal finding in respect of the time it took the Council to complete its internal review.
14. In correspondence with the Commissioner, the complainant argued that he remained of the view that FOIA provided the appropriate regime under which his requests should be considered. The Commissioner has therefore set out below why he believes that the EIR is the appropriate access regime under which these requests should have been considered.
15. The Commissioner has attached to this notice a schedule which lists the withheld information. This includes details of whether a document has been withheld in its entirety or in a redacted form, the exceptions cited by the Council to withhold the information and the Commissioner's findings in respect of each document.

Reasons for decision

The application of the EIR

16. Regulation 2(1) of the EIR set out a number of different definitions of environmental information. The key definitions relevant to this case are those contained at regulations 2(1)(a) and (c):

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other 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;

(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;'

17. In the Commissioner's opinion, the information requested by the complainant falls within the definition of environmental information as set out at regulation 2(1)(c). This is because the information focuses on a range of measures and activities (e.g. the felling of the trees, the decision to prosecute or not and the replanting of the trees) that in some way are likely to affect the environmental factors set out in regulation 2(1)(a). Furthermore, in the Commissioner's opinion some of the information falling within the scope of the requests, e.g. the arboricultural report, also falls within the definition of environmental information as set out in regulation 2(1)(a). This is because such information is clearly information on the state of the elements of the environment, specifically the trees and landscape at the address at which the trees were removed.

Regulation 12(4)(e) – internal communications

18. Regulation 12(4)(e) of the EIR states that a public authority may refuse to disclose information to the extent that the request involves the

disclosure of internal communications. The exception is a class based one; that is to say if information falls within the scope of the exception then it is exempt from disclosure – there is no need for a public authority to demonstrate some level of prejudice in order for the exception to be engaged.

19. The Council has withheld the documents numbered 4 to 7 on the basis of this exception. The documents in question consist of emails exchanged between Council employees and therefore the Commissioner accepts that these emails are exempt from disclosure on the basis of regulation 12(4)(e).
20. However, regulation 12(4)(e) 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 information.

Public interest arguments in favour of maintaining the exception

21. The Council argued that there was a clear public interest in public authorities being able to withhold internal communications so that the 'private thinking space' in which internal deliberations and decision making takes place is not undermined. The Council argued that if this private space was undermined then those discussing particular decisions may be deterred from speaking freely because of a fear that details of that discussion would be disclosed to the public during a period where the information is still of relevance.
22. With regards to the specific circumstances of this case, the Council noted that this request was submitted on 20 December 2011 and at that time the enforcement proceedings in relation to this removal of the trees were ongoing. Although the Council had decided at this stage not to prosecute the landowner, on the basis that they had agreed to replant the trees, the option to pursue a prosecution remained if the replanting was not completed as agreed. Therefore the Council argued that at the time of the request it still required a private space in which to discuss issues relating to this matter.

Public interest arguments in favour of disclosing the information

23. The Council acknowledged that there is a public interest in ensuring that it is transparent about the way it investigates complaints. Disclosing information about investigations would provide a greater transparency to the investigatory process and the actions of the public authority. The Council also acknowledged that disclosure of the requested information may increase the understanding and the trust of the public in relation to its investigation and decision making processes, both in terms of the specifics of this case and more generally.

24. The complainant argued that disclosure of the remaining information was necessary so that the Council's decision not to prosecute the landowner could be fully understood, and in particular, so that the public could be informed as to the thoroughness of the Council's investigation and the exact nature of its decision making process regarding its decision not to prosecute in this particular case.

Balance of the public interest

25. The Commissioner recognises that, in general, there is strong public interest in public authorities being open, transparent and accountable in relation to decisions that they take. In the particular circumstances of this case the complainant remains concerned about the Council's decision not to prosecute the landowner, and moreover, the basis upon which this decision was reached. The Commissioner believes that disclosure of the information that has been withheld on the basis of regulation 12(4)(e) would further inform the complainant about the Council's actions in relation to this matter and therefore could go some way to serving the public interests in disclosure identified above.
26. However, the Commissioner recognises the validity of the Council's argument that there is a public interest in having a 'safe space' in which to debate and discuss ongoing issues freely and frankly from external debate and comment. In the circumstances of this case, at the time of the request the Council's consideration of this issue remained ongoing and the Commissioner therefore recognises that there was a genuine need for it to have a safe space in which to take any remaining decisions associated with this matter. In the Commissioner's opinion given both the timing of the request, and the content of withheld information itself, disclosure of the information withheld on the basis of regulation 12(4)(e) would have undermined this safe space to the detriment of the Council's decision making processes and ultimately to the detriment of the public interest. Furthermore, the Commissioner recognises that the Council has, under its disclosures to this request, already confirmed the existence of the complaint in question and also explained why it ultimately took the decision to not prosecute the landowner. The Commissioner also notes that the disclosures made by the Council on 6 November 2012 provide some further insight into the process by which this decision was arrived at.
27. Therefore, whilst the Commissioner accepts that disclosure of the withheld information would go some way to meeting the public interests in disclosure, he believes that there is greater public interest in providing the Council with a safe space at the time of the request to discuss the ongoing issues.

Regulation 12(5)(d) – confidentiality

28. Environmental information may be exempt from disclosure under regulation 12(5)(d) if disclosing it would adversely affect the confidentiality of a public authority's proceedings where the confidentiality arises from statute or common law.
29. The Council has relied upon this exception to withhold the following documents (or information contained within these documents), document 1 and documents 12 to 15. (However, the Commissioner notes that document 12 only has the personal data of third parties and Council staff redacted from it and therefore he has simply considered these redactions under regulation 13(1).
30. The exception requires a number of criteria to be fulfilled so that it can be relied upon and the Commissioner has considered each of these in turn below.

'Proceedings'

31. Firstly, this exception relates to information that, if disclosed, would adversely affect the confidentiality of an authority's 'proceedings'. The Commissioner accepts that the term proceedings can cover a wide range of activities; however, he believes that the word implies some form of formality, i.e. it does not cover an authority's every action, decision or meeting. It will include, but is not limited to formal meetings to consider matters that are within the authority's jurisdiction; situations where an authority is exercising its statutory decision making powers; and legal proceedings. In each of these cases the proceedings are a means to formally consider an issue and reach a decision.
32. The proceedings in this case relate to the Council's consideration of the complaint regarding the removal of trees from the address in a conservation area and the decision whether to prosecute the landowner or not. The Commissioner accepts that such proceedings are clearly of a sufficiently formal nature to be considered proceedings for the purpose of regulation 12(5)(d).

Provided by law

33. Secondly, the confidentiality of the proceedings must be provided by law. A public authority cannot simply decide for itself that certain proceedings are confidential; there must be a legal basis for this. The confidentiality may be provided in statute or derived from common law.
34. In this case the Council has argued that the confidentiality is provided by the common law duty of confidence.

35. In the Commissioner's view this would apply, for example, where the proceedings involve negotiations with another party, or information obtained from another party. However, in order for such a confidence to apply the following criteria must be met:
36. The information has the necessary quality of confidence. (Information will have the necessary quality of confidence if it is not otherwise accessible and if it is more than trivial; information which is of importance to the confider should not be considered trivial.)
37. The information was communicated in circumstances importing an obligation of confidence. (An obligation of confidence can be expressed explicitly or implicitly. Whether there is an implied obligation of confidence will depend upon the nature of the information itself, and/or the relationship between the parties.)
38. The Council argued that the withheld information was clearly of importance to the confider, namely the party (and its representatives) which was the subject of the complaint regarding the removal of the trees given that the matter related to the committing of an offence; the information was clearly not of a trivial matter. The Council also argued that those who are the subject of a complaint regarding potential breaches of planning regulations would not expect that information that they provided to the Council in respect of such a matter would be disclosed under the EIR or FOIA. The Council noted that such confidentiality was important given that such cases can be contentious and cause friction within the community and thus it is established practice for information of this nature not to be disclosed.
39. The Commissioner accepts that the withheld information has the quality of confidence; it is clearly not of a trivial nature and whilst some information has been disclosed by the Council in relation to this matter, the content of the information withheld on the basis of regulation 12(5)(d) has not been revealed. The Commissioner is also prepared to accept that the party which is the subject of an investigation such as that conducted by the Council would have an implicit expectation that information they provided during the course of the investigation would not be made public. The Commissioner believes that this is because of the Council's established practice of not disclosing information of this nature.

Adverse affect

40. Even where the proceedings are confidential in the terms discussed above, the exception is only engaged where disclosing the information would adversely affect that confidentiality. It is not enough that the

confidentiality is provided by law; there must also be an adverse effect on that confidentiality.

41. 'Adversely affect' means there must be an identifiable harm to, or negative impact on, the interest identified in the exception. Furthermore, the threshold for establishing adverse effect is a high one, since it is necessary to establish that disclosure *would* have an adverse effect. 'Would' means that it is more probable than not, i.e. a more than 50% chance that the adverse effect would occur if the information were disclosed. If the adverse effect would only be *likely* to occur, or *could* occur, then the exception is not engaged.
42. The Council argued that disclosure of the information withheld on the basis of regulation 12(5)(d) would adversely affect the confidentiality of proceedings because the information forms part of its investigation into this potential offence/breach of planning regulations.
43. In light of the fact the information withheld on the basis of this exception constitutes detailed information provided to the Council by the representatives of the landowner, and that such information forms a central part of the Council's investigation into the alleged offence, the Commissioner accepts that disclosure of this information would have had a negative impact upon the Council's investigation itself. Thus disclosure would have had an adverse impact on the proceedings in question and the Commissioner is therefore satisfied that the exception is engaged.
44. However, regulation 12(5)(d) is a qualified exception and therefore the Commissioner must consider the balance of the public interest test.

Public interest arguments in favour of maintaining the exception

45. The Council argued that it was in the public interest to ensure that confidentiality was maintained in order to encourage frankness and openness on the part of those providing information to it. Giving effect to the reasonable expectation of confidentiality on the part of those submitting information to the Council thereby facilitates the effective discharge of the Council's functions.

Public interest arguments in favour of disclosing the information

46. The Commissioner believes that the public interest arguments in favour of disclosing the information are similar to those set out above in relation to regulation 12(4)(e) and therefore he has not repeated them here.

Balance of the public interest

47. In the Commissioner's opinion, there is always a general public interest in protecting confidential information. Breaching an obligation of confidence undermines the relationship of trust between confider and confidant, regardless of whether the obligation is based on statute or common law. For this reason, the grounds on which confidences can be breached are normally limited; a statute that prohibits disclosing information may include certain exemptions from the prohibition, while in common law there may be a public interest defence to a breach of confidence.
48. In the particular circumstances of this case, the Commissioner believes that further significant weight is added to the public interest in favour of maintaining the exception given the fact that the withheld information is central to the proceedings in relation to this matter. Furthermore, the Commissioner believes that disclosure of the withheld information could not only impact upon the willingness of the parties in this case to share information with the Council, but may also affect the willingness of bodies and individuals in the future to share information with the Council in similar circumstances.
49. With regard to the public interest in favour of disclosing the information, for the reasons discussed under his consideration of regulation 12(4)(e), the Commissioner believes that these clearly attract some weight. Disclosure of the information withheld under regulation 12(5)(d) would also go some way to further informing the public about the Council's actions in respect of this matter. However, for the reasons also discussed above the Commissioner believes that it is important to recognise the information that the Council disclosed at the time of the request, and the further information that it disclosed during the course of his investigation due to it amending its original position. In his opinion this arguably reduces the need for the remaining withheld information to be disclosed. In light of the broader consequences of this information being disclosed, i.e. the potential impact on the willingness of third parties to share confidential information with the Council not just in this particular case but also in future cases, the Commissioner has concluded that the public interest favours maintaining the exception.

Regulation 13(1) – personal data

50. Regulation 13(1) states that to the extent that information requested includes personal data of which the applicant is not the data subject and the disclosure of the information to a member of the public would contravene any of the data protection principles set out in the Data Protection Act 1998 (DPA), a public authority shall not disclose the personal data.

51. The Council has withheld what it considers to be the personal data of both its own staff and that of third parties under regulation 13(1). As noted above, the complainant is only concerned with the Council's decision to withhold the personal data of the third parties and does not wish the Commissioner to consider the personal data of Council employees. The third parties constitute the landowner in question and their representatives. The Council has withheld this information on the basis that disclosure of this information would be unfair and thus breach the first data protection principle which states that:

'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'

52. Clearly then for regulation 13(1) to be engaged the information being withheld has to constitute 'personal data' which is defined by the DPA as:

'...data which relate to a living individual who can be identified

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'

53. The Commissioner is satisfied that the information relating to third parties that has been withheld falls within this description because it comprises the names of the landowner in question, their contact details, opinions expressed by them and the names and contact details of representatives of the landowner.

54. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:

- The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:

- what the public authority may have told them about what would happen to their personal data;
 - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights;
 - the nature or content of the information itself;
 - the circumstances in which the personal data was obtained;
 - particular circumstances of the case, e.g. established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
- The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
 - whether information of the nature requested is already in the public domain;
 - if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?

55. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.

56. In considering 'legitimate interests' in order to establish if there is such a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach, i.e. it may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.

The Council's position

57. The Council explained that it had considered whether the individuals concerned would have reasonably expected that their personal data would be made public. The Council concluded that the individuals would have no expectation that their information would be placed in to the public domain by way of disclosure in response to an information

request. Furthermore, it noted that the information regarding the representatives of the landowner related to their private lives. The Council therefore concluded that disclosure of the information would be unfair.

The Commissioner's position

58. The Commissioner believes that a distinction can be drawn between the application of regulation 13(1) to the personal data of the landowner and the personal data of the landowner's representatives. With regard to the expectations of the landowner, the Commissioner accepts that given the fact that the Council's practice is not to publically reveal the identity of those who have submitted complaints about planning issues, or the identity of those complained about, then the landowner would have had a strong, and reasonable, expectation that their name would not be revealed under an information request such as this.
59. With regards to the consequences of disclosure for the landowner, the Commissioner recognises that the alleged offence could have led to the landowner being prosecuted. The Commissioner recognises that if the landowner had been prosecuted then their name may well have been placed in to the public domain, e.g. court proceedings. However no prosecution had taken place at the time of the request. Furthermore, the Commissioner accepts that revealing that a complaint had been made about this particular landowner could arguably have represented some damage to the individual's reputation, which would have been unfair at this particular stage as the Council had not formally completed its investigation of this case.
60. The Commissioner recognises that the complainant has an interest in understanding more about the Council's handling of this complaint and to a limited extent disclosure of the parts of the information which constitute the landowners' personal data would meet this aim. However, the Commissioner does not believe that this interest is one that is sufficiently compelling to override the landowner's significant expectation that their name and other personal data would not be disclosed by the Council. The Commissioner is therefore satisfied that disclosure of such information would be unfair and thus it is exempt from disclosure on the basis of regulation 13(1). In reaching this conclusion the Commissioner recognises that the complainant may well be aware of the identity of the landowner. However, disclosure of information under EIR (and FOIA) is taken to be disclosure to the world at large and therefore the Commissioner has to take into account the consequences of disclosure in this context.
61. In relation to the personal data of the representatives of the landowner, the Commissioner is also satisfied that disclosure of this information

would be unfair. This is on the basis that these individuals, as with the landowner, would have had a reasonable expectation that their personal data would not be disclosed in response to a request. Furthermore, given that the nature of the personal data relating to the landowner's representatives consists almost entirely of their names, job roles and contact details, it is difficult to see how any specific legitimate interest could be served by disclosure of this information.

62. In light of the fact that the Commissioner has concluded that all of the withheld information is exempt from disclosure on the basis of one or more of the exceptions contained at regulations 12(4)(e), 12(5)(d) and 13(1) he has not considered the Council's reliance on regulation 12(5)(b).

Regulation 14 – refusal notices

63. In the circumstances of this case the Commissioner has found that although the Council originally considered these requests under FOIA it is the EIR that actually apply to the requested information. Therefore where the procedural requirements of the two pieces of legislation differ it is inevitable that the Council will have failed to comply with the provisions of the EIR. In these circumstances the Commissioner believes that it is appropriate for him to find that the Council breached regulation 14(1) of EIR which requires that a public authority that refuses a request for information to specify, within 20 working days, the exceptions upon which it is relying. In the circumstances of this case although the request was submitted on 20 December 2011 the Council did not issue an EIR refusal notice until 6 November 2012.

Regulation 11 – internal reviews

64. Regulation 11(4) of the EIR requires public authorities to inform requesters of the outcome of an internal review within 40 working days of receiving a request for such a review. Although the Council initially dealt with these requests under FOIA, the Commissioner has actually concluded that the requests should have been dealt with under the EIR and thus the Council should have complied with the obligations placed upon it by regulation 11(4) of the EIR. In any event, the Commissioner notes that the Council took 130 days to issue its FOI internal review response of 3 August 2012. Therefore, the Commissioner has concluded that the Council breached regulation 11(4) in its handling of these requests.

Other matters

65. The Commissioner recognises that that the complainant has some concerns that the EIR response issued by Council of 6 November 2012, although signed by one individual, may well have been compiled by a different individual and this latter person issued the original FOI response of 26 January 2012. The complainant was concerned that the Council's 'review' regarding the application of the EIR was not therefore sufficiently independent from its initial response under FOIA.
66. Based upon his discussions with the Council the Commissioner is satisfied that the individual who signed the letter of 6 November 2012 was indeed the individual who actually undertook the review of the requests from an EIR perspective. Therefore, the Commissioner is satisfied that the Council's review of these requests under the EIR represented a was sufficiently independent re-consideration of its handling of the requests.

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

Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

| Document number | Date | Description | Disclosed by Council? | Exceptions applied by Council | Commissioner's position on exceptions |
|------------------------|-------------|--------------------------------|------------------------------|--|--|
| 1 | | Complaint details WK/201149079 | Yes, but with redactions | 13(1) – personal data; 12(5)(b) – course of justice etc; 12(5)(d) – confidentiality. | Exempt under 13(1) and 12(5)(d) |
| 2 | | Arboricultural report | Yes, but with redactions | 13(1) – personal data | Exempt under 13(1) |
| 3 | | Plan | Yes, but with redactions | 13(1) – personal data | Exempt under 13(1) |
| 4 | 20.12.11 | Internal Council email | No | 13(1) – personal data; 12(4)(e) – internal communications; 12(5)(b) – course of justice etc; 12(5)(d) – confidentiality. | Exempt under 12(4)(e) |

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| 5 | 20.12.11 | Internal Council email | No | 13(1) – personal information; 12(4)(e) – internal communications; 12(5)(b) – course of justice etc; | Exempt under 12(4)(e) |
| 6 | 19.12.11 | Internal Council email | No | 13(1) – personal information; 12(4)(e) – internal communications; 12(5)(b) course of justice etc. | Exempt under 12(4)(e) |
| 7 | 13.12.11 | Internal Council email | No | 13(1) – personal information; 12(5)(b) – course of justice etc; 12(4)(e) – internal communications; | Exempt under 12(4)(e) |

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| | | | | 12(5)(d) – confidentiality. | |
| 8 | 12.12.11 | Internal Council email with following email attached: Estates Rep ('Rep') to Council of 12.12.11 | Yes, but with redactions | 13(1) – personal information | Exempt under 13(1) |
| 9 | 18.10.11 | Internal Council email | Yes, but with redactions | 13(1) – personal information | Exempt under 13(1) |
| 10 | 17.01.12 | Email Rep to Council with following emails attached: 17.01.12 Council to Rep; 12.12.11 Rep to Council | Yes, but with redactions | 13(1) – personal information | Exempt under 13(1) |
| 11 | 12.12.11 | Email Rep to Council | Yes, but with redactions | 13(1) – personal information | Exempt under 13(1) |

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|----|----------|---|--------------------------|--|---------------------------------|
| 12 | 31.10.11 | Email Rep to Council with following emails attached: Council to Rep; Rep to Council; Rep to Council | Yes, but with redactions | 13(1) – personal information; 12(5)(b) – course of justice etc; 12(5)(d) – confidentiality. | Exempt under 13(1) |
| 13 | 24.10.11 | Emails between Rep and Council | No | 13(1) – personal information; 12(5)(b) – course of justice etc; 12(5)(d) – confidentiality. | Exempt under 13(1) and 12(5)(d) |
| 14 | 12.10.11 | Email Rep to Council | No | 13(1) – personal information; 12(5)(b) – course of justice etc; 12(5)(d) – confidentiality. | Exempt under 13(1) and 12(5)(d) |
| 15 | 11.10.11 | Statement of Rep | No | 13(1) – personal information; 12(5)(b) – course of justice | Exempt under 13(1) and 12(5)(d) |

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|----|----------|-------------------------------|--------------------------|----------------------------------|---------------------|
| | | | | etc; 12(5)(d) – confidentiality. | |
| 16 | 21.09.11 | Emails between Rep to Council | No | 13(1) – personal data | Exempt under 13(1). |
| 17 | 07.09.11 | Email: Council to Rep | Yes, but with redactions | 13(1) – personal data | Exempt under 13(1). |
| 18 | 15.08.11 | Letter: Rep to Council | Yes, but with redactions | 13(1) – personal data | Exempt under 13(1). |
| 19 | 10.08.11 | Letter: Council to Rep | Yes, but with redactions | 13(1) – personal data | Exempt under 13(1). |
| 20 | 04.08.11 | Letter: Council to Rep | Yes, but with redactions | 13(1) – personal data | Exempt under 13(1). |