

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

Decision notice

Date: 24 July 2018

Public Authority: Sheffield City Council
Address: Town Hall
Pinstone Street
Sheffield
S1 2HH

Decision (including any steps ordered)

1. The complainant has made a three part request for information relating to an operation to fell trees and the public safety concerns associated with that operation. The Council's position is that the information sought in the first and third parts of the request were not held. In respect of the second part of the request the Council claimed that complying with the request would exceed the appropriate limit set out in section 12 of FOIA. The Commissioner advised the Council that the request should have been dealt with under the EIR, which the Council has not contested. The Council considers that under the EIR the request could be refused using the exceptions provided by regulation 12(4)(a) – information not held, and 12(4)(b) – manifestly unreasonable.
2. The Commissioner's decision is that the Council is entitled to rely on regulations 12(4)(a) and 12(4)(b) to refuse the request.
3. The Commissioner does not require the public authority to take any further action in this matter.

Request and response

4. On the 25 November 2016 the complainant wrote to the Council about an operation to remove trees from a street in Sheffield. The complainant quoted a councillor as saying that,

"There were reasons relating to public safety why the decision was taken to fell trees at 5 am and not to publish the report [the ITP report explaining the reasons for removing the trees] earlier,"

The complainant then requested information of the following description:

"When was the "decision" to withhold [sic] and not produce ITP report in a timely manner the taken?"

Regarding the reasons regarding public safety, were these based generalised [sic] intelligence or specific information? Please give the dates Sheffield City Council and its stakeholders were informed of these reasons, breakdown separately [sic] if needed.

The date Sheffield City Council or its [sic] contractors informed South Yorkshire Police regarding the works on Rustlings Road and requested a police presence [sic]."

5. On 22 December 2016 the Council responded. It refused the request under section 12 of the FOIA which provides a cost limit, above which a public authority is not required to comply with a request. The complainant requested the Council carry out an internal review of that decision the same day.
6. The Council has advised the Commissioner that initially it sent the complainant one letter dealing with the internal review of both this request and a related one. It is not clear when that response was provided. However the Council later recognised that this approach had led to confusion and therefore carried out a separate review of just the 25 November 2016 request.
7. The outcome of that internal review was provided on 2 October 2017. At this stage the Council explained that it did not hold the information requested in the first part of the request.
8. In respect of the second part of the request the Council explained that the Rustlings Road site, had been the initial focus of protests to remove trees from a number of sites in Sheffield and that therefore the Council considered it likely that there may be attempts to disrupt the tree felling operation. Although these concerns were discussed when planning the management of the operation, no formal minutes of those discussions were made, and therefore there was no record of any particular intelligence giving rise to those concerns. It went on to say that if the complainant was seeking all information which had, collectively, given cause for concerns about public safety at the Rustlings Road site, the Council would need to search through a large volume of information. To do so would be prohibitively expensive in terms of staff time. It was therefore refusing this element of the request under section 12 of FOIA. The Council added that should the request be judged to fall under the

Environmental Information Regulations, it would be considered manifestly unreasonable on grounds of costs and staff time and therefore be exempt under regulation 12(4)(b) of that legislation.

9. In respect of the third part of the request the Council explained that it had been in regular contact with the Police about the tree felling operation at Rustlings Road and that the decision that the Police should attend the operation was a mutual one. Therefore there had not been any formal request for the Police to attend.
10. During the course of the Commissioner's investigation the Council reiterated that it believed the request should be dealt with under the FOIA and confirmed that its position was that it did not hold the information requested in the first and third parts of the request and that section 12 of FOIA applied to the second part, i.e. that it was not obliged to comply with the request because it estimated that to do so would exceed the appropriate limit.
11. However during further discussions the Commissioner explained her position that the information, if held, was most likely to constitute environmental information. Rather than maintaining its position that the request should be considered under the FOIA, which may have resulted in a decision notice which simply required it to provide a fresh response to the request under the EIR, the Council took a constructive approach and chose to no longer contest this particular point.

Scope of the case

12. The complainant contacted the Commissioner on 6 November 2017 to complain about the way his request for information had been handled.
13. In light of the Council's decision not to contest which legislative regime the request should have been handled under, the Commissioner considers the matters to be decided are whether the information requested in the first and third parts of the request is held, if it is not held, the Council would be entitled to refuse the request under regulation 12(4)(a) – information not held. In respect of the second request the Commissioner will consider whether that element of the request is manifestly unreasonable due to the cost involved in collating the information. If it is, the request could be refused under regulation 12(4)(b). It can be seen that these exceptions mirror the grounds relied on by the Council for refusing the request under the FOIA.
14. For completeness, the Commissioner will also set out her grounds for finding the request should have been handled under the EIR.

Background

15. The request relates to the Council's management of trees along its highways. This forms part of a wider contract with a private company for the maintenance and improvement of Sheffield's highways. The initiative is known as 'Streets Ahead'. The contract includes provision for the removal of dead or dying trees and those which were damaging the highway, some of the felled trees were to be replaced with new planting. The proposals proved very controversial with local residents seeking a judicial review of the plans. The campaign against the tree felling attracted national media attention and local protests. Rustlings Road became the focus of the initial protests. As a result of these protests an Independent Tree Panel (ITP) was established to assess the health of trees along different roads and produce reports advising the Council on the management of trees along each of the roads concerned, including Rustlings Road. Those reports were published on the Council's website.
16. The Council believed there was a risk that the operation to remove trees from Rustlings Road could be disrupted by protesters. It was concerned that such protests could endanger the safety of both the public and those carrying out the felling operations. To minimise this risk the report of the ITP in respect of Rustlings Road was only published a very short time before the tree felling operation took place early one morning in November 2016.

Reasons for decision

17. **Relevant Legislation.**

18. The Council accepts that the felling of trees is an activity that would affect the environment. However it has dealt with the request under the FOIA. This was on the basis that the focus of the first element of the request was on the governance of information, i.e. a decision when to publish the independent tree panel report for Rustlings Road, the focus of the second request was on public safety issues and the third element of the request was again on a governance issue.
19. The Commissioner does not accept this approach and considers the requested information, if it existed, would relate to a measure effecting the environment, i.e. the management of trees, including their felling, and therefore constitutes environmental information under regulation 2(1)(c) of the EIR. Regulation 2(1)(c) states that environmental information is information on measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements of the environment as well as activities designed to protect

those elements. In reaching this conclusion the Commissioner recognises that in accordance with her own guidance 'What is environmental information?' it can sometimes be difficult to decide whether individual parts of a larger environmental project are themselves environmental information. In this case for example, one issue is whether a decision on when to publish a report is environmental information. The key test in such situations is how integral that particular decision is to the overall measure. The Commissioner will look at each element of the request in turn to explain her position.

20. The first element of the request seeks information on a decision in respect of when it would be most appropriate to publish the ITP report. The Commissioner considers that that decision was taken in order to facilitate the successful completion of the tree felling operation. So although, if the decision was taken out of context, it could be seen purely as an issue around the handling and management of information, the intention behind the decision was to ensure the tree felling operation was conducted without the risk of it being dangerously disrupted. It was an integral piece of the operation to remove those trees and had the potential to directly affect whether those trees were felled.
21. The second element of the request is for the intelligence that gave rise to public safety concerns over the felling operation. It is understood from the Council's response that there is no record of intelligence on a specific plan to disrupt the operation, but that it does hold more general information on complaints and protests against the plans. The Commissioner has not had access to any of this more general information, but she anticipates it is likely to fall within two broad categories. There would be records of complaints from local residents and possibly information more specifically about problems experienced by the Council, its contractors, or the Police as a result of protests. Both will relate to information on the measure to fell trees within Sheffield. Any letters of complaint about the proposals are likely to directly reference that measure and express views on those plans. Any record of previous attempts to disrupt tree felling operations, or views expressed on the likelihood of operations being disrupted, would relate to the management of the tree felling operations. The Commissioner does not disagree that such information is held for the purposes of minimising public safety concerns, but she considers this has to be seen as part of the overall management and implementation of the plans to remove trees from the area.
22. The final part of the request is for the date the Police were informed about the Rustlings Road operation and when they were asked to be present at that operation. Again the Commissioner considers that the Police's involvement in the operation was all part and parcel of the management of that operation to ensure it went ahead and did so with

minimum risk to those involved and the public. It therefore relates very closely to the measure to remove the trees.

Regulation 12(4)(a) - Information Held

23. As already referred to, regulation 12(4)(a) of the EIR states that a public authority may refuse a request to the extent that it does not hold the information at the time the request was received. The Council has stated that it does not hold the information requested in the first and third elements of the request.
24. Where there is a dispute over the amount of information held the Commissioner will, following the lead of a number of Tribunal decisions, apply the civil standard of proof, and decide whether on the balance of probabilities the requested information is held. In applying this test the Commissioner will consider the thoroughness of the searches carried out and/or other explanations offered by the public authority as to why the information is not held.
25. The Commissioner will start by looking at the first part of the request which sought information on the decision to delay the publication of the ITP report for Rustlings Road, and in particular when that decision was itself taken.
26. The Council has published a number of ITP reports, eventually around 150, and the normal practice was for these to be published in advance of any tree felling operation that was to take place. However in respect of the report for Rustlings Road the Council had concerns that its publication would lead to the tree felling operation being disrupted, which would result in the safety of staff, contractors, protesters and the general public being endangered. It is clear therefore that a decision was taken to minimise the risk of protests taking place by delaying the publication of the ITP report. The question is whether there is any record of when that decision was taken.
27. The Council has explained that because of the importance of minimising the risk of disruption it regarded any information about that operation as being very sensitive. The details of its timing were known to only a limited number of people within the Council, its contractors and the Police. The Council has said that details were provided on a need to know basis and to help ensure the confidentiality of the operation records of the management of the operation were kept to a minimum. As a result the Council has stated that no record is held of when a decision was taken to delay the publication of the ITP report. It appears therefore that not all decisions were documented and instructions were provided verbally to a limited number of people responsible for the task of publishing the report. Given the circumstances the Commissioner considers this explanation to be plausible.

28. Nevertheless the Commissioner has sought clarification of certain issues to satisfy herself that relevant information has not been inadvertently overlooked. In response to the Commissioner's enquiries the Council has confirmed that staff within its Highways Maintenance Division, the lead business area for this operation, and staff within its Policy, Performance and Communication area (PPC), responsible for actually publishing ITP reports, were asked to review any information they held and both areas have robustly confirmed that no record of the decision were ever held. The enquiries have included staff directly involved in the tree felling operation and the relevant manager within the PPC. Given that knowledge of when the operation was to take place was treated as being highly sensitive, and only a limited number of staff were privy to it, and given that the decisions were being taken at a senior level, the Commissioner considers it reasonable to expect that the responses from these staff can be relied on.
29. A Silver Command was established to oversee tree felling operations. Based within Police offices, it is understood this was a central operational team composed of council and Police officers and the contractors' staff. The Council has identified one reference in Silver Command's operational plan to the publication of the ITP report being dependent upon Silver Command receiving confirmation that the Rustlings Road work could commence. However the Council has reviewed the operational plan and stated categorically that it does not contain any details on when decisions were taken to delay the publication of the ITP. This operational plan had previously been released in response to requests from other individuals. For completeness the Council provided the complainant with a copy of this document shortly before the conclusion of the Commissioner's investigation.
30. The Commissioner has also enquired about the procedures that were established for publishing the ITP reports normally, as it is conceivable that had specific procedures been put in place, the reasons for any deviation from that process may have been recorded in the administrative paperwork. However although the ITP reports were usually published sometime in advance of any tree felling taking place, the Council has explained that no specific procedure for the publication of these reports was documented. The process did not differ from that for the publication of any other material on the Council's website. Therefore the Commissioner accepts it is unlikely that there would be any administrative records which would shed light on when the decision to delay the publication of the Rustling Road ITP report was taken.
31. In conclusion the Commissioner accepts that the Council considered it necessary to keep the date of the Rustlings Road operation confidential in order to ensure public safety. That strategy itself was confidential with only a limited number of people within the Council knowing the

approach that was being taken. To ensure that confidentiality a conscious decision was taken to limit what was recorded. It is quite plausible that a small group of officers could operate effectively in this way. Although some of the officers involved no longer work for the Council, others who were also directly involved in leading the tree felling operation and publishing the ITP report have confirmed that there is no record of when it decided to delay its publication. In the specific circumstances of this case the Commissioner finds that on the balance of probabilities the Council does not hold the information sought in the first part of the request. The Council is therefore entitled to refuse part one of the request under regulation 12(4)(a) on the basis that the information is not held.

32. Although the Commissioner accepts the Council's explanation as to why the requested information is not held and understands its reasoning for wishing to ensure its plans remained confidential, she also considers there is a value in recording the decision making process in such circumstances. Where there are concerns around the security of recorded information a public authority should look to resolve those issues in preference to choosing not to record important or controversial decisions. This would enable a public authority to better explain the reasons for its actions and the public to better understand and hold the public authority to account for those actions.
33. Technically the exception provided by regulation 12(4)(a) is subject to the public interest test. However the Commissioner can see no practical value in applying the public interest test where information is not held.
34. The Council has also refused the third part of the request on the basis that the information is not held. Part three sought information on when the Council or its contractors requested the Police's presence at the Rustlings Road tree felling operation.
35. The Council has argued that this request is based on a false premise. It has explained that neither the Council nor its contractors requested the Police to attend the tree felling operation. Instead, as it says is apparent from information previously released by the Police, the Council and its contractors were in regular contact with the Police and the decision that the Police should attend the operation to ensure no protestors endangered their own or anyone else's safety was a collective one arrived at through an assessment of the risk of the operation being disrupted. Similarly the decision as to when the operation would take place was a joint one determined by when all three parties would have the necessary resources at their disposal.
36. In terms of the date when Police were informed about the tree felling operation in Rustlings Road, the Police would obviously have been aware of the scope of the tree felling operations taking place under the Streets

Ahead contract, including the intention to fell trees in Rustlings Road soon after their initial involvement in these matters, which the Commissioner understands to have been around June 2016. However in terms of the actual date of the Rustlings Road operation the Commissioner accepts that it makes sense this would have to have been a decision that was mutually convenient to all parties.

37. As for information on when a request was made to Police for them to be present, the Commissioner has no grounds for disputing the Council's position that this decision was also one made jointly between the parties during discussions on the operation. The Commissioner accepts that the information available of the Police website <https://www.southyorks.police.uk/find-out/right-to-information/categories-of-significant-interest/operation-testate-tree-felling-prior-to-jan-2018/> reveals an extensive dialogue between the Council and the Police.
38. In light of the above the Commissioner finds that on the balance of probabilities neither the Council nor its contractors requested the Police to be present at Rustlings Road in the way envisaged by the request. Nor was there any need to inform the Police of the date of the operation as it was a decision that the Police themselves were involved in making. It follows that the Council would not hold the information sought in part three of the request. The Commissioner finds that the Council is entitled to rely on regulation 12(4)(a) to refuse this element of the request. Although regulation 12(4)(a) is subject to the public interest, as before, the Commissioner does not consider there to be any value in carrying out that test where the information is not held.

Regulation 12(4)(b) – manifestly unreasonable

39. Regulation 12(4)(b) of the EIR provides that a public authority may refuse a request if it is manifestly unreasonable. In line with her published guidance which follows previous Tribunal decisions, the Commissioner considers a request can be manifestly unreasonable if the cost of complying with it is too great.
40. The second part of the request first asked whether the Council's concerns over public safety arose from specific, or generalised intelligence, before seeking information on when the Council, or its stakeholders were informed of these reasons. In responding to this element of the request the Council has explained that concerns over public safety would have been discussed in operational meetings which were not minuted. Therefore it is unable to identify any particular threats or intelligence that lead it to believe that the Rustlings Road operation would attract protestors.

41. Rather than there being a specific threat which gave rise to the concerns, the Council has gone onto explain that it was obviously aware that Rustlings Road had been the focus of initial protests against the felling of trees. Furthermore it had received numerous letters of protest and complaint against the planned removal of trees. Its officers and the contractor's staff also had experience of protests being made during other felling operations. The Council attention had also been drawn to websites protesting against the tree felling and the issue was very high profile with the strength of feeling against the proposals being evident from the media coverage. In light of this the Council believed it very likely that if protestors were given the opportunity to do so, they would mount protests against any operation to fell trees in Rustlings Road.
42. The Commissioner accepts that the Council's position that there was not one specific piece of intelligence that triggered public safety concerns. Instead those concerns developed over time from the cumulative effect of receiving numerous complaints etc and its experience of other felling operations. There is therefore no specific date for when the Council was informed of reasons to be concerned about safety.
43. The Council has explained that if the request is interpreted as seeking details of when it became aware of each of the individual sources of information which, collectively, led to public safety concerns, then the request would be manifestly unreasonable. This is because of the volume of information that would have to be searched through to collate that relevant to the request. Furthermore as some of the concerns were based on personal accounts of the staff involved it is not clear where these would be documented, if at all.
44. When applying regulation 12(4)(b) on grounds of the cost the public authority will need to consider the proportionality of the burden or costs involved and decide whether they are clearly unreasonable. As well as the actual cost or burden involved, this will include taking account of the value of making the requested information publicly available, the importance of the issues to which it relates and the size of the public authority and therefore the resources it has available.
45. In her guidance the Commissioner suggests that when assessing the level of costs that might be incurred when dealing with a request public authorities may use a rate of £25 per hour in respect of any staff time that is involved. This rate mirrors that which parliament considered a reasonable charge for staff time in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. As well as setting out a reasonable charge for staff time these 'Fees Regulations' set the cost limits above which a request can be refused under section 12 of the FOIA. Although the Fees Regulations cannot be used to determine, absolutely, what constitutes a manifestly unreasonable request under the EIR, they do provide a useful starting point when

considering the issue. Therefore the Commissioner notes that under the Fees Regulations local authorities such as Sheffield City Council would be able to refuse a Freedom of Information request if the cost of collating the information exceeded £450. At £25 per hour this equates to 18 hours of staff time, or around two and half day's work.

46. As already discussed, the Council dealt with the request under the FOIA and refused it under section 12 on the basis that the cost of locating and retrieving all the myriad pieces of information would exceed the appropriate limit. When doing so it considered the wide range of information that could be captured by the request. Potentially relevant information may be contained in complaints, general correspondence, any records of protestors' behaviour either recorded by the Council's own staff or recorded and shared by the contractor or the Police. The Council has stressed that it does not hold a central intelligence data base for such information, nor is it likely that information potentially relevant to the request would be labelled as 'intelligence' in any way that would allow electronic records to be efficiently searched using key terms.
47. As a consequence the Council would need to search a variety of sources using a wide range of terms in order to identify documents that may be relevant. All these documents would then have to be viewed to determine whether they did contain any information that may have fed into the Council's awareness of the risk of demonstrations during the Rustlings Road operation. The Council has advised the Commissioner that one officer alone had 286 emails captured by the search term 'rustlings'. All of these would have to be considered to determine their relevance which the Council estimates would take 30 seconds per email, or about two hours and forty minutes. A wide range of staff could have received or hold information relevant to the second part of the request, including staff from the Highways maintenance Division and the PPC. The Council has argued if just a further ten officers were required to search through an equal number of emails the time taken would amount to nearly 24 hours. At £25 per hour this represents a cost of around £600.
48. The Commissioner has considered carefully the Council's estimate of 30 seconds to review each email. Often emails will form part of a chain of correspondence between colleagues on a particular issue and so there will be times when the relevance of batches of emails could be easily established. Furthermore it is not unreasonable to assume that some emails will be quite short. However other emails may be less focussed and require more careful reading to assess their relevance. It may well be that the average time would be less than the 30 seconds used by the Council, but not significantly.

49. Importantly however the Commissioner recognises that the public safety concerns would not necessarily be linked to only Rustlings Road; information relating to protests carried out at other sites could also have fed into the overall assessment. Therefore a search using the term 'rustlings' could not be relied on to recover all the relevant information; numerous other searches may be required.
50. Similarly the Council has advised the Commissioner that a review of its data base of complaints would involve searching through 4,469 complaints that were received about the 'Streets Ahead' contract. The Council has informed the Council that this figure includes complaints received about all aspects of the 'Streets Ahead' highways contract, not solely those about the removal of trees. The Council estimates that to look through all of these complaints would take over 37 hours at 30 seconds per complaint. 37 hours equates to £925 at £25 per hour. Again the Commissioner suspects that a great many of complaints could very quickly be dismissed as being irrelevant, but accepts that others would need more careful reading. The Commissioner gathers that the Council did, briefly, at one point keep some form of running total of complaints specifically linked to tree felling in Rustlings Road, presumably to gauge the public's concerns. Even if that monitoring had continued there would still be a need to search through all of the 4,469 complaints received because the Council's concerns over public safety were informed by complaints about the tree felling operations generally, not just those at Rustlings Road.
51. The Commissioner is satisfied that there was not one specific piece of intelligence which gave rise to concerns over public safety at Rustlings Road site. Instead it appears those concerns grew out of a number of information sources, experience and knowledge of managing the project. The Commissioner is also satisfied there is not one simple, concise record summarising how these public safety concerns arose. Therefore to provide information on all the sources of concerns and the dates they were received would require the Council to conduct extensive searches of all the disparate avenues by which relevant information may have been submitted to the Council. There is little doubt that the cost of doing so would have significantly exceeded the appropriate limit had the request been considered under the FOIA.
52. However before deciding whether the cost would render the request manifestly unreasonable it is necessary to consider whether it would be proportionate for the Council to incur such costs given the value in disclosing the requested information.
53. The Commissioner is aware of how controversial both the decision to remove trees from Rustling Road and the way the operation was conducted were. The operation started at 5am and local and national news coverage refer to it as 'pre-dawn raid' and others liken it to an

anti-terrorist operation with three arrests being made. There is clearly a value in disclosing whether the information available to the Council justified its course of action. There is also a value in better understanding how the Council received information giving raise to its concerns and whether there was, for example, any proactive attempt to gather intelligence and if so how. There is also a value in disclosing information that would reveal the strength of opposition to the Council's management of its highway trees.

54. However regard has to be had for the actual information that would be disclosed. If there had been specific intelligence gathered about a particular threat to the operation, then there would be a value in disclosing its details. However the Commissioner accepts that this is not the position and in any event the request is not for the substance of the intelligence, but just clarification of when the different stakeholders received it. Rather than there being a specific piece of intelligence, the Council received information piecemeal from a range of sources. Therefore providing the requested information is unlikely to reveal anything very remarkable, regard also has to be had that some of the anecdotal experiences that fed into the Council's risk assessment would not have been recorded. Responding to the request would be likely to disclose information about the receipt of complaints which in turn would shed light on the strength of feeling against the tree management proposals generally. However given how widely covered the issue was by the press, it is questionable what such a disclosure would add to the public's understanding of events.
55. In light of the above the Commissioner is satisfied that the cost of complying with the request renders it manifestly unreasonable.

Public interest test

56. The exception provided by regulation 12(4)(b) is subject to the public interest test. This means that although the request is manifestly unreasonable, the Council would still be required to provide the information unless, in all the circumstances of the case, the public interest in maintaining the exception is greater than the public interest in disclosing the information.
57. There is obviously some overlap between the public interest test and the consideration of proportionality carried in paragraphs 53 and 54 above. In addition to the public interest factors already discussed in those paragraphs the Commissioner recognises that there is general public interest in a public authority being transparent in how it carries out its functions and being accountable for the actions it has taken. The Council has developed these points further. Not only would disclosure identify in part why it took the actions it did, the disclosure may in theory allow protest groups to challenge its actions. Those groups may feel the

information would assist with future legal action against the Council. The Council also considers the intense public scrutiny it has been under in respect of the management of highway trees increases the value in full transparency.

58. However when weighing these arguments the Council has also taken account of the information that it is likely would be disclosed in response to the request and whether it would actually serve the public interest in these ways. The Council argues that it is not clear what information would actually be held once all the necessary searches had been carried out and therefore it is quite possible that would not be of any great help to those opposed to the tree felling.
59. The Council has also raised a point which the Commissioner considers irrelevant. It has argued that on the off chance the information did trigger further legal action by protestors this would be against the public interest due to the cost of defending such action. Similarly disclosing information in response to this request might simply be the stimulus for further complaints or Freedom of Information requests. The Commissioner would argue that if these were the results of disclosing the information, it would simply be part of the process of a holding the Council to account and should not be arguments used for withholding information. However this is all rather speculative and a distraction from the main point in favour of maintaining the exception. That is that extensive and costly searches are most likely to produce piecemeal information that would provide only a partial explanation of why the tree felling operation in Rustlings Road was carried out in the way it was.
60. The Commissioner is satisfied that the public interest in favour of maintaining the exception is greater than that in favour of disclosure. The Council are entitled to rely on regulation 12(4)(b) to refuse the second part of the request.
61. **Advice and Assistance**
62. When refusing a request under regulation 14(4)(b) on the grounds of cost a public authority is expected to provide the requester with appropriate advice and assistance in accordance with regulation 9 of the EIR. Such advice should be aimed at enabling the requester to refine their request so that they are able to submit a fresh request targeting information which would still be of interest to them but which could be provided at a cost that did not render the request manifestly unreasonable.
63. The Council's position is that it has provided advice and assistance to the complainant so far as it is reasonable to do so. It explained that it thought the complainant most likely anticipated that the council would hold a single document or sequence of messages which summarised the

grounds for believing there was a risk that protests at Rustlings Road could endanger public safety. It has explained that in its internal review letter it attempted to set the scene as to what information it did hold and what was not held. That is, its internal review advised the complainant that no single document or discrete sequence of communications was held. It then went on to explain that if he was seeking any and all information that could be interpreted as relating to the risk of protests then the sheer weight of information that would have to be searched through would have significant cost implications. The Council also argued that it directed the complainant to the disclosure log of the South Yorkshire Police which included details of the tactical plan for the operation and a large volume of correspondence between the Police and the Council about the tree felling operations.

64. The Commissioner notes that if it had been the case that concerns over public safety arose from a single piece of intelligence, for example a tip off about specific plans to try and prevent the tree felling, it would be simple to identify that information and consider whether it was appropriate to disclose that information. However this is not the case. The reality is that the concerns arose from knowledge accumulated from numerous sources and interactions with the public. This being the case the Commissioner considers it would be very hard to accurately pin point the most significant sources and so direct the complainant in any meaningful way to information that would best answer his request within a reasonable cost. The Commissioner initially anticipated that the Council would at least be able to set out the variety of sources of information and the different departments which would hold relevant information. However having gained a better understanding of events the Commissioner accepts that given the range of information that might be held and how the way that information is organised hinders any attempt to search it efficiently, she recognises it would be very difficult to assist the complainant in making a refined request for information that is likely to be of value to the him as it would not provide a full picture of what gave rise to the public safety concerns.

Right of appeal

65. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

66. 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.
67. 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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