

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

**Decision notice**

**Date:** 13 March 2019

**Public Authority:** The Council of the University of Cambridge  
**Address:** The Old Schools  
Trinity Lane  
Cambridge CB2 1TN

**Decision (including any steps ordered)**

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1. The complainant has requested information associated with a proposed land development. Trinity Hall (a College of the University of Cambridge) originally relied on section 21(1)(information accessible to applicant by other means), section 41(1) (information provided in confidence) and section 43(2) (commercial interests) of the FOIA to withhold information it considers it is likely to hold. Trinity Hall subsequently confirmed that its primary position is that it is not obliged to comply with the request under section 12(1) of the FOIA (cost exceeds the appropriate limit). It also indicated that some information would be exempt under section 42(1) (legal professional privilege).
2. The Commissioner's decision is as follows:
  - The requested information, where held, can be categorised as environmental information which Trinity Hall should have handled under the EIR.
  - Trinity Hall can rely on regulation 12(4)(b) of the EIR (manifestly unreasonable request by virtue of cost) to refuse to comply with the complainant's request.

- Trinity Hall breached regulation 9(1) of the EIR as it failed to offer advice and assistance to the complainant.
3. The Commissioner requires Trinity Hall to take the following step to ensure compliance with the legislation:
- In order to comply with regulation 9(1) provide advice and assistance to the complainant as to how he might refine his request to bring complying with the request within the cost limit, if it is possible to do so.
4. Trinity Hall must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## **Request and response**

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5. On 23 June 2018 the complainant wrote to Trinity Hall and requested information in the following terms:

*"Through the FOIA, I would like to request all details you hold on transactions, meetings, reports and correspondence (including your staff, representatives and agents and where applicable your pension fund manager) relating to the proposed sale and/or development of land in Waltham Abbey owned by the Master or Keeper Fellows and Scholars of the College or Hall of the Holy Trinity commonly called Trinity Hall in the University of Cambridge.*

*This includes, but is not limited to:*

- 1. Correspondence, reports and emails.*
- 2. Records of dates and times of meetings, and those present at such meetings.*
- 3. Minutes and notes of such meetings, and related correspondence.*

*The purpose of this request is review the background and process of the development of the Epping Forest District Local Plan up to and including the application of planning permission by Next plc on Green Belt land in Waltham Abbey owned by Cambridge University."*

6. Trinity Hall responded on 30 July 2018. It handled the request under the FOIA. With regard to (1) – correspondence, reports and emails - Trinity Hall said it withheld this information as it was deemed to be commercially sensitive, was provided in confidence or is already in the

public domain. With regard to (2) – records of dates and times of meetings and those present at such meetings – Trinity Hall withheld this information as it was deemed to be commercially sensitive. With regard to (3) – minutes and notes of meetings and related correspondence – Trinity Hall withheld this information as it was deemed to be commercially sensitive and was provided in confidence. Trinity Hall confirmed that it was withholding information under section 43(2) of the FOIA and that section 21 and section 41 also applied. It considered the balance of the public interest favoured maintaining the section 43(2) exemption.

7. In his request for an internal review on 31 July 2018, the complainant's concern appears to have focussed on Trinity Hall's application of section 43(2) to particular information. Trinity Hall provided a review on 28 August 2018. It upheld its original position with regard to its application of section 41(1) and section 43(2).

### **Scope of the case**

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8. The complainant contacted the Commissioner on 31 July 2018 to complain about the way his request for information had been handled. He confirmed to the Commissioner that the focus of his complaint is Trinity Hall's reliance on sections 43(2) and 41(1) to withhold the information he has requested.
9. The Commissioner noted that in its initial submission to her Trinity Hall stated that it is also relying on section 12(1) to refuse to comply with the request, and section 42(1) to withhold requested information. On 6 February 2019 the Commissioner advised Trinity Hall to communicate this revised position to the complainant and on 18 February 2019 Trinity Hall confirmed to the Commissioner that it had done so. The Commissioner subsequently confirmed with Trinity Hall that its primary position is that it is not obliged to comply with the request under section 12(1) of the FOIA.
10. In her initial correspondence to Trinity Hall dated 7 December 2018 the Commissioner had noted that she would consider whether Trinity Hall had considered the request under the correct information legislation. Trinity Hall appears not to have reviewed its position on this matter. It has continued to consider the request under the FOIA in its submissions to the Commissioner and further response to the complainant. The Commissioner's investigation has therefore first considered whether Trinity Hall has managed the request under the correct access regime.

11. The Commissioner has then considered whether Trinity Hall can rely on section 12(1) of the FOIA or its EIR equivalent to refuse to comply with the request.
12. If necessary, the Commissioner will also consider whether Trinity Hall complied with regulation 9(1).

## **Reasons for decision**

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### **Is the requested information environmental information?**

13. Information is 'environmental information' and must be considered for disclosure under the terms of the EIR rather than the FOIA if it meets the definition set out in regulation 2(1)(a) to 2(1)(f) of the EIR.
14. The request in this case is for information associated with the proposed sale and development of a piece of land owned by Trinity Hall. It is for information relating to the proposed sale and includes correspondence, information about related meetings, transactions and reports.
15. Regulation 2(1) of the EIR defines 'environmental information' as, under regulation 2(1)(a), information that concerns the state of the elements of the environment, including: air and atmosphere, soil, landscape and natural sites and biological diversity. Regulation 2(1)(c) defines environmental information as information that concerns measures (including administrative measures) such as policies, legislation, plans, programmes and activities affecting or likely to affect the elements referred to in (a) as well as measures or activities designed to protect those elements.
16. The Commissioner considers that developing the land in question is a measure that is likely to affect the elements referred to in regulation 2(1)(a). As such, the Commissioner is satisfied that the requested information is environmental information that Trinity Hall should have managed under the EIR at the point it received the request.
17. This includes the information on dates and times of meetings, and those present at such meetings. The Commissioner considers that this particular information is inextricably linked to the matter of the development of the land in question and therefore can also be categorised as environmental information.

**Regulation 12(4)(b) – manifestly unreasonable request, by virtue of cost**

18. As referenced above, in its initial submission to the Commissioner dated 16 January 2019, Trinity Hall indicated that it is justified in withholding the information on the grounds that it would take in excess of 18 hours of staff time to review and collate all the relevant information, reports, emails, notes and minutes of meetings and diary entries.
19. In a further submission dated 18 February 2019, Trinity Hall has confirmed that it is relying on section 12(1) in respect of the 'correspondence, reports and emails' and 'records of dates and times of meetings and list of attendees' and 'minutes and notes of meetings and related correspondence' that the complainant has referred to in his request. Trinity Hall subsequently confirmed that the information to which it had applied particular exemptions is not information it had formally identified, as such, but is information it considers it is likely to hold and to identify if it was to comply with the request.
20. The Commissioner has gone on to consider whether Trinity Hall can refuse to comply with the request as the cost of doing so would exceed the appropriate limit.
21. Regulation 12(4)(b) of the EIR says that an authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable. A request can be categorised as manifestly unreasonable because it is a vexatious request or, as here, it can be categorised as manifestly unreasonable because of the cost associated with complying with it ie it is the equivalent of section 12(1).
22. The EIR does not contain a limit at which the cost of complying with a request is considered to be too great. However, the Commissioner's guidance suggests that public authorities may use the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 as an indication of what Parliament considers to be a reasonable charge for staff time. It has been determined that £450 is the appropriate limit for public authorities that are not central government departments, and that the cost of complying with a request should be calculated at £25 per hour; this applies a time limit of 18 hours.
23. For the purposes of the EIR, a public authority may use this hourly charge in determining the cost of compliance. However, the public authority is then expected to consider the proportionality of the cost against the public value of the request before concluding whether the cost is excessive. If an authority estimates that complying with a

request may cost more than the cost limit, it can consider the time taken to:

- determine whether it holds the information
  - locate the information, or a document which may contain the information
  - retrieve the information, or a document which may contain the information, and
  - extract the information from a document containing it.
24. Where a public authority claims that regulation 12(4)(b) is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with regulation 9(1) of the EIR.
25. In its initial submission Trinity Hall told the Commissioner that it would take staff in excess of 18 hours to determine whether further information is held; to locate the information; to retrieve the information and to extract the information.
26. Trinity Hall then said that the information the complainant has requested would not be held in one source but would be contained in documents, communications and diary entries relating to its property investments and interactions with its legal and property advisers and the third party.
27. Trinity Hall also said that, while some records may relate solely to the requested information most of the requested information (particularly but not solely email correspondence) will contain information that is not relevant to the request and therefore it would require extensive work to extract the requested information. By 'extracting' the Commissioner assumes that Trinity Hall is referring to, for example, removing a small amount of relevant information from a longer document in order to then collate the relevant information, rather than redacting particular information. The process of redacting information cannot be included in the cost of complying with request.
28. Finally, and with regard to the dates and times of meetings [and attendees], Trinity Hall said in its first submission that there is no definitive record of dates and times of meetings. Whilst it may be possible to identify particular meetings at which the matter that is the subject of the request was discussed, Trinity Hall said it would be impossible to provide a list of meetings where incidental discussions took place.
29. In its subsequent submission Trinity Hall provided further detail. With regard to 'correspondence, reports and emails' it estimated that it holds approximately 550 pages of relevant information – the majority of which

are emails – that it would need to review and from which it would need to extract relevant information. This is because, if it was referred to at all, the matter of the land development might be referred to incidentally and would not necessarily be the main subject of any email correspondence or other material.

30. With regard to 'dates and times of meetings and list of attendees' Trinity Hall says it has identified that discussions about the possible sale and possible development of the land in question have been underway since late 2012. For this reason electronic diaries for the past six years would need to be reviewed in order to identify meetings where the subject that that is the focus of the complainant's request may have been discussed. Relevant meetings would not only include scheduled meetings of the College's Finance, Finance (Investments) and Finance (Property) Committee meetings but also *ad hoc* meetings with the College's professional advisers (legal, accounting and property) and potential development partners.
31. Finally, with regard to 'minutes and notes of meetings and related correspondence', Trinity Hall has referred to the point above ie that the matter in question may have been discussed at particular meetings since 2012. From that period up to the date of the request, Trinity Hall says there has been a total of 63 meetings of the three Finance Committee meetings. It says that it would need to review the papers and minutes for these meetings to identify when relevant discussions took place and to extract any relevant information. With regard to any *ad hoc* meetings, Trinity Hall says it is difficult to know how many such meetings have taken place but it estimates a minimum of 25. It says few of these meetings will have been formally minuted but all are likely to have generated some correspondence that it would need to review.
32. In the absence of a more detailed breakdown of the cost and time involved in complying with this request from Trinity Hall, the Commissioner has had to give the matter more thought than she usually needs to in these cases. She has been prepared to do this on this occasion.
33. Taking first the 550 (approximately) pages of information (emails, correspondence, reports) that Trinity Hall has identified it holds and that might contain information falling within the scope of the request. If the Commissioner allows one minute to review each page, it would take Trinity Hall approximately nine and a quarter hours to review all this particular information to identify whether it includes information about the development in question. If it has to extract relevant information from these documents, at 30 seconds per extraction, this would equate to four and a half hours. The running total so far – which the

Commissioner acknowledges is very much an estimate – would therefore be 13.75 hours.

34. With regard to dates and times of meetings, and lists of attendees, the Commissioner's view is that a search of an electronic calendar – using the meeting names as search terms, for example 'Finance Committee' – is not a task that is particularly onerous. Where the information is still held, on the face of it such a search might retrieve the dates and times of the three Committee meetings in a matter of moments. Trinity Hall has already identified that there were 63 such meetings from 2012 to the time of the request. It has not clarified why, if it has identified 63 meetings, it does not already have the dates and times of those meetings to hand. However, having considered all the circumstances – such as the time period covered – the Commissioner is going to estimate that it would take one hour to comply with the request for dates and times of meetings in respect of the three Committee meetings. This would take the total time to comply with the request up to 14.75 hours.
35. Trinity Hall has then estimated that there might have been a minimum of a further 25 *ad hoc* meetings at which the development might have been discussed. Identifying these meetings over the period from 2012 would be a more time consuming task. Trinity Hall would first need to identify relevant staff members whose calendars it would need to search. It would then need to search these calendars for all *ad hoc* meetings that had taken place. Trinity Hall would then need to review each of these meetings (presumably by reviewing any calendar entries, associated agendas or minutes or notes, or by talking to staff members) to identify if the development had been discussed at these meetings. If the development had been discussed, and if dates and times of these meetings had been recorded, Trinity Hall would then need to extract that information in order to compile a list. The Commissioner considers that for Trinity Hall to determine whether it holds this particular information – dates and times of the *ad hoc* meetings – and to locate it might reasonably take a full working day ie seven and a half hours. This would take the length of time needed to comply with the request up to 22.25 hours. And this is without then complying with the request for attendees at both the *ad hoc* meetings and the 63 Committee meetings, and the request for minutes and notes of all the meetings.
36. The Commissioner is satisfied that the cost of complying with the request as it has been expressed would exceed the appropriate limit of 18 hours and makes it a manifestly unreasonable request under regulation 12(4)(b) of the EIR. As such, Trinity Hall is not obliged to comply with it.



## **Regulation 9 – advice and assistance**

37. Regulation 9(1) of the EIR place a duty on a public authority to offer an applicant advice and assistance so far as it would be reasonable to expect the authority to do so.
38. As referred to above, in cases where an authority is relying on regulation 12(4)(b), regulation 9 creates an obligation to provide advice and assistance on how the scope of the request could be refined or reduced to avoid exceeding the appropriate limit.
39. The Commissioner's guidance states that where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy regulation 9 is:
  - either indicate if it is not able to provide any information at all within the appropriate limit; or
  - provide an indication of what information could be provided within the appropriate limit; and
  - provide advice and assistance to enable the requestor to make a refined request.
40. The further response that Trinity Hall provided to the complainant on 18 February 2019, and which it also provided to the Commissioner, makes no reference to regulation 9 (or its FOIA equivalent, section 16(1)). In failing to provide any advice and assistance the Commissioner finds that Trinity Hall breached regulation 9(1) of the EIR.

## Right of appeal

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41. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

42. 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.
43. 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

**Pamela Clements**  
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**Information Commissioner's Office**  
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