

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

**Date:** 1 July 2022

**Public Authority:** Moreton-in-Marsh Town Council  
**Address:** Old Town,  
Moreton in Marsh,  
Gloucestershire,  
GL56 0LW

**Decision (including any steps ordered)**

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1. The complainant requested information relating to the purchase and development of the British Legion site in Moreton-in-Marsh. Moreton in Marsh Town Council (the "council") disclosed some information and withheld other information under the exemption for commercial interests – section 43(2) of the FOIA. During the Commissioner's investigation the council disclosed further information and reconsidered the request under the EIR, withholding information under the exception for commercial confidentiality – regulation 12(5)(e).
2. The Commissioner's decision is that the council wrongly handled the request under the FOIA and in so doing breached regulations 5(1) and 14 of the EIR, and that it failed to demonstrate that the exception in regulation 12(5)(e) is engaged.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
  - Disclose the costings information withheld under regulation 12(5)(e).

4. The council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

## Background

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5. In March 2021 Moreton-in-Marsh Town Council and Great Western Railway (GWR) announced the joint purchase of a brownfield site neighbouring Moreton-in-Marsh Railway Station.
6. The purchase was made with the intention of developing the site into a transport hub next to the existing railway station to reduce both CO2 emissions and congestion around the town.
7. The complainant submitted a request for information associated with these activities.

## Request and response

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8. On 26 March 2021 the complainant wrote to the council and requested the following information:

"I note the developments on the Council's website regarding the Royal British Legion site. Please send me: The minutes of the meeting at which councillors approved the purchase.

The minutes of the meeting at which councillors approved the agreement with GWR. All the supporting papers to the above approvals, including:

The legal advice obtained by the Council, The cost benefit analysis, The financial arrangements for the funding of the Council's share of the purchase, The agreement between the Council and GWR."

9. The council responded on 27 April 2021 and disclosed some information. It withheld other information because it considered it to be "confidential".
10. Following an internal review the council wrote to the complainant on 7 July 2021. It confirmed that it was relying on section 43(2) of the FOIA to withhold some of the requested information.

## Scope of the case

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11. On 29 April 2021 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
12. The Commissioner advised the council that, in view of the nature of the request, which related to the purchase of and development of land, it was likely that the information was environmental in nature. He, therefore, directed the council to reconsider the request and issue a new response under the EIR.
13. During the course of the Commissioner's investigation the council disclosed additional information to the complainant. The council confirmed that the only outstanding information held constituted "costing" information (falling within the scope of the request for the "cost benefit analysis") which it was withholding under the exception for commercial confidentiality – regulation 12(5)(e). The Commissioner confirmed with the complainant that the decision notice would focus on this matter.

## Reasons for decision

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### Is it Environmental Information?

14. During the course of his investigation the Commissioner advised the council that he considered the requested information fell to be considered under the EIR. The Commissioner has set down below his reasoning in this matter.
15. Regulation 2(1) of the EIR defines what 'environmental information' consists of. The relevant part of the definition are found in 2(1)(a) to (c) which state that it is any information in any 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;
  - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements...”

16. The Commissioner considers that the phrase ‘any information...on’ should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner’s opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor, etc in question.
17. In this case the requested information relates to the purchase of and proposed development of land.
18. The Commissioner considers that the information, therefore, falls within the category of information covered by regulation 2(1)(c) as the information can be considered to be a measure affecting or likely to affect the environment or a measure designed to protect the environment. This is in accordance with the decision of the Information Tribunal in the case of Kirkaldie v IC and Thanet District Council (EA/2006/001) (“Kirkaldie”).
19. In view of this, the Commissioner has concluded that the council wrongly (initially) handled the request under the FOIA and breached regulation 5(1) of the EIR. As the council subsequently corrected this the Commissioner does not require the council to take any steps in this regard

#### **Regulation 14 – refusal to disclose information**

20. In the circumstances of this case the Commissioner has found that although the council originally considered this request 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.
21. In these circumstances the Commissioner believes that it is appropriate to find that the council breached regulation 14(1) of EIR which requires a public authority that refuses a request for information to specify, within 20 working days, the exceptions upon which it is relying. This is because the refusal notice which the council issued (and indeed its internal review) failed to cite any exception contained within the EIR as the council actually dealt with the request under FOIA.

22. Since the council has subsequently addressed this failing the Commissioner does not require it to take any steps in this regard.

**Regulation 12(5)(e) – commercial confidentiality**

23. Regulation 12(5)(e) of the EIR provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect “the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest”.
24. The Commissioner considers that in order for this exception to be applicable, the following conditions must be met:
- Is the information commercial or industrial in nature?
  - Is the information subject to confidentiality provided by law?
  - Is the confidentiality provided to protect a legitimate economic interest?
  - Would the confidentiality be adversely affected by disclosure?
25. In this case the withheld information consists of various costings which the council has stated addresses the complainant’s request for “The cost benefit analysis”.
26. The council’s submissions in respect of its application of regulation 12(5)(e) consist of the following:
- “The Council retains other information (Enclosed) as Commercial in Confidence under the FOIA Section 43 EIR 12(5)(e). An indication of available funds for development may prevent the Council from achieving best value for money when it seeks quotes or contracts for site development works, which would not be in the public interest.”
27. The Commissioner recognises that a case might be made for withholding the information in question. However, where a public authority has not provided adequate submissions it is not his role to generate arguments on its behalf.
28. In this case the council was given many opportunities to provide arguments in support of its position but failed to do so. The submissions provided fail to explain why the exception is engaged in this case.
29. Having considered the council’s position the Commissioner has concluded that it has failed to demonstrate that regulation 12(5)(e)

applies to the withheld information. As the exception is not engaged he has not gone on to consider the public interest test.

### **Other matters**

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30. Although they do not form part of the decision notice the Commissioner would like to note the following matters of concern.
31. In investigating complaints under section 50 the Commissioner is heavily reliant on public authorities providing timely and comprehensive responses to his enquiries. This is particularly the case where a complaint identifies information which could have been disclosed either with an authority's initial response or at the internal review stage.
32. In this case the Commissioner had to repeatedly prompt the council to address outstanding elements of the request and direct it to disclose information to the complainant. He is left with the impression that the council is either reluctant to fulfil its information rights obligations and/or that staff have not been provided with adequate training regarding the handling of requests for information.
33. The Commissioner is mindful that for smaller public authorities the resources available for dealing with information requests might be limited. However, the duty to deal with requests for information remains a statutory duty for all sizes of authority and he expects that, in future, the council will ensure it meets its obligations.

## Right of appeal

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34. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

35. 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.
36. 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 .....**

**Christopher Williams**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**