

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

**Date:** 7 November 2022

**Public Authority:** Lee Valley Regional Park Authority  
**Address:** Myddelton House  
Bulls Cross  
Enfield  
EN2 9HG

**Decision (including any steps ordered)**

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1. The complainant has requested copies of business plans. The above public authority ("the public authority") relied on regulation 12(5)(e) of the EIR to withhold the information.
2. The Commissioner's decision is that the public authority has not demonstrated that regulation 12(5)(e) of the EIR is engaged in relation to the indicative business plan. The final business plan does engage the exception and the public interest favours maintaining this exception. The public authority also breached regulation 5(2) of the EIR, as it disclosed information outside of the 20 working timeframe and regulation 14 as it failed to deal with the request under the EIR within 20 working days.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose, to the complainant, an unredacted copy of the indicative business plan.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## **Request and response**

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5. On 7 July 2021, the complainant wrote to the public authority and requested information in the following terms:

“I note in Paper E/618/19 there is mention of a business plan, see reference below. The first stage was declared to be 'indicative' and would be followed by full plan. “I would like to request copies of these plans, the indicative plan and any full plan that was later carried out.”
6. The public authority responded on 5 August 2021. It had dealt with the request under FOIA and relied on section 41 of FOIA to withhold the requested information.
7. The complainant argued that the request ought to have been dealt with under the EIR. Following an internal review the public authority wrote to the complainant on 1 October 2021. It now agreed that the information in question was environmental but relied on regulation 12(5)(e) of the EIR in order to withhold it.

## **Scope of the case**

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8. During the course of the Commissioner's investigation, the public authority disclosed a redacted version of the final business plan to the complainant on 10 October 2022.
9. The complainant was unwilling to withdraw the complaint, noting that the request had specifically sought two documents, yet only one had been provided.
10. The Commissioner contacted the public authority again on 12 October 2022, to ask it to carry out further searches aimed at identifying the indicative plan. The public authority identified this document and provided a redacted version to the complainant on 19 October 2022. The complainant maintains that the exception should not apply to either document or, if it does, that the public interest should favour disclosure.

## **Reasons for decision**

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11. The information in question relates to the re-development and future re-use of outdoor leisure facilities. The Commissioner therefore accepts that the request should be dealt with under the EIR.

## **The indicative business plan**

12. The public authority has disclosed a copy of the indicative business plan including profit and revenue projections, but has withheld the precise figures. Because of the nature of the document, this means that the majority of the information it contains has been redacted.
13. The Commissioner accepts that the information in question is commercial as it relates to business projections for a particular company and how that company was intending to generate a profit.
14. The Commissioner also accepts that, at the time, the information was provided in confidence. The information is clearly more than trivial as it relates to the potential operator's ability to turn a profit. The circumstances in which the information was provided, would in the Commissioner's view, be sufficient to impose a duty of confidence upon the public authority.
15. However, whilst the confidentiality of the information may well have protected an economic interest at the time it was provided (and for some time thereafter), the Commissioner does not accept that it was still required at the point the request was responded to.
16. The information in question was created in 2018 or 2019 and was a future projection which would have reflected the prevailing economic conditions at that time. Consequently those figures are very unlikely to have anticipated the global pandemic and the associated supply issues and lifestyle changes that this generated. The Commissioner is therefore unpersuaded that the figures involved would be of considerable relevance to any of the operator's competitors at the point the request was responded to.
17. The public authority has accepted that the operator has been granted a ten year contract but has argued that the contract may need to be re-tendered earlier in the event that the operator is unable to fulfil the contract (ie. if the operator were to become insolvent).
18. The Commissioner is not aware of any indication that the current operator may struggle to meet its obligations and so he cannot regard this argument as going much beyond the hypothetical. Furthermore, even if the operator were to collapse into administration, he is sceptical that the information, even if it were less out of date, would be relevant in such circumstances (ie. the public authority having to take on another operator at short notice).
19. The Commissioner is therefore unpersuaded that the confidentiality of this document is still required to protect an economic interest, or that

disclosure would, by breaching that confidentiality, adversely affect the economic interests of either the operator or the public authority.

20. The exception is thus not engaged and the public authority must disclose the information.

### **The final business plan**

21. For the same reasons as set out in paragraphs 13 and 14 of this decision notice, the Commissioner considers that the information in question is commercial in nature and subject to the common law duty of confidence.
22. However, the Commissioner does not consider that the arguments set out in paragraphs 15-19 apply this to the parts of this document that were redacted.
23. The document in question is dated April 2021. Therefore any financial information was likely to be more current than the information generated in 2019. Crucially, the updated business plan would have been able to take account of the economic impacts caused by the pandemic. At the point the public authority responded to the request, the Commissioner understands that the contract had yet to be agreed and therefore this material would have retained commercial sensitivity.
24. Disclosing the information at the point the public authority responded to the request would therefore have adversely affected the confidentiality of the information and thus harmed the economic interests of both the operator and the public authority itself. The exception is thus engaged.
25. Whilst the Commissioner recognises that large amounts of public money may well have been spent on the public authority's facilities, in this case he considers that the public interest lies in allowing the public authority to negotiate the most favourable terms available. This ultimately benefits the public by ensuring the facilities are available for public use.
26. The Commissioner is therefore satisfied that the balance of the public interest favours maintaining the exception.

### **Procedural matters**

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27. As the public authority disclosed environmental information outside of the 20 working day timeframe, it breached regulation 5(2) of the EIR.
28. The public authority also breached regulation 14 as it failed to cite a valid EIR exception within 20 working days.

## Right of appeal

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29. 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)

30. 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.
31. 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 .....**

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