

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

**Decision notice**

**Date:** 28 November 2022

**Public Authority:** Nuclear Decommissioning Authority  
**Address:** Herdus House  
Westlakes Science & Technology Park  
Moor Row  
Cumbria  
CA24 3HU

**Decision (including any steps ordered)**

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1. The complainant has requested Nuclear Decommissioning Authority (NDA) to confirm whether it is in the process of purchasing land adjoining or in the vicinity of the low level waste repository site at drigg Cumbria and, if so, to provide a map of that land. NDA refused to disclose this information citing regulation 12(5)(e) of the EIR.
2. The Commissioner's decision is that NDA is not entitled to refuse to disclose the withheld information under regulation 12(5)(e) of the EIR.
3. The Commissioner requires NDA to take the following steps to ensure compliance with the legislation:
  - Disclose the remaining withheld information to the complainant.
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 23 January 2022, the complainant wrote to the NDA and requested information in the following terms:

“Does the company own land adjoining or in the vicinity of the low level waste repository site at drigg Cumbria?

If the company does own land adjoining or in the vicinity of the low level waste repository site at drigg Cumbria, what land and where? please provide a map

Is the company currently in the process of purchasing land adjoining or in the vicinity of the low level waste repository site at drigg Cumbria?

If the company is currently in the process of purchasing land adjoining or in the vicinity of the low level waste repository site at drigg Cumbria, what land and where? Please provide a map”

6. NDA responded on 25 February 2022. It confirmed that it does own land adjoining or in the vicinity of the low level waste repository site at drigg Cumbria and provided a map. But refused to provide details of the land (and its location) it was in the process of purchasing nearby, under regulation 12(5)(e) of EIR.
7. The complainant requested an internal review on 25 February 2022.
8. NDA carried out an internal review and notified the complainant of its findings on 24 March 2022. It upheld its application of regulation 12(5)(e) of the EIR.

## Scope of the case

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9. The complainant contacted the Commissioner on 24 March 2022 to complain about the way her request for information had been handled. She believes the remaining withheld information should be disclosed.
10. The Commissioner has not obtained the withheld information or obtained further submissions from NDA. He is satisfied that he can make his decision without this information.
11. He is satisfied that regulation 12(5)(e) of the EIR is not engaged. The following section of this notice will now explain why.

## Reasons for decision

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12. Information can be withheld under regulation 12(5)(e) of the EIR if disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
13. The withheld information is commercial in nature; it involves ongoing negotiations between NDA and a landowner over the potential purchase of land near the grigg Cumbra. The purchase of land is a commercial transaction.
14. The information will also be subject to confidentiality by law. It is not trivial or otherwise accessible and so has the necessary quality of confidence.
15. In terms of legitimate economic interests and how disclosure would adversely effect those interests, NDA has stated that disclosure would have a negative impact on NDA and LLWR Ltd. It stated that disclosure would prejudice its negotiating position in any ongoing property purchases and its ability to obtain best value for money for UK taxpayers. It considers information relating land owned or purchased will also be available via HM Land Registry on completion.
16. The Commissioner notes that the request is to know where the land in question is and to obtain a map of that land. It is not for any information relating to the ongoing negotiations themselves or what price is being negotiated; information which he could see would adversely effect NDA at this stage in the discussions if it was disclosed. Purely knowing where the land is does not adversely effect NDA's economic interests. It is no different to the land being advertised publicly for sale and for a specific sum. Knowing where the land is would not damage ongoing negotiations or allow anyone interested in the land to outbid NDA. It would need to know more information concerning the price of the land being agreed to do that.
17. Disclosure could potentially lead to more interest in the land or someone else approaching the owner to express interest. But this is something that can happen when land is advertised on the open market and does not effect what NDA is willing or able to pay. Those that may also be interested in the land would still not know what negotiations have taken place and what price has been discussed; information which would adversely effect NDA if it were disclosed. They could also use the map already disclosed and approach privately the landowner(s) of the land adjacent to or in close vicinity and express an interest in purchasing the land.

18. For the above reasons, the Commissioner is not satisfied that regulation 12(5)(e) of the EIR applies to the withheld information. As he does not consider the exception is engaged, there is no need to go on to consider the public interest test.

## Right of appeal

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19. 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)

20. 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.
21. 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

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