

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

Decision notice

Date: 8 December 2022

Public Authority: Tenterden Schools Trust
Address: Ashford Road
Tenterden
TN30 6lt

Decision (including any steps ordered)

1. The complainant has requested information from Tenterden Schools Trust ('TST') about an application to dispose of a former playing field.
2. The Commissioner's decision is that the requested information is environmental information which TST should have handled under the EIR. The information TST is withholding is commercially sensitive and engages regulation 12(5)(e) of the EIR. The public interest favours maintaining the exception. TST breached regulation 5(2) and 14 as it did not communicate information or cite an EIR exception within 20 working days of the request.
3. The Commissioner does not require TST to take any corrective steps.

Request and response

4. On 16 June 2022, the complainant wrote to TST and requested the following information:

"...a copy of the application made by Tenterden Schools Trust to the Department for Education on or about 27 May 2022 to dispose of the playing field land in Appledore Road."

5. TST disclosed the Form B application on 13 July 2022 and on 14 July 2022 the complainant requested the attachments to the Form B application.
6. TST wrote to the complainant on 27 July 2022. It had handled the request under FOIA. It released the Form B attachments withholding some information from them under section 43(2) of FOIA, which is the FOIA equivalent of regulation 12(5)(e) of the EIR.
7. In this correspondence TST clearly advises the complainant to request an internal review if they were not satisfied with the response. The complainant did not do so but instead submitted a complaint to the Commissioner on 1 August 2022 and stated that TST had not invited them to request a review.

Reasons for decision

8. The requested information concerns an application to dispose of a former playing field. As such the Commissioner is satisfied that the information is environmental information under regulation 2(1)(a) and 2(1)(c) of the EIR.
9. 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.
10. Since TST had not been given the opportunity to carry out an internal review, the Commissioner wrote to it on 18 November 2022 and asked it to confirm what information it was withholding and whether it remained satisfied that regulation 12(5)(e) was engaged.
11. TST confirmed its reliance on regulation 12(5)(e) with regard to some information in a valuation report it had disclosed and advised personal data had also been redacted from the report. TST said that the valuation report was provided to assist with a commercial activity it is involved with; namely the sale of the piece of land it owns. Disclosing certain details within the valuation report, particularly in advance of the sale of the land would cause harm to, and impact on, its commercial position. TST also said that disclosure would result in the market being made aware of what TST might be expecting to receive before bidders offer their price.
12. The Commissioner has considered four tests. First, he is satisfied that the information to which TST has applied the regulation 12(5)(e) exception is commercial in nature. Second, he is satisfied that the

information is subject to confidentiality by law because it is not trivial and is not otherwise accessible and so has the necessary quality of confidence.

13. Third, the Commissioner has considered whether the confidentiality is required to protect a legitimate economic interest. The Commissioner accepts that disclosing the withheld information would undermine TST's commercial position for the reason it has given. It would indicate to potential bidders what figure TST would be expecting to receive for the land, which might be a figure less than bidders were prepared to offer. This would undermine TST's ability to secure the best price for the land.
14. Finally, the Commissioner is satisfied that the confidentiality would inevitably be affected if TST disclosed this information.
15. Since the four tests have been satisfied the Commissioner finds that regulation 12(5)(e) of the EIR is engaged as disclosing the withheld information would adversely affect TST's commercial interests. He has gone on to consider the associated public interest test.
16. TST has noted that there is a general public interest in transparency and visibility of public bodies so they can be held to account on decisions they make. The withheld information will also indicate if the price that TST eventually agrees represents value for money.
17. The complainant is concerned about TST's proposal to sell the field in question, which they say is opposed by Tenterden Town Council and a wide range of community and environmental groups.
18. Regarding the public interest in withholding the information, TST has noted that disclosure would impact on, and potentially cause harm to, its commercial position. Releasing the valuation figures could indicate TST's expectations to bidders ahead of the sale of the land and possibly adversely affect TST's finances. TST argues that it is important, as a recipient of public funds, that it secures the best value for the taxpayer. Disclosure would adversely affect its ability to secure the best value for the land.
19. The selling off of school playing fields, even disused ones as in this case, is a matter of some public concern. However, the Commissioner finds that the public interest in this case has been adequately met through the information TST has disclosed. There has also been a consultation on the potential sale. There is greater public interest in TST achieving the best price for the piece of land that it is proposing to sell – money that it can re-invest into educating local young people. The Commissioner's decision is therefore that the public interest favours

maintaining the regulation 12(5)(e) exception to protect TST's commercial interests.

20. Under regulation 5(2) of the EIR a public authority must communicate information that has been requested within 20 working days of the request. Under regulation 14(2) it must issue a refusal notice in respect of any excepted information within the same timescale and under regulation 14(3) it must cite the EIR exception on which it is relying to withhold that information.
21. In this case, the complainant submitted their request on 16 June 2022. TST released some information on 13 July 2022 but did not release all the relevant non-excepted information, or provide a refusal notice, until 27 July 2022. As the Trust had handled the request under FOIA, it did not cite an EIR exception. The Trust therefore breached regulation 5(2) and regulation 14 of the EIR.

Right of appeal

22. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. 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.
24. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF