

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 16 May 2022

Public Authority: City of York Council
Address: West Offices
Station Rise
York
YO1 6GA

Decision (including any steps ordered)

1. The complainant has requested information held by City of York Council (the council) relating to the legal status of a particular road.
2. The council refused to provide the information requested, citing regulation 13 – personal information, regulation 12(5)(b) - course of justice, and regulation 12(5)(f) - interests of the information provider, of the EIR. During the Commissioner's investigation, the council stated that it also considered regulation 12(4)(b) – manifestly unreasonable, of the EIR, to be engaged.
3. The Commissioner finds that the council has failed to demonstrate that any of the exceptions cited are engaged in respect of part 1 of the request.
4. The Commissioner is satisfied that the council is entitled to rely on regulation 13 when withholding all the information relevant to part 2 of the request (with the exception of that information which also relates to part 1 of the request).
5. With regard to part 3 of the request, it is the Commissioner's decision that the council has breached regulation 9 of the EIR, as it failed to ensure that it had obtained an objective reading of this part of the request.
6. The Commissioner also finds that there has been a breach of regulation 14(2) of the EIR, as the council failed to issue a refusal notice within 20 working days.

7. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - Release the information relevant to part 1 of the request
 - Contact the complainant to seek clarification of part 3 of the request.
8. 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

9. In 2002, a number of properties were sold to a property development company on land that had previously been owned by the Ministry of Defence. A dispute has recently arisen regarding the legal status of the access road (the Road) to these properties.
10. In 2020, the complainant received a notice from the council to remove a 'highway obstruction' on part of his driveway.
11. The council claimed it was entitled to issue this notice on the basis that the Road, and the complainant's driveway which formed part of the Road, were adopted as a highway when the land was sold by the Ministry of Defence in 2002.
12. On 26 October 2020, the complainant provided the council with information which he believed contradicted the council's claims.
13. On 2 November 2020, the council advised the complainant it had now received a copy of an adoption certificate dated 29 June 1967, which provided 'conclusive evidence' that the Road 'is an adopted highway' as defined by section 202 of the Highways Act 1989.
14. The council subsequently determined that the adoption certificate it had received for the Road was ineffective; it had found that as the Road was Crown land, and owned by the Ministry of Defence at the time that the certificate was issued, section 202 of the Highways Act 1989 could not apply.
15. On 16 July 2021, the council then issued a highway adoption certificate which confirmed that following receipt of an application from the majority of residents on 10 May 2021, the Road (which included the

complainant's driveway) was now a highway maintainable at public expense.

Request and response

16. On 24 November 2020, the complainant wrote to the council and requested information in the following terms:

'The council's highways department recently received from a solicitor's firm an alleged "adoption certificate and map" for Government House Road, York, dated 1967. Please inform as to the name of the solicitors and share the document that brought this solicitors firm to the council's attention and the email exchanges between them and the council.'

17. On 24 December 2020, the council advised the complainant that, due to the Christmas holiday period, and Covid working restrictions, it would need to extend the time frame in which to provide a response until 8 January 2021.
18. The complainant expressed his concerns about the delay; he stated that as he had not received a response to the request within the statutory time period, he was now requesting an internal review.
19. On 24 December 2020, the council accepted the complainant's request for an internal review, and advised that the due date for its response would now be 26 January 2021.
20. Following the Commissioner's intervention, on 12 February 2021, the council confirmed to the complainant that it had completed its internal review and that it was refusing the request under regulation 12(5)(f), regulation 12(5)(b) and regulation 13, of the EIR.

Scope of the case

21. On 28 January 2021, the complainant contacted the Commissioner to raise concerns that he had not received a response to his request from the council.
22. After receiving the council's response of 12 February 2021, the complainant then contacted the Commissioner again on 16 February 2021, about that response.
23. The complainant advised the Commissioner that he required conclusive proof that the 1967 adoption certificate was genuine. He advised that the Ministry of Defence, and the developers, had stated that they held

no evidence of the road having ever been adopted. Given this, and the council's change of position about the Road based on the receipt of this one document, he stated that he wanted to verify the source to ensure its authenticity.

24. The complainant has recently set out a number of additional concerns about the copy of the 1967 certificate held by different authorities; this includes questions about when, how and why they came to hold a copy of this information. However, these are not matters for the Commissioner, and will therefore not be considered within this decision notice.
25. The council has recently confirmed to the Commissioner that in addition to regulation 12(5)(f), regulation 13, and regulation 12(5)(b), it is now also relying on regulation 12(4)(b) of the EIR, as its basis for withholding the relevant information.
26. The Commissioner notes that the complainant's request contains three parts:
 - the 'name of the solicitors' that held the adoption certificate and map.
 - 'the document that brought this solicitors firm to the council's attention'
 - 'the email exchanges between them and the council'
27. The Commissioner is to consider the following:
 - Whether the council has taken an objective reading of the third part of the complainant's request.
 - Whether the council is entitled to rely on regulation 12(4)(b), regulation 13, regulation 12(5)(f), and/or regulation 12(5)(b) when refusing to disclose the information held that is relevant to the request.
 - Certain procedural matters.

Reasons for decision

Regulation 9 – duty to provide advice and assistance

28. Under regulation 9(1) of the EIR a public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

29. The Commissioner has published guidance¹ on interpreting and clarifying requests; this states that public authorities must interpret information requests objectively, and avoid reading into the request any meanings that are not clear from the wording.
30. The guidance provides that if the authority finds there is more than one objective reading of the request then it must go back to the requester to ask for clarification. It should not guess which interpretation is correct.
31. The part of the request in question here is that which states 'the email exchanges between them and the council'. The issue at hand is what party the complainant was referring to as 'them'. The council proceeded on the basis that 'them' referred to a third party. However, the Commissioner's view is that it is more likely the complainant was referring to the solicitors.
32. The Commissioner accepts that the terms of part 3 of the request are ambiguous and provides for more than one objective reading. This means that the council should have sought clarification from the complainant on this part of the request.
33. By failing to seek the necessary clarification in respect of part 3 of the request, the Commissioner finds that the council failed to comply with the requirements stipulated in regulation 9 of the EIR.
34. Given the above, the council must now write to the complainant and seek clarification with regards to part 3 of the request.
35. The Commissioner will now go on to consider whether the council is entitled to rely on any of the exceptions it has cited when withholding the information relevant to parts 1 and 2 of the request.

Regulation 12(4)(b) – manifestly unreasonable

36. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request is manifestly unreasonable. Where it is found to be engaged, regulation 12(4)(b) of the EIR is also qualified by the public interest test.
37. There is no definition of 'manifestly unreasonable' under the EIR. The Commissioner considers that 'manifestly' implies that the request should be 'obviously' or 'clearly' unreasonable.

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/regulation-9-advice-and-assistance/>

38. Regulation 12(4)(b) of the EIR is designed to protect public authorities from exposure to a disproportionate burden or an unjustified level of distress, disruption or irritation in handling information requests. In effect, it works in similar regards to two exemptions within FOIA; section 12, where the cost of complying with a request 'is too great', and section 14, where a request is vexatious.
39. Although there is no definition of 'manifestly unreasonable' under the EIR, the Commissioner's opinion is that 'manifestly' implies that a request should be obviously or clearly unreasonable.
40. The council has stated that it accepts that it could not refuse the request solely on the basis of the amount of time and costs. However, it goes on to argue that there is no public interest in relation to the withheld information, and to divert officers away from their usual duties to deal with the request is manifestly unreasonable, and also not in the public interest.
41. The Commissioner has considered the fact that, at that time of the request, the council was still relying on the 1967 certificate as evidence that the Road was an adopted highway. Whilst the Commissioner appreciates that matters have now moved on, and that the council subsequently determined that the certificate could not be relied upon to determine the legal status of the Road, this was not the position at the time of the request.
42. The Commissioner has also taken into account that the request requires consideration of a small amount of information which is easily identifiable, and therefore it would create very little burden on the council's resources to deal with the request.
43. It is the Commissioner's opinion that, at the time of the request, disclosure of the withheld information would have provided further clarity, and transparency, about the processes which led the council to make the decision (at that time) about the legal status of the Road.
44. Therefore, the Commissioner does not accept the council's argument that the request was manifestly unreasonable on the basis that it would divert its resources and have 'no public interest benefit'.
45. Given that there are no further arguments that have been presented in support of the application of this exception, the Commissioner finds that regulation 12(4)(b) of the EIR is not engaged.

Regulation 13 – personal data

46. Regulation 13(1) of the EIR provides that information is exempt from disclosure if it is the personal data of an individual other than the requester, and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.
47. In this case the relevant condition is contained in regulation 13(2A)(a)². This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
48. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data, then regulation 13 of the EIR cannot apply.
49. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

50. Section 3(2) of the DPA defines personal data as:

'any information relating to an identified or identifiable living individual'.

51. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
52. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
53. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

² As amended by Schedule 19 Paragraph 307(3) DPA 2018.

54. The information requested in part 1 of the request (the name of the firm of solicitors) also forms part of the withheld information relevant to part 2 of the request.
55. The council claims that releasing the name of the solicitors firm would result in a disclosure of personal data; it suggests that the name of the firm could be used with information already in the public domain, in order to identify which individuals solicitor(s) were involved in relevant matters.
56. The Commissioner has considered the arguments presented by the council, including its reference to the details published on the firm of solicitors' website; however, he is not persuaded that the release of the name of the solicitors firm would allow any solicitor(s) who had involvement in the matter to be directly identified.
57. It is the Commissioner's decision that as the name of the solicitors firm itself does not meet the definition of personal data, the council cannot rely on regulation 13 of the EIR when withholding this information.
58. However, the Commissioner is satisfied that the remaining information contained within the document relevant to part 2 of the request does fall within the definition of 'personal data' in section 3(2) of the DPA; this is because it both relates to, and identifies, a third party.
59. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the EIR. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
60. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

61. Article 5(1)(a) of the GDPR states that:

'Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject'.
62. In the case of an EIR request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
63. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

64. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that 'processing shall be lawful only if and to the extent that at least one of the' lawful bases for processing listed in the Article applies.
65. There are six lawful bases for processing in Article 6, but only (a) consent or (f) legitimate interests, are relevant to disclosure under FOIA and EIR. The Commissioner intends to consider each in turn.

Article 6(1)(a) - consent

66. Consent is defined in Article 4 of the UK GDPR as

'any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her.'
67. For this basis to be satisfied, the individual must give their consent freely to the specific disclosure, with the understanding that their personal data will be disclosed to the requester under the EIR, and therefore potentially to the world at large.
68. In this case, the third party originally advised the council that whilst the documents that they were providing were public documents and could be shared more widely, they expected their personal correspondence to be shared only with the council's legal team.
69. However, when advised by the council that it had received the complainant's information request, the third party asked for some additional time to consider the matter; they then subsequently stated that that they would 'not necessarily mind' some information and their identity being revealed to the complainant. However, the third party did raise concerns about the full content of their emails being released, indicating that they regarded them to be personal and private. They also expressed some concerns that disclosure may cause them some distress and an 'unwelcome' intrusion of their privacy.
70. Whilst the third party gave consent, the Commissioner considers it unlikely that they had a full understanding that disclosure of their personal information would extend to a much wider audience, and would be a disclosure to the 'world at large'.
71. It is the Commissioner's view that had the third party been aware of the full consequences of disclosure, it is unlikely that they would have provided consent. As a result, it is the Commissioner's decision that the

council cannot rely on Article 6(1)(a) as a lawful basis for disclosure of the withheld information in this particular instance.

72. The Commissioner has therefore gone on to consider whether Article 6(1)(f) would provide the council with a lawful basis for processing the withheld information. This states:

'processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child'³.

73. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the EIR, it is necessary to consider the following three-part test:-

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

74. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

³ Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, regulation 13(6) EIR (as amended by Schedule 19 Paragraph 307(7) DPA) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

Legitimate interests

75. In considering any legitimate interest(s) in the disclosure of the requested information under the EIR, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.
76. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
77. It is the Commissioner's opinion that disclosure of the withheld information would, at the time of the request, further promote transparency and openness regarding the processes and the decisions that were being reached by the council about the legal status of the Road, particularly given the confusion that arose about this, and related matters.
78. Given the above, the Commissioner is satisfied that there is a legitimate interest in the disclosure of the information.

Is disclosure necessary?

79. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the EIR must therefore be the least intrusive means of achieving the legitimate aim in question.
80. The requested information is not in the public domain, and the Commissioner accepts that the complainant would have no other means of getting the requested information. Therefore, it is the Commissioner's opinion that disclosure of the withheld information would be necessary to satisfy the legitimate interests identified in this case.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

81. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the EIR in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.

82. In considering this balancing test, the Commissioner has taken into account the following factors:
- the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
83. The Commissioner notes that the complainant was provided with details about where the adoption certificate was held (a firm of solicitors). The council has also provided the complainant with a copy of the certificate, and the relevant map associated with the document, and explained why it regarded this as evidence of the status of the Road (at the time of the request). The council also confirmed that it had not previously been able to locate the 1967 adoption certificate within its own records.
84. It is the Commissioner's opinion that the disclosure of the document requested would provide little further insight into the actual decision that was reached by the council. Should the complainant question the authenticity of any document used by the council to determine the legal status of the Road, then there are alternative and more appropriate ways in which he can challenge this.
85. The Commissioner is satisfied that releasing the document would be disproportionately intrusive to the third party, and could cause unwarranted damage and distress to that third party.
86. As a result, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and the disclosure of the personal information that is relevant to part 2 of the request would not be lawful.
87. Given that the Commissioner is satisfied that disclosure would be unlawful, he considers that it is not necessary to go on to separately consider whether disclosure of the personal data contained within the relevant document would be fair or transparent.
88. In conclusion, it is the Commissioner's decision that the council is entitled to rely on regulation 13 of the EIR when withholding the information relevant to part 2 of the request, with the exception of the name of the firm of solicitors (which is relevant to part 1 of the request).
89. The Commissioner will now go on to consider whether the council is entitled to rely on regulation 12(5)(f) when withholding the information relevant to part 1 of the request.

Regulation 12(5)(f) – interests of the person who provided the information

90. The Commissioner is to consider whether the council is entitled to rely on regulation 12(5)(f) when withholding the name of the solicitors (part 1 of the request).
91. The Commissioner's published guidance on the exception at regulation 12(5)(f) explains that its purpose is to protect the voluntary supply of information to public authorities that might not otherwise be made available to them.
92. In such circumstances, a public authority may refuse disclosure when it would adversely affect the interests of the information provider. The wording of the exception makes it clear that the adverse effect has to be to the person or organisation providing the information, rather than to the public authority that holds it.
93. With regard to engaging the exception, and as recognised by the Information Tribunal, a four stage test has to be considered, as stated below:
 - Was the person under, or could they have been put under, any legal obligation to supply the information to the public authority?
 - Did the person supply the information in circumstances where the recipient public authority, or any other public authority, was entitled to disclose it other than under EIR?
 - Has the person supplying the information consented to its disclosure?
 - Would disclosure adversely affect the interests of the person who provided the information to the public authority?
94. Where the four stages of the test are satisfied, the exception will be engaged. The public interest test will then determine whether or not the information should be disclosed.
95. In order for the exception to be engaged, the adverse affect is to the interests of the person who provided the information, in this case the third party. Therefore, the Commissioner does not intend to take into account any arguments presented by the council as to how disclosure would adversely affect the interests of the solicitors.
96. The Commissioner accepts that the third party was not under any obligation to provide the information to the council, and that it was a voluntary submission of information.

97. In addition, the Commissioner is not aware of any circumstances where the council would be obliged to release this particular information (other than potentially under the EIR).
98. The Commissioner also accepts that the council does not have the consent of the third party to release the requested information.
99. Given the above, the Commissioner is satisfied that the first three stages of the test to determine whether the exception is engaged are met; he has therefore gone on to consider whether disclosure would adversely affect the interests of the provider of the information.

Adverse effect

100. When considering whether there would be an adverse effect to the interests of the person who voluntarily provided the information, the public authority needs to identify harm to the person's interests which is real, actual and of substance and to explain why disclosure would, on the balance of probabilities, directly cause harm.
101. There is no requirement for the adverse effect to be significant – the extent of the adverse effect would be reflected in the strength of arguments when considering the public interest test (i.e., once the application of the exception has been established).
102. However, the public authority must be able to explain the causal link between disclosure and the adverse effect, as well as why it would occur. The need to point to the specific harm and to explain why it is more probable than not that it would occur reflects the fact that this is a higher test than 'might adversely affect', which is why it requires a greater degree of certainty; it also means that it is not sufficient for a public authority to speculate on possible harm to a third party's interest.
103. In this case, the council's arguments focus on the adverse affect to the interests of the provider of the information following the disclosure of their identity. However, the Commissioner has already determined that the council is entitled to withhold any information which would identify any third party.
104. The Commissioner accepts that the solicitors did not provide consent for its company name to be released into the public domain. However, the Commissioner considers that it is for public authorities to fully explain the relevant causes and effects, and it is not his role to generate arguments on their behalf. In this instance, the arguments presented by the council focus on the damage and distress caused to the provider of the information (and solicitors), should their identities be revealed as a result of disclosure.

105. As the Commissioner has already determined that the disclosure of the name of the firm of solicitors would not reveal the identity of any one individual, it is his opinion that the arguments presented by the council in support of the exception do not carry any weight in this instance.
106. It is therefore the Commissioner's decision that the council has failed to demonstrate the adverse effect which would be caused to the interests of the provider of the information, and regulation 12(5)(f) of the EIR is not engaged.

Regulation 12(5)(b) – the course of justice

107. The Commissioner is to consider whether the council is entitled to rely on regulation 12(5)(b) when withholding the name of the solicitors (part 1 of the request).
108. Regulation 12(5)(b) of the EIR provides that a public authority can refuse to disclose information, if its disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial, or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature.
109. The course of justice at regulation 12(5)(b) is a broad exception which encompasses any adverse effect on the course of justice and the Commissioner considers that it is not limited to only information that is subject to legal professional privilege (LPP).
110. It is the Commissioner's view that the exception can be relevant in relation to activities such as planning decisions and enforcement activities. It is therefore the case that the exception may be engaged, if it is shown that the disclosure of the information has an adverse effect on the council's ability to conduct a proper investigation, and take action where appropriate.
111. The council has argued that should the requested information, which includes the name of the solicitors, be released, it would have an adverse affect on its ability to receive information relevant to carrying out investigations in the public interest in the future.
112. The council's arguments focus on the reluctance of third parties to provide information voluntarily, should it be the case that information may be released that can be traced back to them. It claims that this would be detrimental to its ability to carry out its functions in the future.
113. The Commissioner recognises that where there is an ongoing dispute about a legal matter (in this case, both the status of the Road, and the related notice of a highway obstruction), there is a strong need to

protect the process so as not to prejudice the outcome or any potential legal action taken by any party.

114. The council's reasoning for this exception being engaged are predicated on compliance with the first part of the request involving disclosure of the identity of an individual. Given that the Commissioner has already determined that this part of the request would require disclosure of the name of a firm of solicitors rather than the identity of an individual, he is not persuaded by the council's representations in support of the application of regulation 12(5)(b).

115. Therefore, in the absence of any other arguments, the Commissioner must find that the exception at regulation 12(5)(b) is not engaged.

Procedural matters

Regulation 14 – Refusal to disclose information

116. Under regulation 14(2) of the EIR, if a request for environmental information is refused by a public authority under regulation 12, the refusal must be made as soon as possible, and no later than 20 working days after the date of receipt of the request.

117. In this case, the council failed to issue a refusal notice to the complainant within 20 working days of receipt of the request; the Commissioner has therefore found a breach of regulation 14(2) of the EIR.

Other matters

118. The Commissioner has found it necessary to make additional comment about the council's initial handling of the complainant's request.

119. The council contacted the complainant to advise that it would require additional time in which to deal with the request. The complainant expressed his dissatisfaction with this, and asked for an internal review.

120. The council should have identified that the complainant's correspondence of 24 December 2020, was a complaint solely about the delay in processing the request, and then dealt with this accordingly, and not as an internal review request. The council's approach caused confusion, and led to a position where it was then unable to properly complete the internal review process, as required by the EIR.

121. The Commissioner is also concerned about the council's decision to further extend the response time to the original request (on the basis

that it had decided to progress matters to the internal review stage); this was not appropriate, and was unfair to the complainant.

122. The council must ensure that there is no repetition of these issues in relation to future information requests. A failure to do so, and the receipt of similar complaints in the future, may lead the Commissioner to revisit this matter.

Right of appeal

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

124. 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.

125. 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

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