

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

**Date:** 31 March 2022

**Public Authority:** South Gloucestershire Council  
**Address:** Department for Chief Executive and Corporate Resources  
PO Box 1953  
Bristol  
BS37 0DB

**Decision (including any steps ordered)**

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1. The complainant has requested from South Gloucestershire Council ('SGC') information on the options it had considered for the proposed location and design of a new railway station car park. He also requested copies of communications between SGC and a landowner over the sale of land for the car park. SGC said the information was exempt from disclosure under sections 22 (Information intended for future publication) and 43 (Commercial interests) of FOIA.
2. During the Commissioner's investigation, SGC reconsidered the request under the EIR and applied regulations 12(4)(d) (Material still in the course of completion) and 12(5)(e) (Confidentiality of commercial or industrial information) to withhold the information.
3. The Commissioner's decision is that SGC has not demonstrated that it was entitled to rely on either regulation to withhold the requested information. The Commissioner therefore finds that SGC breached Regulation 5(1) of the EIR (Duty to make available environmental information on request).
4. The Commissioner requires SGC to take the following steps to ensure compliance with the legislation.

- Disclose the communications between it and the landowner's agent (and all associated attachments). In doing so it may redact the names and contact details of non-senior staff and private individuals, in accordance with regulation 13 (Personal data) of the EIR.
5. SGC 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.

## Background

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6. The request in this case relates to proposals to build a new station on the Bristol to Gloucester rail line, serving the area of Charfield, South Gloucestershire. At the time of the request, SGC was in negotiations with a landowner to purchase land for an overflow car park.
7. SGC's website contains details about the proposals<sup>1</sup>. The Commissioner notes that, following the request for information, a public consultation exercise on the plans was undertaken between 19 October 2021 – 10 January 2022<sup>2</sup>.

## Request and response

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8. On 30 July 2021, the complainant wrote to SGC and made the following request for information:

"I request copies of all plans, documents, emails and minutes that provide the following information in relation to options for a railway station overflow car park on Station Road in Charfield:

1. Detail of all site options considered in the last 24 months, including location and drawings/plans.
2. Copies of all evidence used to compare and contrast the site options, in particular vehicular access, cost/price (of land and construction) that have resulted in the published plan.

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<sup>1</sup> <https://beta.southglos.gov.uk/charfield-train-station>

<sup>2</sup> <https://consultations.southglos.gov.uk/CharfieldStation>

3. Minutes of any meetings concerning site comparisons and in particular recording justification of the selection of the Station Road site.

Copies of all communication between South Gloucestershire and the organisation considering the options on their behalf and [name redacted] (owner of [house name redacted] and the land on which the proposed car park is to be built) including any material referring to a) negotiation/discussion of the acquisition of the land for the site on Station Road, b) the price of the land, c) any negotiated deal regarding the layout, meeting a condition/request by [name redacted] and c) negotiation/agreement to provide access to the field behind the proposed car park site (via an access road that runs down the side of the proposed car park).

South Glos council have posted a planning application summary online, with reference P21/023/SCR

The publication is quoted to be 'screening opinion' yet no comments are invited.

I intend to assess and gauge whether due process has been followed in the identification and selection of the proposed overflow car park site. I therefore need all evidence regarding the development and selection of options."

9. SGC responded on 31 August 2021. It refused to disclose the requested information, citing the non disclosure exemptions at sections 22 (Information intended for future publication) and 43 (Commercial interests) of FOIA. It said that work on the planned design of the car park was ongoing and that information would be published in due course as part of a public consultation on the new station. It explained, in general terms, how the planning process was intended to progress. It offered no public interest analysis for its application of section 22. As regards section 43, it said:

"Favouring withholding:

. The Council has a duty to protect the commercial interests of our suppliers, contractors and consultants;

. If information was disclosed this would distort the negotiation process and so could make it more difficult for the Council to ensure it selected those options which provide best value for money.

Favouring disclosing:

Openness and transparency

The factors in favour of disclosure of this information, including the general public interest and greater transparency and accountability, were carefully weighed against the need to allow the Council space to conduct their lawful business competitively and without fear of disclosure of sensitive commercial information.”

10. The complainant requested an internal review on 31 August 2021. He believed that a final car park design had already been determined, that there had been insufficient opportunity for the public to comment on it and that the public interest favoured transparency with regard to the purchase of land for the car park.
11. SGC provided the outcome of the internal review on 1 October 2021. It upheld its application of sections 22 and 43 of FOIA to refuse the request.

### **Scope of the case**

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12. The complainant contacted the Commissioner on 7 October 2021 to complain about the way his request for information had been handled. He disagreed with SGC’s decision to refuse the request for the reasons set out in his internal review request. He also disputed that the detailed information he had requested would be published in the upcoming public consultation:

“Consultation does not include the detail that I am requesting, just the conclusion or outcome. I restate my desire to see the detail, the evidence, including minutes of meetings at which decisions were made in order to ensure the efficacy of the current plans”.
13. The Commissioner considers that, given the subject matter of this request, the request should have been dealt with under the EIR.
14. The analysis below therefore considers whether SGC was entitled to rely on regulations 12(5)(e) (Confidentiality of commercial or industrial information) and 12(4)(d) (Material still in the course of completion) of the EIR.
15. The Commissioner has viewed the withheld information.

## Reasons for decision

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### Is the information environmental information?

16. Environmental information must be considered for disclosure under the terms of the EIR. Regulation 2(1)(c) of the EIR defines 'environmental information' as any information on:

"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 [regulation 2(1)](a) and (b) as well as measures or activities designed to protect those elements."
17. The request in this case is for information relating to a planning matter (the purchase of land on which to build a car park). The Commissioner is satisfied that this is information on a measure likely to affect the state of soil and land (regulation 2(1)(a)). The Commissioner therefore considers that the request should be dealt with under the EIR.
18. The Commissioner informed SGC accordingly at the start of his investigation. In light of the reasons it had given to the complainant for refusing his request, the Commissioner invited SGC to consider whether the exceptions at regulations 12(4)(d) and/or 12(5)(e) of the EIR applied. He said that in the event SGC believed that other non-disclosure exceptions applied, it should answer the corresponding standard questions for the exception, available on his website, for which he provided a link. SGC has not indicated that it believes that any other exceptions are engaged.

### Regulation 12(4)(d) (material still in the course of completion)

19. SGC identified the following information as falling within the scope of points 1) – 3) of the request:

Appendix A - Option Assessment Report (dated December 2018)<sup>3</sup>

Appendix B - Strategic Outline Business Case (dated 2 October 2020)

Appendix C - Outline Business case (dated 29 September 2021)

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<sup>3</sup> Although this document falls outside of the timeline specified in the request, it is itself an appendix to the Strategic Outline Business Case so is included

Appendix E - Public consultation display boards

Appendix F - Frequently asked questions (dated 18 October 2021)

20. SGC explained that at the time of the request it had refused to disclose appendices A, B, C, E and F, under section 22 of FOIA. It said the information was later released into the public domain.
21. Following the Commissioner's assessment that the information should be considered under the EIR, SGC said that the exception at regulation 12(4)(d) of the EIR was engaged.
22. The EIR contain no equivalent provision to section 22 of FOIA. However, regulation 12(4)(d) of the EIR states that a public authority may refuse to disclose information to the extent that:

"... the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data."
23. The EIR do not define what "material in the course of completion" is, but the Commissioner's guidance<sup>4</sup> clarifies that the fact the exception refers to both "material in the course of completion" and "unfinished documents" implies that these terms are not necessarily synonymous.
24. With this in mind, the Commissioner asked SGC to explain why the withheld information engaged the exception provided by regulation 12(4)(d). In doing so, SGC was asked to make clear which limb of the regulation it was relying on (ie material still in the course of completion, unfinished documents or incomplete data). The Commissioner also asked SGC to respond to the complainant's claims that, at the time of the request, the car park design and location had already been determined (and thus that the material could not be considered to be "still in the course of completion" at that point). SGC was also asked to explain what public interest arguments it had considered when deciding that the public interest favoured maintaining the exception over disclosing the information.
25. Addressing the complainant's belief that, at the time of his request, the car park design and location had been determined, SGC noted that point 1) of the request asked for details of all site options considered in the previous 24 months (ie between 30 July 2019 and 30 July 2021).

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<sup>4</sup> [https://ico.org.uk/media/for-organisations/documents/1637/eir\\_material\\_in\\_the\\_course\\_of\\_completion.pdf](https://ico.org.uk/media/for-organisations/documents/1637/eir_material_in_the_course_of_completion.pdf)

26. SGC said that the proposed site for the car park had indeed been determined prior to 30 July 2019:

"... The starting point is the Options Assessment Report from Dec 2018, and as outlined in Appendices E and F, short-listed options were reduced to a single site for the station itself and a single site for the large station car park - due to a lack of availability of the other short listed options following discussions with land owners and the loss of a site on appeal to a housing developer (Barratt Homes)."

27. The 2018 Options Assessment Report sets out all the sites that were considered. Appendix E (Public consultation display boards) states:

"A list of six options for a station location have been investigated (see diagram above). Of the six options, two were considered potentially deliverable, these were Options 2 and 3 ... Following the Planning Inspectorate decision in 2018 permitting Barratt Homes to develop land north of Wotton Road, Option 2 became unavailable. This left Option 3, on land adjacent to the old station, as the most deliverable site for the station."

28. The Commissioner concludes from this that the decision on the proposed site of the car park had been taken prior to 30 July 2019. The only site option considered during the period covered by the request was therefore Option 3. The request was therefore not capable of obtaining information about any site comparisons which lead to the selection of Option 3, because of the timescale specified by the complainant<sup>5</sup>.

29. Turning to its reasons for refusing to disclose the information at the time of the request, SGC told the Commissioner that appendices A, B and C were disclosed to the complainant a short time later, on 12 November 2021. This disclosure was made by the West of England Combined Authority ('WECA', which was funding the station development), in response to a separate request for information the complainant had made to it. SGC said that it had supported WECA's decision to disclose that information at that time.

30. SGC said that appendices E and F contained information which was provided to the public as part of the 12 week public consultation exercise on the proposals for the new station, which commenced on 19 October 2021. They contained information about the rationale for the station and the station location, options assessed for the station and car

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<sup>5</sup> The Commissioner notes that SGC wrote to the complainant outside of the EIR, on 28 September 2021, about why other sites were unsuitable.

park locations, plus scheme drawings and video visualisation. SGC said the complainant was provided with the information at the time of the consultation, in which he had participated.

31. SGC maintained that the fact the appendices had since been made available to the public showed that, at the time of the request, there had been an intention to publish them at a later point, and therefore that it had been entitled to withhold them.
32. Although it provided helpful background to the matter, SGC's initial response to the Commissioner's enquiries did not address his specific request that it show how the information in the appendices engaged regulation 12(4)(d) - ie SGC did not show how the withheld information related to material that was still in the course of completion, unfinished documents or incomplete data. Rather, it titled its response on this point, "Information Intended for Future Publication", which refers to the original FOIA exemption cited, which has a different focus to the EIR exception under consideration. SGC simply maintained that, at the time of the request, it had intended that the information in those documents would be disclosed a short time later. This, without other, supporting arguments, is not grounds for engaging regulation 12(4)(d) of the EIR.
33. The Commissioner notes that appendix A was dated December 2018 and appendix B, October 2020. It was not clear from SGC's submissions why these documents were deemed 'unfinished' or 'incomplete' at the time the request was made (30 July 2021) or at internal review (1 October 2021). When pressed further on this point, SGC conceded that, on reflection, the documents could have been disclosed at the time of the request. The Commissioner has treated this as SGC having withdrawn reliance on regulation 12(4)(d) in respect of appendices A and B.
34. SGC went on to explain that appendix C, although prepared in September 2021, was 'incomplete' at the time of the internal review on 1 October 2021 because it was still subject to ongoing review and amendment at that time. It provided the Commissioner with a timeline showing that revisions continued to be made to it until 6 October 2021, when a final version was submitted to WECA.
35. Similarly, SGC explained that appendices E and F, which were published as part of the public consultation, starting on 19 October 2021, were not in a condition where they could be disclosed at the time of the internal review, because they continued to be subject to revisions at that point.
36. The Commissioner has no reason to disbelieve SGC's claims that appendices C, E and F were still in the course of completion on 1 October 2021 (the time the internal review was completed). However, that alone is not sufficient to allow information to be withheld under regulation 12(4)(d). There is a presumption in favour of disclosure



inherent in the EIR<sup>6</sup>. This means that environmental information must be disclosed unless there is a good reason, under the EIR, why it may not be. While the non-disclosure exceptions set out the grounds on which information may be withheld, they are each subject to a public interest test. This means that even though an exception is engaged, information should be disclosed unless the public interest in withholding it is stronger.

37. The Commissioner finds that SGC has failed to demonstrate that it took account of the public interest test when assessing whether the information should have been disclosed. The Commissioner's initial letter asked it to outline the public interest arguments it considered and how it determined that the public interest in maintaining the exception was stronger than that in disclosing the information, but its response failed to address these points. The Commissioner wrote again to SGC, pointing out that these questions needed to be answered. When responding to that letter SGC seemed to imply that as it had originally dealt with the request under FOIA, any attempt to retrospectively apply EIR exceptions was academic. It did not address, or in any way refer to, its consideration of the public interest.
38. The Commissioner therefore has no information about why SGC considered it was not in the public interest for information which was almost – but not quite – complete, to be disclosed in response to the request. He also notes that section 22 of FOIA is itself subject to a public interest test and that at no point did SGC supply any public interest arguments in support of its application, either to the complainant or to the Commissioner.

### **The Commissioner's decision**

39. As set out above, SGC has accepted that it was not entitled to rely on regulation 12(4)(d) of the EIR to refuse to disclose appendices A and B. It has not provided any explanation about why, at the time of the request, the public interest favoured maintaining the exception, over disclosing appendices C, E and F. In view of this, and when considered in conjunction with the EIR's inherent presumption in favour of disclosure, the Commissioner is not satisfied that SGC has demonstrated that it was entitled to rely on regulation 12(4)(d) of the EIR to refuse the request for appendices C, E and F. It follows that SGC breached regulation 5(1) (Duty to make environmental information available on request) of the EIR.

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<sup>6</sup> Regulation 12(2) EIR

40. As the Commissioner has been provided with evidence that the complainant has since been provided with appendices A, B and C via a more recent request to WECA, and appendices E and F through his participation in the public consultation, the Commissioner does not require these documents to be disclosed to him again.

**Regulation 12(5)(e) – (Confidentiality of commercial or industrial information)**

41. SGC explained that, at the time of the request, it was negotiating to acquire land from a third party on which to build the new station car park. It had applied section 43 (Commercial interests) of FOIA to withhold correspondence between its project team and the landowner's agent. The correspondence comprised email exchanges and associated attachments amounting to 57 documents, regarding the proposed sale of land for the car park. The correspondence included draft design, financial and administrative information.
42. The EIR contain no direct equivalent to section 43 of FOIA. However, regulation 12(5)(e) of the EIR incorporates elements of section 43, together with elements of section 41 (Information provided in confidence) of FOIA.
43. Regulation 12(5)(e) of the EIR states 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.
44. Regulation 12(5)(e) differs from section 43 in some key respects. In particular, it is not enough simply to argue that disclosure would adversely affect a public authority's commercial interests, or those of a third party. It is also necessary to demonstrate that there is confidentiality provided by law, which may turn on some of the same factors relevant to section 41, but it is not an identical test.
45. The Commissioner has published guidance on the application of this exception<sup>7</sup>. As the guidance explains, the exception can be broken down into a four-stage test. All four conditions must be satisfied in order for the exception to be engaged:
- The information is commercial or industrial in nature.

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<sup>7</sup> <https://ico.org.uk/for-organisations/commercial-or-industrial-information-regulation-12-5-e/>

- Confidentiality is provided by law.
- The confidentiality is protecting a legitimate economic interest.
- The confidentiality would be adversely affected by disclosure.

**Is the information commercial or industrial in nature?**

46. The Commissioner's guidance on regulation 12(5)(e) states that for information to be commercial in nature, it will need to relate to a commercial activity, either of the public authority or a third party. The essence of commerce is trade and a commercial activity will generally involve the sale or purchase of goods or services for profit. The guidance goes on to cite information about planning and development plans for land as an example of information which is commercial in nature.
47. The withheld information relates to plans to purchase land to build a station car park. The first condition has therefore been met.

**Is the information subject to confidentiality provided by law?**

48. Confidentiality may be imposed on any person by the common law of confidence, contractual obligation, or statute. The exception covers information obtained from a third party and information jointly created or agreed with a third party. The exception protects confidentiality owed to a public authority by a third party, as well as confidentiality the public authority owes a third party.
49. In considering whether the information is subject to a common law of confidence, there are two key issues to consider:
- Does the information have the necessary quality of confidence? If the information is not trivial nor in the public domain, it has the necessary quality of confidence. If it has been shared with a limited number of people then it may still keep its quality of confidence, as long as it has not been disseminated to the general public. Even if it is all in the public domain, it is still possible for information to keep its quality of confidence, if it would take time and effort to find and collate it from multiple sources.
  - Was the information shared (or provided to employees) in circumstances creating an obligation of confidence? This can be explicit or implied, and may depend on the nature of the information itself, the relationship between the parties and any previous or standard practice regarding the status of information.
50. A useful test is to consider whether a reasonable person in the place of the recipient would have considered that the information has been provided to them in confidence.

51. SGC explained that:

“The correspondence...includes highly sensitive information such as costings and details of the terms and conditions of future land acquisition. We reserve our right to withhold this information and for it not to be released into the public domain. These conversations are both private and commercially sensitive and we assert that if released, it would hamper our ability to obtain the most advantageous deal for the Local Authority, delivering value for money in acquiring the land thereby prejudicing our commercial interest and intentions. Any disclosure of these conversations would be likely to prejudice the commercial interests of the land owner...potentially resulting in withdrawal from negotiations with the Council.”

52. The Commissioner notes that the information relates to negotiations surrounding the anticipated purchase of land for the car park, as well as design and layout suggestions. As such, he agrees that it is not trivial in nature. Furthermore, he has seen evidence that the information from the third party's agent was provided to SGC with an expectation that their negotiations would be conducted in confidence, and that information about them has not entered the public domain.

53. The Commissioner is therefore satisfied that the information is subject to confidentiality provided by law, and therefore that the second condition has been met.

**Is the confidentiality provided to protect a legitimate economic interest?**

54. The confidentiality must be “provided...to protect a legitimate economic interest”. The Tribunal confirmed in *Elmbridge Borough Council v Information Commissioner and Gladedale Group Ltd (EA/2010/0106, 4 January 2011)*<sup>8</sup> that, to satisfy this element of the test, disclosure of the confidential information would have to adversely affect a legitimate economic interest of the person the confidentiality is designed to protect.

55. It is not enough that some harm **might** be caused by disclosure. The Commissioner considers that it is necessary to establish, on the balance of probabilities (ie be more probable than not), that some harm **would** be caused by the disclosure. In order to do this it is necessary to identify

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[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i479/%5b2011%5dUKFTT\\_EA20100106\\_\(GRC\)\\_20110104.pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i479/%5b2011%5dUKFTT_EA20100106_(GRC)_20110104.pdf)

what the legitimate economic interest is that would be harmed, and the nature of the harm.

56. The Commissioner considers that legitimate economic interests could relate to retaining or improving market position, ensuring that competitors do not gain access to commercially valuable information, protecting a commercial bargaining position in the context of existing or future negotiations, avoiding commercially significant reputational damage, or avoiding disclosures which would otherwise result in a loss of revenue or income.
57. In its initial response to the Commissioner's enquiries, SGC stated that there would be harm to its commercial interests if the information was disclosed, as it "...would hamper our ability to obtain the most advantageous deal". However, it did not state how or why that would be the outcome of disclosure. Similarly, it failed to elaborate on precisely how the landowner's commercial interests would be harmed.
58. The Commissioner is not aware that, at the time of the request, there were other parties competing to buy the land in question, or that SGC was considering other potential sites for the car park, against which the landowner was competing. The majority of the withheld information does not contain financial information about the proposed sale. Some of it was between two and three years old at the time of the request. Information about the proposed car park (including plans and maps) formed part of the public consultation which commenced less than three weeks after the internal review was completed. It is therefore not clear how disclosure would adversely affect the interests described in paragraph 56 without SGC explaining this.
59. SGC also failed to provide any analysis of its consideration of the public interest test.
60. In view of this, the Commissioner asked SGC to provide further information about the application of the exception to the 57 withheld documents. He said:

"Again, the specific questions I asked SGC to address have not been answered. SGC needs to show the ICO how the information meets the four criteria referred to in my letter, and how it conducted the public interest balancing test.

On the face of it, the email exchanges discussing the [Heads of Terms] appear to me to contain some information which may engage this exception, but it is not clear that many of the other exchanges do. Please go through the withheld documents individually and explain why each engages the regulation. Given the varied information in them, regulation 12(5)(e) cannot be applied to them in a 'blanket'

fashion without some explanation of why, in each case, the exception is engaged.

Furthermore, if SGC is claiming that a third party's commercial interests will be harmed, it will need to consult with them on their views regarding the affects of disclosure, unless it can show it has prior knowledge of their views. It is not sufficient to speculate about potential harm to a third party's interests without some evidence that the arguments genuinely reflect the concerns of a third party."

61. The Commissioner asked SGC to address these points and to answer all the questions regarding regulation 12(5)(e) contained in the previous letter.
62. When responding, SGC provided no further analysis of how the four-stage test in paragraph 45 was met, and it provided no public interest analysis. It also did not provide the requested breakdown of how and why the 57 individual documents engaged regulation 12(5)(e).
63. SGC did provide evidence that it had consulted with the landowner's agents regarding their view on disclosure. As a result, the landowner's agent declined to consent to the disclosure of any of its correspondence or communications with SGC, saying:

"...all our negotiation must remain private and confidential as they are commercially sensitive and if were [sic] in the public domain would have an adverse effect on our business plans...the placing of any of the above commercially sensitive details/information in the public domain or imparting any of this information to anyone not party to the negotiations would prove detrimental to our project and future plans".

64. However, neither the landowner's agent nor SGC provided any explanation as to how and why disclosure would adversely affect their legitimate economic interests.

### **The Commissioner's decision**

65. The Commissioner considers that the arguments provided by SGC fail to convince that the applicability of the exception has been properly considered. SGC's submissions fail to properly address the conditions required to engage the exception and they fail to make clear any causal link between disclosure of the specific information requested and adverse effect to a legitimate economic interest. A mere assertion, lacking detail and evidence, that disclosure would adversely affect a range of unspecified commercial interests is not sufficient to show that the exception is engaged. SGC has also provided no information about its consideration of the public interest.

66. The overall impression the Commissioner has is that SGC has decided that the information as a whole should not be made public and has sought to apply the exception on a 'blanket' basis in order to facilitate this. It has not shown that it has analysed the 57 documents individually with a view to establishing the extent to which each one genuinely engages the exception.
67. Drawing on his experience of considering commercially sensitive information, the Commissioner acknowledges that a case might be made for some of the information to be withheld. In particular, he highlighted to SGC that information relating to the Heads of Terms might support a claim that regulation 12(5)(e) applied, but that further, supporting arguments were needed. SGC did not go on to supply those arguments.
68. In the circumstances, the Commissioner considers that SGC has been given sufficient opportunity (and guidance) to enable it to make its case for the application of regulation 12(5)(e) and it has failed to do so. The Commissioner explained in his initial letter to SGC that it was responsible for making its own case as to why an exception is engaged. Had SGC properly engaged with the questions put to it, it may have been able to demonstrate to the Commissioner's satisfaction that regulation 12(5)(e) was engaged for at least some of the information, such as financial details. As it is, it disregarded two requests to respond to specific enquiries and the final position it outlined was vague and unspecific.
69. The Commissioner cannot speculate or "fill in the gaps" for weak or inadequate submissions and he cannot "second guess" what may or may not be suitable for disclosure. It is not the Commissioner's role to go through voluminous amounts of withheld information to consider non-disclosure exceptions on SGC's behalf.
70. The Commissioner has concluded that SGC has failed to show that disclosure would result in harm to a legitimate economic interest. Since, for regulation 12(5)(e) to be engaged, it is necessary that this condition be met, he has determined that the exception is not engaged.
71. The Commissioner has not, therefore, gone on to consider the public interest. However, had he done so, he notes that despite being asked twice, SGC failed to provide any public interest arguments. In the absence of such arguments he finds it unlikely that he would have been able to conclude that the public interest in maintaining the exception was stronger than that in disclosure.
72. SGC is therefore required to take the steps specified in paragraph 4.

73. The Commissioner uses intelligence gathered from individual cases to inform his insight and compliance function. This aligns with the goal in his draft "Openness by design"<sup>9</sup> strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting systemic non-compliance, consistent with the approaches set out in his "Regulatory Action Policy"<sup>10</sup>.

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<sup>9</sup> <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

<sup>10</sup> <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>



## Right of appeal

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74. 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)

75. 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.

76. 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 Bracegirdle**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**