

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 15 February 2021

Public Authority: University of Winchester
Address: Sparkford Road
Winchester
SO22 4NR

Decision (including any steps ordered)

1. The complainant requested from the University of Winchester ("the University") information relating to the purchase of a plot of land on Lommedal, Milnthorpe Lane, Winchester. The University withheld the information and applied regulations 12(4)(e) (internal communications) and 12(5)(e) (commercial confidentiality) of the EIR.
2. The Commissioner's decision is that the University correctly applied regulations 12(4)(e) and 12(5)(e) to the withheld information. Therefore, the Commissioner does not require the University to take any steps to ensure compliance with the legislation.

Background information

3. The withheld information in this case, consists of four documents relating to the purchase of land on Milnthorpe Lane, Winchester, to develop student residential properties. Two of the documents are minutes to meetings held on 14 and 23 January 2019. The information relates to the University's engagement in this development project.

Request and response

4. On 5 December 2019, the complainant wrote to the University and requested information in the following terms:
"a) Documents supporting the speculative purchase of the plot of land known as Lommedal, Milnthorpe Lane, Winchester.
b) How was the speculative purchase authorised?"

c) What in the University's remit allows the speculative purchase of land with known restrictive covenants?

d) How did the University justify the purchase price of £1,300,000?

e) We would also like details of the options granted and registered with the Land Registry at the time of purchase?

f) Also can you advise if minutes of Board of Governors meetings are in the public domain?"

5. On 23 December 2019 the University responded. It handled parts 1 to 5 of the request under the EIR and part 6 under both EIR and the FOIA. The University refused the request and cited regulations 12(4)(e) (internal communications) and 12(5)(e) (confidentiality of commercial information) to parts of the request. With regards to part 6, the University directed the complainant to the clerk at Winchester and provided a link to its website to request the minutes of Governor Committees and Boards.
6. On 19 February 2020 the complainant asked the University for an internal review.
7. On 17 April 2020 the University provided its internal review response. It upheld the complainant's appeal in respect of failure to establish which part of the EIR 2(1) was being applied. Following its review of the request, the University identified that the information falls under EIR 2(1) regulation 2(1)(c) – measures and activities. The University maintained its position to refuse the request under the exceptions cited.

Scope of the case

8. The complainant contacted the Commissioner on 22 May 2020 to complain about the way her request for information had been handled. Specifically, in relation to some of the University's responses to her request which the complainant disagreed with.
9. The following analysis focuses on whether the University correctly withheld information to parts 1 to 5 of the request under regulations 12(4)(e) and 12(5)(e) of the EIR.

Reasons for decision

Regulation 2 – environmental information

10. Regulation 2(1) of the EIR defines what “environmental information” consists of. The relevant parts of the definition are found in 2(1)(a) to (c) which state that it is information in any material form on:

“(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) 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 (a) and (b) as well as measures or activities designed to protect those elements...”

11. The Commissioner considers that the phrase “any information...on” should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner’s opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor, etc in question.
12. In this case, the withheld information relates to land development, measures which will have an impact on the use of land. The Commissioner notes that the information consists of four documents concerning the purchase of a specific plot of land - Lommedal, Milnthorpe Lane, Winchester. This is an activity which is likely to affect many of the elements and factors referred to in regulations 2(1)(a) and (b) of the EIR. For example, any development plans are likely to affect land and landscape, and will be likely to result in environmental factors such as energy and emissions.

13. The Commissioner considers that the information, therefore, falls within the category of information covered by regulation 2(1)(c) as the information can be considered to be on a measure affecting or likely to affect environmental elements and factors listed in regulations 2(1)(a) and (b). This is in accordance with the decision of the Information Tribunal in the case of *Kirkaldie v IC and Thanet District Council* (EA/2006/001)¹
14. Having found that the requested information is environmental, the Commissioner has gone on to examine whether the University was correct to rely upon the exceptions cited.

Regulation 12(4)(e) – Internal communications

15. Regulation 12(4)(e) states:

*"For the purposes of paragraph 1(a), a public authority may refuse to disclose information to the extent that...
(e) the request involves the disclosure of internal communications."*

16. The Commissioner's publicised guidance² on this exception defines a communication as encompassing any information which someone intends to communicate to others, or even places on file (including saving it on an electronic filing system) where others may consult it.
17. The EIR does not provide a definition of what is meant by "internal". However, the Commissioner's guidance provides clarification on the scenarios where communications can be defined as such. Such a scenario is where the communications have taken place solely within a public authority.
18. Regulation 12(4)(e) is a class based exception. This means that there is no requirement to consider the sensitivity of the information in order to engage the exception. However, the exception is subject to a public interest test under regulation 12(1)(b), and the exception can only be maintained should the public interest test support this.

¹ <https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i94/Kirkaldie.pdf>

² <https://ico.org.uk/media/for-organisations/documents/2021/2619005/12-4-e-internal-communication-31122020-version-31.pdf>

19. The University stated that it withheld the requested information under regulation 12(4)(e) as it considered it to be an internal communication of a public authority that it is only circulated internally.
20. The University provided the Commissioner with four documents that it withheld either partially or in full, and for clarity it labelled these documents (i) to (iv). The University said that information within documents (i) and (ii) were withheld completely, and that redacted copies of (iii) and (iv) were supplied to the complainant.
21. The University stated its reasons for applying this exception to document (i). It said that the Standing Committee paper was produced by the University's Senior Management Team for endorsement and approval by the University's Governing Body. Its content, it said, was made up of material from the valuation report – document (ii) and other sector related material supplied to the University by third parties. The University confirmed that the information (the paper) was not produced with the intention of circulation beyond the meeting of the Standing Committee and the Board of Governors. Therefore, the University considers the information (the paper) to be an internal communication of a public authority as it is only circulated internally. The University said that this paper also recorded content supplied by a third party. Taking this into account, the University believes that this paper remains an internal communication on the understanding that it is following the Commissioner's guidance on regulation 12(4)(e), and quoted paragraph 34 which states:

"...if information from that communication is later reproduced in a separate internal email or memo, that separate internal email or memo is an internal communication, irrespective of the origin of the information."

22. With regard to information within document (ii) the University did not withhold this under regulation 12(4)(e) it applied regulation 12(5)(e) of the EIR. Arguments regarding the information within document (ii) will be covered further on in this decision notice from paragraph 58.
23. The information within documents (iii) and (iv) the University stated that these are also internal communications, and quoted paragraph 14 of the Commissioner's publicised guidance which states:

"It will therefore include not only letters, memos and emails, but also notes of meetings or any other documents if these are circulated or filed so that they are available to others."

24. The University said that the minutes of both meetings are shared only with members of the committee, and that they remain within the University.
25. In relation to the redacted information contained within documents (iii) and (iv), the University explained that in the spirit of transparency, redated copies of the minutes from the meetings held on 14 and 23 January 2019 were supplied to the complainant. The University confirmed that it released the following information in redacted form:
 - Standing Committee of the Board of Governors on 14 January 2019; and
 - The Board of Governors' subsequent meeting on 23 January 2019.
26. The University clarified the redactions and said that they are of two types:
 - Redactions due to the information contained being out of scope of the request of 5 December 2019; and
 - Information which is within scope of the request, but which has been redacted as it falls within one or more of the EIR exemptions.
27. Information that was not related to the original request, the University said that this was removed. The University explained that it decided to redact all information that did not relate to the request in order to avoid confusion in the information being sent to the complainant. It said that the decision was either *"leaving in material that was not confidential and not related to the request, or the redaction of all material, confidential and non-confidential, except for material that was related to the request."*
28. The University provided the Commissioner with the unredacted minutes that included highlighted sections which had been originally redacted. The Commissioner viewed these unredacted minutes from both meetings.
29. Having examined the withheld information, the Commissioner is satisfied that it comprises of communications that were solely "internal" to the University. Therefore, this information within document (i) engages regulation 12(4)(e) of the EIR.

Public interest test

30. Where regulation 12(4)(e) is engaged, it is subject to the public interest test required by regulation 12(1)(b). This is to ascertain whether in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
31. In carrying out her assessment of the public interest test, the Commissioner is mindful of regulation 12(2) which states that a public authority shall apply a presumption in favour of disclosure.
32. The University and the complainant provided the Commissioner with their public interest test reasoning. The Commissioner has considered this reasoning along with other relevant factors.

Public interest in favour of disclosing the information

33. The University said it was mindful of the arguments in support of disclosure such as greater accountability for spending public money, the number of people affected by a proposal, and also to dispel any reasonable suspicions of there being conflicts of interest or other wrongdoing.
34. Within the complainant's arguments, she referred to the University's factors in favour of disclosing the information, and she is of the view that these criteria are met by her request. The complainant believes that the University as a public body is spending public money, there are a number of local residents adjacent to the land purchased, and there are grounds to believe that the University overpaid for the land.
35. The Commissioner acknowledges that the content of the withheld information which concerns the plot of land in question – Lommedal, relates to a matter of importance. This could have huge implications and any decisions would have an impact on the lives of many, especially residents living in the area.
36. In relation to the withheld information, the Commissioner recognises that there is a strong public interest in disclosure as this would add to public understanding about the processes and decision-making regarding the proposed development. The Commission's view is that there is a particularly weight in the public interest in favour of disclosure, due to the implications of the decision-making in this area.
37. However, the Commissioner's understanding is that, whilst the University was a consultee in relation to this proposed development, it was not a key decision-maker on this matter. This somewhat limits the public interest in the disclosure of the information in question.

Public interest in favour of maintaining the exception

38. The University stated its argument in favour of not releasing all information within documents (iii) and (iv). It said that the minutes from both meetings cover broad subject areas. The University is of the view that releasing the full content of these minutes would not materially inform public debate, as they covered other matters that were either of an equally confidential nature or they focussed on internal discussions and decision-making. The University said that *"these two meetings and their subsequent minutes, served as a necessary space in which the University in general, as a public authority and, the Standing Committee and the Board specifically as representatives of that public authority, can discuss matters."*
39. The Commissioner notes from the University's submissions, the purpose of the meetings. These are intended to provide advice, scrutiny and to discuss concerns regarding the purchase of land on Milnthorpe Lane, and other subject matters. Whilst the withheld information provides background to decision-making, it does not record the process of decisions being made.
40. The Commissioner acknowledges the importance of a "private thinking space" in order to allow the University to carry out internal deliberation. The Commissioner considers that this is a valid public interest factor, with significant weight, in favour of maintenance of the exception.

Balance of the public interest arguments

41. The Commissioner's guidance on the exception explains that although a wide range of internal information will be caught by the exception, public interest arguments should be focussed on the protection of internal deliberation and decision-making processes. This reflects the underlying rationale for the exception being that it protects a public authority's need for a "private thinking space".
42. With regard to attributing weight to the public interest arguments in favour of maintaining the exception, the Commissioner accepts that a public authority needs a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction. This may carry significant weight in some cases. In particular, the Commissioner considers that the need for a safe space will be strongest when the issue is still live.

43. The Commissioner considers that there will always be some public interest in disclosure to promote transparency and accountability of public authorities, greater public awareness and understanding of environmental matters, a free exchange of views, and more effective public participation in environmental decision-making, all of which ultimately contribute to a better environment.
44. The weight of this interest will vary from case to case, depending on the profile and importance of the issue and the extent to which the content of the information will actually inform public debate. However, even if the information would not in fact add much to public understanding, disclosing the full picture will always carry some weight as it will remove any suspicion of "spin".
45. The complainant argued that the University is not being open, transparent, or accountable as a public body, for spending public money. She does not believe that the University is providing accountability to the number of local people that she considers "*will be seriously affected by their actions.*" The complainant also considers that the University did not do sufficient due diligence, and that there were irregularities in the purchase process.
46. The complainant disagrees with the University's belief that content of Board and Committee meetings will not inform public debate. She considers that if the full facts regarding this speculative purchase of land are not made available, the University can not be properly scrutinised or held accountable.
47. With regard to the confidentiality of this information which the University stated is provided by law, the complainant disagrees with this and also that the confidentiality of the information protects the legitimate economic interests of the University. She is of the view that the powers of the University does not extend to speculative land purchases, nor speculative property development. The complainant said that as the basic commercial information for this development is available from the Land Registry, then the University's argument that disclosure of the information would affect relationships with external partners in commercial property development, cannot be relevant.
48. She believes that this would indicate that the University has something to hide, and said this should be addressed as it is a public body, spending public money. The complainant questioned the University's position as a teaching establishment or as a property developer.

49. The complainant disputes the University's conclusion that maintaining the exceptions outweigh the public interest in disclosure. She reiterated her argument that the University is a public body, and that "*they must be accountable for their spending of public monies and the impact of this spending on people and the environment.*"
50. It is clear that at the time of the request for information, planning for this development project was live and still under discussion, and the Commissioner accepts that this was on-going. Allowing access when the decision is still to be made is likely to cause a higher degree of media and public interest or contacts from lobby groups. This could ultimately delay final decisions and increase the costs and risks to planning projects. The Commissioner considers that if matters were closed, then the risk of prejudicing the process would be reduced. However, this is not this case, therefore, the need to maintain the safe space gives more weight to the argument for maintaining the exception.
51. The Commissioner is mindful that the public interest is time and context sensitive and she accepts that, with the passage of time, the sensitivity of the information may diminish.
52. The Commissioner has considered the competing arguments. She accepts that there is a public interest in disclosure in promoting transparency and accountability around decisions made by public authorities. The Commissioner acknowledges that there is a public interest in allowing the public to better understand how these decisions are reached. There is particular public interest in information relating to planning processes, and that there is a public interest in disclosure of the information in question in order to inform about the spending of public money, transparency and increased participation over decision-making where environmental issues are involved, and also informing public debate.
53. The Commissioner accepts that there is a need for the University to have a safe space for internal deliberation and decision-making processes. The University should be able to communicate in private and discuss ideas in a free and frank manner where there is a need to do so.
54. The Commissioner understands that the release of internal communications may create a "chilling effect" on the free and frank exchange of views and ideas, also on future discussions and debates. These exchanges, she agrees, are necessary in order for the University to take decisions based on advice and consideration of all the options relating to environmental plans. The Commissioner accepts the risk of such an effect is likely to be higher if information is disclosed whilst the plans are live and ongoing.

Conclusion

55. The Commissioner considers that the argument for a safe space for internal communications carries significant weight in this case. Given the detrimental impact that disclosure may have on the quality of decision-making, there is a stronger public interest in not disclosing the withheld information. The Commissioner's decision is that the balance of the public interest favours maintaining the exception.
56. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions. As stated in the Upper Tribunal decision *Vesco v Information Commissioner (SGIA/44/2019)*, "*If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure...*" and "*the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations*" (paragraph 19).
57. As covered above, in this case the Commissioner's view is that the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that regulation 12(4)(e) was applied correctly. Therefore, the University was not obliged to disclose the requested information.

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

58. Regulation 12(5)(e) states that:

"For the purposes of paragraph 1(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect-

(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest."

59. The Commissioner's published guidance³ on this exception explains that, in order for this exception to be applicable, there are a number of conditions that must be met. These are:

- Is the information commercial or industrial in nature?
- Is the information subject to confidentiality provided by law?
- Is the confidentiality provided to protect a legitimate economic interest?
- Would the confidentiality be adversely affected by disclosure?

60. The information withheld under regulation 12(5)(e) comprises:

- Lommedal Acquisition Proposal – withheld in full
- Valuation Report – withheld in full
- Standing Committee Minutes (12/1/19) – parts redacted
- Board of Governors Minutes (23/1/19) – parts redacted

Is the withheld information commercial or industrial in nature?

61. 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. A commercial activity will generally involve the sale or purchase of goods or services, usually for profit. Not all financial information is necessarily commercial information. In particular, information about a public authority's revenues or resources will not generally be commercial information, unless the particular income stream comes from a charge for goods or services.

62. The University applied regulation 12(5)(e) to information within all four documents (i) to (iv). The University believes that the information is commercial in nature as there is an economic interest. It explained that there is an opportunity for equity investment in the site for student residential accommodation. The University informed the Commissioner of the information which each document contained.

³ https://ico.org.uk/media/for-organisations/documents/2021/2619007/12-5-e-confidentiality-of-commercial-and-industrial-information_31122020-version-13.pdf

63. The Commissioner accepts that the withheld information is commercial in nature. Having viewed the information she also accepts that it relates to the University's engagement in a development project.

Is the information subject to confidentiality provided by law?

64. With regard to this element of the exception, the Commissioner will consider if the information is subject to confidentiality provided by law, which may include confidentiality imposed under a common law of confidence, contractual obligation or statute.
65. The University confirmed that information relating to parts (i) and (ii) was provided by the developers in confidence. The University believes that this information is not trivial in nature and that it is not in the public domain. It explained that the information was provided with the intention of seeking the University's engagement in a development project, and that an obligation of confidence between the two parties was created in this instance.
66. The University is of the view that the information is commercial in nature and it is subject to a duty of confidence provided by law. It explained that this confidentiality is required to protect the economic interests of the University and the developer. The University believes that this economic interest, the financial position of the developer, including that of its Directors, would be adversely affected should the information contained within paper (i) were to be released.
67. It is the Commissioner's view that it was not unreasonable for all parties to have expected that communications about the development project would be treated in confidence. She is therefore satisfied that the information withheld in this case, is not trivial in nature, it is not already in the public domain, and has the necessary quality of confidence. The Commissioner has gone on to consider whether the third criteria is met in relation to the withheld information.

Is the confidentiality protecting a legitimate economic interest?

68. The Commissioner considers that to satisfy the third criterion, disclosure of the confidential information would have to adversely affect a legitimate economic interest of the person(s) the confidentiality is designed to protect. She also considers it to be necessary to establish that, on the balance of probabilities, some harm *would* be caused, rather than *might* be caused, as a result of disclosure.

69. The University's position is that by disclosing information that had been supplied to it in confidence by a developer, could also adversely affect its own future economic interest. It said that future businesses and developers may decline to work with the University upon learning that it had previously disclosed information supplied to it in confidence.
70. The University believes that the same arguments of confidentiality apply regarding the valuation report - document (ii). It explained that the valuation report was not produced for public consumption, and cited a paragraph regarding confidentiality from the report: "*...we confirm that the Report is confidential to the party to whom it is addressed for the specific purpose to which it refers...neither the whole Report, nor any part, nor references thereto, may be published in any document, statement or circular, nor in any communication with third parties without prior written approval of the form and context in which it will appear.*" The University also highlighted that further referrals to confidentiality is evident in a letter between [names redacted] of 26 January 2018, which it said, forms part of Appendix 1 of the valuation report.
71. The University considers that due to the nature of the information in document (ii) – the valuation report for the Lommedal site, it is commercial in nature as it has been produced to support the development of building student residential properties on the land. This report, the University reiterated, was produced in confidence by [name redacted] on behalf of [name redacted]. Therefore, the University believes that the information contained within the report is not trivial in nature and that it would not be in the public domain.
72. The University is of the view that releasing the information – the valuation report, would grant competing developers and other higher education institutions access to commercially valuable information. In this case, the University said, it is the valuation of the Lommedal site, "*with the potential that they could gain an improved market position without having to make the initial outlay of paying for their own report*".
73. With regard to the information contained in documents (iii) and (iv) the University explained that where the minutes related to the subject of the original request, that some commercially sensitive information was redacted. The University said that some information contained details of the University's own financial position regarding securing future debt, its own refurbishment plans, other sites that the University is considering for student accommodation, and future development projects.

74. The University believes that this redacted information is not trivial in nature and is not in the public domain. It said that this is to protect the economic interest of the University, namely its current and future development plans, its ability to secure costs to support these plans and its ability to compete in the competitive higher education market.
75. Therefore, the University considers disclosure of the information would adversely affect its ability to operate in its own market. It said that disclosure would allow other institutions to gain an advantage by having sight of planning decisions being made by the University before these decisions were being put into effect.
76. The University reiterated its explanation (paragraph 62 of this decision notice) with regard to releasing extracts of information that had been supplied to it in confidence, could also adversely affect its own future economic interest. The University referred the Commissioner to the relevant pages of document (iv) which it considers confidential and not for disclosure.
77. Having taken the factors into account, the Commissioner is satisfied that there is sufficient evidence for her to conclude that there is still a realistic possibility that the disclosure of the withheld information would harm the legitimate economic interests of the University. The Commissioner therefore considers that the third part of the test as set out in paragraph 59 of this decision notice is met.

Would the confidentiality be adversely affected by disclosure?

78. Although this is a necessary element of the exception, once the first three elements are established, the Commissioner considers it is inevitable that this element will be satisfied. She acknowledges that disclosure of truly confidential information into the public domain would inevitably harm the confidential nature of that information by making it publicly available, and would also harm the legitimate economic interests that have already been identified.
79. As the exception under regulation 12(5)(e) is engaged, the Commissioner has gone on to consider the balance of the public interest regarding disclosure of the requested information.

Public interest test

80. Regulation 12(5)(e) is subject to the public interest test. This means that even when the exception is engaged, public authorities have to consider whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

81. When carrying out the test, the Commissioner must take into account the presumption towards disclosure provided in regulation 12(2) of the EIR.

Public interest in favour of disclosing the information

82. The University recognised the argument in favour of disclosure is to promote transparency and accountability of public authorities. It said that it also noted the significance of public participation in planning matters, recognising in this case, the local proximity of the requestor in relation to the subject under consideration.
83. The Commissioner acknowledges the public interest in openness, transparency and accountability. Also, members of the public having access to information to enable them to understand why certain decisions are made and how these will affect them. The Commissioner notes that the proposed development will attract significant public interest; both positive and negative, and that it will effect those living in the area. There is a public interest in sharing information which concerns investments into proposed developments, in order for the public to be fully informed. She also notes that the development will involve a significant amount of public money. There is a public interest in allowing the public to fully scrutinise how public funds are spent and to evaluate for themselves whether value for money is being obtained.

Public interest in favour of maintaining the exception

84. The University believes that disclosing the information would harm its own legitimate economic interests. It said that it would place the University's development plans, which have only been shared internally with a limited number of people into the public domain. The University notes that the information under consideration contains details supplied by third-parties which were shared in confidence and seeking supporting investment from the University. It also believes that should information about this investment opportunity be disclosed, it would undermine its relationship with this developer. In doing so, the University said it would find its opportunities to work with them in the future either greatly reduced or, at worst, non-existent.
85. It further explained that this would also apply to opportunities for the University to work with other estates developers in the future, as it would be seen as an institution that could not respect information received in confidence.

86. The University also recognises that disclosing the details of this investment opportunity would enable competitors, including other higher education institutions, to take advantage of an opportunity that was previously only presented to the University. It said that this would also apply to the details of the other development options being considered by the University, with other institutions and competitors being able to observe what these considerations were.

Balance of the public interest arguments

87. In determining where the balance of the public interest lies, the Commissioner has given due weighing to the general presumption in favour of disclosure and the specific public interest in transparency and accountability in relation to decisions having a significant community impact.
88. The Commissioner has considered the competing arguments. She accepts that there is a public interest in disclosure in promoting transparency and accountability around decisions made by public authorities. The Commissioner acknowledges that there is a public interest in allowing the public to better understand how these decisions are reached. There is particular public interest in information relating to planning processes, and that there is a public interest in disclosure of the information in question in order to inform about the spending of public money, transparency and increased participation over decision-making where environmental issues are involved, and also informing public debate.

Conclusion

89. The Commissioner has concluded that there are compelling reasons in the public interest, to protect certain information that is obviously commercial such as investment opportunities. In the circumstances of this case, the Commissioner is persuaded that the balance of the public interest favours maintaining the exception.
90. As set out in paragraph 81 of this decision notice, regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions. The Commissioner's view in this case is that the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. Therefore, the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that regulation 12(5)(e) was applied correctly. The University was not obliged to disclose the requested information.

Right of appeal

91. 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: 0116 249 4253

Email: grc@justice.gov.uk.

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

92. 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.

93. 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

**Phillip Angell
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SK9 5AF**