



Case Reference: EA/2023/0381  
Neutral Citation Number: [2024] UKFTT 00183 (GRC)

**First-tier Tribunal  
General Regulatory Chamber  
[Information Rights]**

**Heard: GRC Remote Hearing Rooms**

**Heard on: 13 Feb 2024  
Decision given on: 6 March 2024**

**Before:**

**Tribunal Judge: Brian Kennedy KC  
Tribunal Member: Marion Saunders.  
Tribunal Member: Paul Taylor.**

**Between:**

**WILLIAM LLOYD DAVIES**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

Respondent

**Representation:**

For the Appellant: William Lloyd Davies as litigant in person.

**Decision:** The appeal is Dismissed.

## Reasons

### Introduction:

1. This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 (“the FOIA”), as modified by regulation 18 of the Environmental Information Regulations 2004 (SI 2004/3391) (“EIR”), against his decision notice of 22 August 2023 Ref. IC-248798-Y0X5 (“the DN”) which is a matter of public record.

### Factual Background to this Appeal:

2. Full details of the background to this appeal, the complainant’s request for information and the Commissioner’s decision are set out in the DN. The Appellant asked for planning consultation reports relating to specific plot addresses as well as minutes from an executive board meeting from Carmarthenshire County Council (the Council). The Council gave links to information within scope of the request; however, it withheld the information for the first part under regulation 12(5)(e) of the EIR.
3. The Commissioner’s decision was that the Council was entitled to rely on regulation 12(5)(e) to withhold the requested information. The Commissioner found a breach of regulation 5(2) regarding the delay in responding to the request. The Commissioner maintains the position set out in his DN. The Appellant now appeals against the DN.

### History and Chronology:

4. On 23 February 2023, the complainant wrote to the Council and requested information in the following terms:

*“Details with regard to the internal approval to sell council land plot 1 and plot 4 Parc Trostre. Both parcels of land have now either being sold or have a formal legal contract in place with ourselves meaning the release of this information would not prejudice any interest and its release would be in public interest. With regard to both can I request copies of the below:*

- *Details of the planning Consultant Reports used to support paper submitted to Executive Board as per attached correspondence I received at the time which can be forwarded as necessary.*

• *Copy of Paper and Approval Minutes from Executive Board.*”

5. On 27 June 2023, the Council apologised for the delay in its response and provided links to some of the information within scope of the request. However, it withheld information under regulation 12(5)(e) of the EIR. The Council maintained its reliance on the exception under regulation 12(5)(e) at internal review on 25 July 2023.

**Legal Framework:**

6. **“Environmental Information” is defined in Reg 2(1) EIR as any information in written, visual, aural, electronic or any other 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...”

- d. reports on the implementation of environmental legislation;

- e. cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

- f. the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch

as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);”

7. A public authority that holds environmental information is required to make it available on request (reg. 5(1) EIR). However 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” (Regulation 12(5)(e)).
8. In order to determine whether the Regulation 12(5)(e) EIR exception is engaged the Commissioner supports the use of the four-stage test which was adopted by the Tribunal in *Bristol City Council v Information Commissioner and Portland and Brunswick Squares Association* (EA/2010/0012). In order to come within the terms of the exception, it must be shown that:

(1) The information in question is “commercial or industrial”;

(2) The information is subject to confidentiality provided by law;

(3) Such confidentiality is provided to protect “a legitimate economic interest”; and

(4) The disclosure of the information would adversely affect such confidentiality.

9. However, even if the exception is found to apply a public authority can only refuse to disclose the requested environmental information if “in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information” (Regulation 12(1)(b) EIR). Under the EIR there is a presumption in favour of disclosure (Regulation 12(2) EIR).

**Commissioner’s Decision Notice:**

10. The Commissioner considered the scope of the complaint in relation to the request for information. The Council explained that with regard to the four-point test the information is commercial in nature given it is for the sale and development of its land. The information consists of details of bids received by the Council for the plots and the prices offered, it also reveals the negotiating position of the Council and its

approach to the sale of parcels of land. It added that Schedule 12A Local Government Act allows the Council to exempt the report from publication, this therefore provided a basis in law for the information to be considered confidential.

- 11.** Finally, the Council argued that such disclosure may provide undue leverage for competitors when negotiating the future sale of land in the same area.
- 12.** The Commissioner understands the points raised by the Council and considers they carry significant weight with regard to reputation and future negotiations which may be damaged, as well as potential legal action against the Council if disclosure were to take place.
- 13.** The Appellant provided the view which centres around the Council's obligations for transparency and accountability, as well as obtaining best value with regard to the public purse.
- 14.** The Council has considered the following arguments with regard to the public interest test:
  - There is a general public interest in transparency, accountability, and openness of the Council's budgeting and decision-making processes. However, it states that.
  - The impact of disclosure on the ability of the Council to secure the best possible outcome in future negotiations is a powerful public interest argument in favour of withholding the information.
  - At a time of significant budget constraints revenue from such disposals is extremely important to public finances as are the terms and conditions attached to such disposals.
- 15.** In conclusion the Council was satisfied that the balance of the public interest lies in favour of withholding the information, although it accepts that the argument is finely balanced. Having considered all the arguments presented, the Commissioner's decision is that the public interest in maintaining the exception outweighs that in

disclosure, therefore the Council was entitled to rely on regulation 12(5)(e) to withhold the requested information.

### **Grounds of Appeal**

- 16.** The Appellant, states the Commissioners decision that the council is entitled to rely on regulation 12(5)e to withhold from public view historic decisions (5 plus years ago) which have since resulted in land transactions at values, evidenced by land registry data significantly below other bids of the time by virtue of the fact it could prejudice future land sales is deemed flawed by the same assertions used by the Upper Tribunal in the case of *Ryan v The information Commissioner* (2020). It is this potential prejudicial position the applicant believes is flawed as what unique position could the council hold that would not be at odds with usual procedural and professional practise for the disposal of land asset by a public authority presumably following guidelines as set out by Section 123 and 128(2) of Local Government Act.
- 17.** This case has similarities as alluded above to the *Ryan v The information Commissioner* (2020) case in that the applicant feels the commissioners reasoning for maintaining the exception is flawed in that these are now a historic reports which have resulted in completed land and contractual transactions which presumably was not unique or unusual for the local authority. The applicant struggles to understand the unique negotiating position described and how it would prejudice the local authority should it become public knowledge with other land it may own or sell in the vicinity.
- 18.** As per the above case anyone involved in selling or acquiring land for large scale developments has their own advisors and the sort of advice and tactical position taken would be anticipated. What is unclear is how the perceived "best value" bids were assessed. Given the above the applicant fails to see how making the now historic hidden reports public information would hamper a local authority in the way declared in the future and just appears to be a ruse in order to avoid public scrutiny.
- 19.** Given that 12(2) specifically provides a presumption in favour of disclosure the applicant feels that at the very least the prejudicial position requires further independent scrutiny to assess the factors to be weighed against the significant public

interest in disclosure for transparency, accountability and to avoid the current reasonable suspicion of wrongdoing.

### **The Commissioner's Response**

20. The Commissioner has considered the Appellant's grounds of appeal and does not consider they disturb his decision. The Commissioner maintains that regulation 12(5) (e) EIR is engaged and the public interest favours maintaining the exception for the reasons set out in his Decision Notice, and in Carmarthenshire County Council's submissions in response to the request for information and request for an internal review.
21. In light of the above, the Commissioner submits that the grounds of appeal do not identify any error of law or incorrect exercise of discretion. Accordingly, the appeal should be dismissed.

### **The Hearing:**

22. The hearing was attended by the Appellant as a Litigant in person who expressed his concerns and confirmed the reasons for his appeal as set out in his Grounds. He stressed the importance of Accountability and Transparency and his genuine concerns about wrongdoing or underhand conduct in the competitive tendering process. He informed the Tribunal that he had a personal interest in this particular competition for the purchase of land and the bidding on the sale in question. He was concerned that the ultimate purchase price was below (circa a third or about £1million less) a bid he was aware of. However, he did properly concede that the fact that the lower bid can be accepted for many reasons and could be described as quite normal practice.
23. The Tribunal have looked at the evidence carefully and make the following observations;
  - a) We accept that the Council have commercial interests in the bidding process There were a number of bidders in negotiation for this sale. Other bidders not connected to the Appellant were also engaged in negotiations and like the Council they would have commercial interests in keeping their modus operandi of negotiations and bidding in

these circumstances out of public view. This is for justifiably commercially sensitive reasons. Disclosure under FOIA is to the world at large and not forum of such commercially sensitive information.

b) At page 28 OB we note that the sale of Plot 1 was not complete at the time of the request so the process live.

c) Finally, we have considered the Closed material which has been held by the Council under the exception to the general principles of the balance in favour of disclosure under the EIR Regs. and we are satisfied that Reg. 12(5) (e) is engaged as observed by the Commissioner and that four-part test set out at Paragraph 7 of the DN do apply. There are many apparent reasons why both the Council and other bidders would not agree to commercially sensitive criteria in the bidding process being disclosed to competitors.

D) Furthermore, having scrutinised the Closed material we can find not trace or suggestion of wrongdoing on the part of the Council in relation to the sale of the relevant lands (part of which was still live).

**24.** The Appellant has accepted at this appeal that he understood why a lower bid could be successful and this was normal practice in deals which can have variable sorts of intricacies and benefits to both sides.

**25.** In all the above circumstances we also are of the view that the Public Interest is in favour of withholding the closed material subject to the request.

**26.** In all the circumstances we can find no error of Law or in the exercise of the Commissioners' discretion in the DN and we must dismiss the appeal.

**Brian Kennedy KC**

**01 March 2024.**