

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 November 2017

Public Authority: Rossendale Borough Council
Address: The Business Centre
Futures Park
Bacup
OL13 0BB

Decision (including any steps ordered)

1. The complainants requested information about particular funding for a Heritage Arcade scheme from Rossendale Borough Council (the 'Council'), who provided some of the requested information with redactions, but withheld the remainder. The Council cited section 21 (information accessible by other means), section 40(2) (personal information), section 41 (information provided in confidence), section 42 (legal professional privilege) and section 43 (commercial interests).
2. During the Commissioner's investigation, the Council revisited its handling of the request and also considered whether the remaining information constitutes environmental information. It concluded that it did, and advised that it wished to rely on regulations 12(4)(b) (manifestly unreasonable) and 12(5)(b) (course of justice) in respect of the remaining information.
3. The Commissioner finds that the information constitutes environmental information and so should have been handled by the Council under the EIR from the outset. She finds that the Council was entitled to rely on regulations 12(4)(b) and 12(5)(b) in respect of this information.
4. By failing to respond to the request within the statutory 20 working days' time frame, the Council breached regulation 5(2) of the EIR. It also breached regulation 14(2) of the EIR as it did not issue a refusal notice within 20 working days. The Commissioner does not require the Council to take any steps as a result of this notice.

Background

5. From the information provided in this case, the Commissioner understands that the complainants owned, or were part of a private sector company, and applied for funding for the Heritage Arcade in Rawtenstall via the European Regional Development Fund ('ERDF'), circa 1995/96; the Council were the administrators for the ERDF funding at a local level. Subsequently, the complainants were awarded funding but under the Conservation Area Partnership ('CAP') through English Heritage.
6. Having corresponded with the Council over the last 20 or so years and also having submitted a number of FOIA requests, the complainants' view is that they are entitled to more monies than they have received. They believe that the Council has defrauded them and that the ensuing extensive correspondence has been necessary and justified, given the severity of the allegation and the amount of money which they believe is involved.
7. As a result, the complainants have been pursuing the Council over the last 20 years for the ERDF funding that they believe they are entitled to in connection with the Heritage Arcade scheme in Rawtenstall. The Council has told the Commissioner that this is a matter which has been investigated by a number of agencies, including the Local Government Ombudsman, the European Ombudsman, Government Office for the North West and the police. Each agency and investigation has confirmed no wrongdoing on the part of the Council and found that the complainants were not entitled to any more money than what they were awarded under the CAP funding through English Heritage.
8. In addition, during this period, the complainants have also requested five Council Chief Executives/Monitoring Officers to review the matter.
9. The Commissioner understands that the complainants have also approached their ward members, MP and MEP on the matter, all of whom have received responses detailing the Council's position. The Commissioner also understands that at no point have the complainants brought any formal claim against the Council; it is likely that they may now be statute barred due to the length of time which has elapsed.
10. However, the complainants have made a number of counter statements in their correspondence with the Commissioner, eg that the Legal department of the European Commission Ombudsman found that: "*The Council had no legal grounds to withhold the approved ERDF funding from us*" and advised the complainants to seek the remedies available to them in the United Kingdom, which is what they have been doing.

11. They also assert that their contact with the various new Chief Executives at the Council has been not to complain; rather it has been to seek assurance that the documentation associated with their case is being retained, and not destroyed; an approach that they believe was agreed with the Council in 2004.
12. The Council said it has provided: "*numerous undertakings to the complainants that we will not destroy the documentation that we hold and that this will continue in place*". However, it claims this undertaking was only given in 2007 so could only apply to the papers in the Council's possession at that time. The Council therefore cannot be sure how complete the documentation is but it continues to hold the information it has.
13. The Council has advised that the papers held mainly consist of correspondence between it and the complainants, the various agencies investigating the matter, interdepartmental memoranda and other documentation outside the scope of this request, all dating from circa 1996.
14. The complainants have produced a number of what they refer to as 'dossiers' that they have handed into the Council to assist the various Chief Executives and Monitoring Officers to consider their concerns. The Council explained that:

"These contain lengthy accounts from the complainants as to how they view this matter with their comments and observations, summaries of the contact they had with officers, and how they feel the Council has allegedly defrauded them. They further contain copy correspondence of all the parties mentioned above, grant application forms, action plans, redacted ERDF payment schedules, newspaper articles, general Audit Commission advice for Councillors on fraud and guides to eligible works."
15. Whilst the Commissioner considers it important and relevant to set this request in context, she has made it clear to the complainants that her remit is not to determine whether or not there has been any wrongdoing in the matter. The complainants have stated that they understand and accept the Commissioner's remit.
16. It is against this background that the Commissioner has investigated this case. Due to the passage of time and the volumes of correspondence involved the Commissioner considers it unlikely that an absolute guarantee can be given to the complainants that every document has been retained and provided. However, the specific scope of her investigation, as agreed with the complainants, is as set out under the 'Scope of the case' section of this notice.

Request and response

17. On 30 November 2016 the complainants wrote to the Council and requested information in the following terms:

"Under the Freedom of Information Act 2000 we request all documents/information relating to our scheme Heritage Arcade and the 94-96 ERDF Objective 2 programme administered by Rossendale Borough Council, held by RBC under our current agreement, together with any additional documentation / information relating to this ERDF application and our scheme Heritage Arcade, that has been located to date during the Review of our case by [name redacted] (RBC Legal Services)."

18. The Council responded on 5 January 2017. It provided some of the requested information and withheld the remainder citing:

- Section 21 – information accessible by other means
- Section 40(2) – personal information
- Section 41 – information provided in confidence
- Section 42 – legal professional privilege
- Section 43 – commercial interests

19. In relation to the information it disclosed, the Council advised the complainants as follows:

"You will find that some of the documents have been redacted. This is a result of third party data and/or not relating to the Heritage Arcade and/or for reasons as set out above. I have also not included recorded information provided by you in the numerous dossiers that you have provided to the Council as it is assumed that you have retained the master copy. If this is not the case please advise accordingly."

20. On 18 January 2017 the complainants wrote to the Council. They did not confirm whether or not they had retained a 'master copy'; instead they asked the Council for: *"a list/catalogue of all documents RBC has retained relating to our case to enable us to seek independent advice from the ICO with regard to accessing the retained information / documentation"*.

Scope of the case

21. The complainants contacted the Commissioner on 27 February 2017 to complain about the way their request for information had been handled. Although FOIA is purpose blind the Commissioner considers it useful to

set out the complainants' stated reasons for requesting this information, as follows:

"We are writing to you for your assistance in accessing documents held by our local authority...RBC relating to a dispute between ourselves and RBC regarding ERDF... funding, for which they were administrators at local level.

Our primary purpose for requiring this information / documentation is to establish the facts regarding the above dispute with a view to seeking legal advice on the viability of making a case to the Civil Court for the postponement of the Statute of Limitation on the grounds that RBC have for many years, have concealed and withheld key information / evidence from ourselves relating to our case."

22. They advised that through a previous complaint to the Commissioner they had secured:

"... several files of documents from RBC which have proved most helpful, however RBC have retained a body of information / documentation for specified reasons" (ie the exempted material) and: "Given that RBC are assessing what information we can and can't have access to regarding our case and the potential negative impact of passing this information / documentation on to us ... we feel there is the potential for a conflict of interest. Given the situation we find ourselves in we are seeking advice from the ICO to see if they could be the arbitrators of which, if any of the remaining withheld documents ... we may or may not have access to".

23. At the outset of the Commissioner's investigation, it transpired that the complainants had not received the Council's internal review, which was sent on 27 February 2017. With the Commissioner's intervention, the Council re-sent this to the complainants on 3 July 2017. The Council advised that it does not have a list of the documents and is not required to create such a list under FOIA, explaining that such a list is not recorded information in existence at the time of the complainants' request.
24. Due to the correspondence submitted by the complainants, which included documentation about another request, and in order to determine exactly what they were seeking, the Commissioner found it necessary to correspond with them several times to clarify the scope of her investigation.
25. The Commissioner noted that the complainants did not complain, when requesting an internal review, about the Council withholding some of the requested information under the various exemptions (specifically

sections 21, 40, 41, 42 and 43). Additionally, they did not complain as to whether or not they believe the Council holds further information which had not been provided. Instead the complainants requested a "list" of all the information held by the Council.

26. In relation to her investigation, the Commissioner told the complainants that she would normally only consider issues that have been raised by a complainant at the internal review stage as this is the most recent position. However, she accepts that this case is a longstanding one, involving a significant amount of correspondence, and further notes that the complainants had requested "all documents / information" relating to Heritage Arcade and ERDF funding in their request of 30 November 2016. She has therefore exercised her discretion and considered an issue which was not raised by the complainants at internal review, but which was caught by the original request of 30 November 2016. Additionally, the Commissioner has explained to the complainants that asking for the information "to date" only includes information in scope up to the date of the request, ie to 30 November 2016.
27. The complainants have not complained at any stage about any of the redactions made to the information already released in response to this request so the Commissioner has disregarded this aspect for the purposes of her investigation. As a result, the Commissioner has only considered whether the complainants are entitled to any of the other information which has been withheld in its entirety.
28. After further cross referencing the information it holds in scope of the request against the 'bundles' it had previously disclosed to the complainants, the Council provided the Commissioner with copies of five remaining documents, details of which are as set out below.

The information under consideration

29. *Document 1* – is a one page undated list of names and companies under a heading 'Capital Grants as per RBC ledger' with a handwritten draft letter to the complainants down one side. The Council confirmed it had previously sent a typed up version of the handwritten note to the complainants so this information has been disclosed to them. With regard to the list of names, the Council, where it can, has cross referenced those on the list with its records of funding. It advised that it considers the list of names to be out of scope because it relates to those awarded some sort of capital funding (ie a one-off payment) over a time period which it is unable to qualify due to the passage of time.
30. Having viewed the document in full, the Commissioner agrees with the Council that the list does not relate to ERDF funding, and she accepts that the undisclosed part of *Document 1* does not fall within the scope of the request.

31. *Document 2* - is a document entitled 'Jobs Created Following Project Completion' which it said had been provided to the complainants previously (with redactions for personal information). The Council advised that it had included *Document 2* to illustrate to the Commissioner that the names listed do not correlate with those listed in *Document 1* which it said adds weight to its view that the list of names in that document are not in scope of the request (ie that they do not relate to ERDF funding). As the complainants have not complained about the redactions made to *Document 2*, the Commissioner has therefore determined that the remainder of this document falls outside the scope of her investigation.
32. *Documents 3 and 4* - are documents between the Council's then Chief Executive and its Borough Solicitor for which the Council is relying on regulation 12(5)(b), course of justice.
33. Attached to *Document 3* is a letter about ERDF funding and the Heritage Arcade Scheme sent to the Council in October 1998 by a private firm of solicitors. The Council has confirmed that there is an un-redacted copy of this attachment in one of the dossiers submitted by the complainants. The Commissioner is therefore satisfied that this attached letter has previously been disclosed in full to the complainants, so she has excluded it from her investigation.
34. *Document 5* - is a letter dated 6 October 1998 from the Council's Borough Engineer and Planning Officer which details the complainants' complaint to the Ombudsman. As the Council was unable to confirm definitively whether this letter had been previously disclosed to the complainants, it sent them a copy with redactions under section 40(2) for personal information, ie for the names of individuals. As the complainants have not complained about the redactions made to *Document 5*, the Commissioner has therefore determined that the remainder of this document this falls outside the scope of her investigation.

Which legislative regime applies?

35. As part of her investigation, the Commissioner also asked the Council to consider whether the request should have been handled under the EIR ie whether the requested information constitutes environmental information. On 2 October 2017, the Council confirmed it had revisited the requested information and concluded that the EIR is the correct regime. It duly wrote to the complainants to explain its reasons why, citing the following exceptions:
 - Regulation 12(4)(b) - manifestly unreasonable
 - Regulation 12(5)(b) - course of justice
 - Regulation 13(1) - personal data

36. Subsequently, the Commissioner wrote to the complainants on two occasions seeking their views on the Council's revised position and the cited exceptions; they did not submit any further comments other than restating the information they are seeking via this request.
37. The Council said that regulation 13(1) largely applies to information that it has already disclosed to the complainants, which is excluded from the scope of this investigation because the complainants have not complained about any redacted material. The Council also cited regulation 13(1) in respect of the list of names in *Document 1*, which is now considered to be out of scope. The Commissioner has therefore disregarded regulation 13(1) for the purposes of her investigation.
38. The Commissioner has therefore considered whether the Council has properly applied regulations 12(4)(b) and 12(5)(b) to *Documents 3* and *4*. In addition, the Council has said that there is information about ERDF funding available in the local library in the form of minutes, to which the Council has relied on regulation 12(4)(b), manifestly unreasonable.
39. The Commissioner has also determined which legislative regime applies to the complainants' request of 30 November 2016.

Reasons for decision

Regulation 2 - Is any of the information environmental?

40. The Commissioner has first considered whether the requested information constitutes environmental information.
41. Information is environmental if it meets the definition set out in regulation 2 of the EIR¹. Regulation 2(1)(a) covers the state of the elements of the environment, including water, soil, land and landscape. Information on factors (such as energy, noise and waste) affecting or likely to affect the elements of the environment as defined in 2(1)(a) is environmental information under regulation 2(1)(b). Regulation 2(1)(c) provides that information is environmental where it is on:

"measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and

¹ https://ico.org.uk/media/for-organisations/documents/1146/eir_what_is_environmental_information.pdf

activities affecting or likely to affect the elements and factors referred to in 2(1)](a) and (b) as well as measures or activities designed to protect those elements."

42. The Council has stated:

"...as this [request] related to grant works for external works on a property that was duly considered under a heritage scheme, the request would fall to be considered under EIR. I have on the whole considered this matter under Regulation 2(1)(f) in that it relates to cultural sites and built structures. Clearly due to the time that has elapsed since the grant works were carried out i.e. 1994 it is difficult to say that they are or may be affected by factors, measures or activities however it is arguable that at the time they probably were".

43. The definition of regulation 2(1)(f) is more specific than the other definitions in regulation 2(1) and does not take the form of an illustrative list of examples. It relates to the following areas:

- the state of human health and safety (this will include the contamination of the food chain, where relevant to the state of human health and safety);
- conditions of human life; and
- cultural sites and built structures.

44. Cultural sites will include places that have a historical, literary, educational or artistic value, and religious, ethnic, or social significance. It will cover modern as well as historical, and urban as well as rural locations.

45. These areas will be environmental information to the extent that they are or may be affected by:

- the state of the elements of the environment in 2(1)(a) or through those elements, or
- by any of the factors, measures or activities referred to in 2(1)(b) and (c).

46. In both the Commissioner's and the Council's view, the information requested by the complainants constitutes environmental information under regulation 2(1)(f) as it concerns a plan to alter the use of land and to alter an existing structure, which is a cultural site, and is likely to affect, for example, the landscape referred to in 2(1)(a). The Commissioner also considers that the proposal to alter the Heritage Arcade into shops falls under the definition of 2(1)(c) ie a measure or activity affecting (or likely to affect) the elements referred to in 2(1)(a).

47. The Commissioner has therefore concluded that the requested information is environmental and that, having revised its position during her investigation, the Council is correct to have considered this request under the EIR.

Consideration of the exceptions

Regulation 12(4)(b) – manifestly unreasonable

48. The EIR allow public authorities to refuse a request for information which is manifestly unreasonable. The inclusion of the word 'manifestly' means that there must be an obvious or clear quality to the unreasonableness. This exception can be used either when the request is vexatious or if the cost or burden of dealing with a request is too great².
49. The Council has explained that information relating to the ERDF funding and Heritage Arcade is held within old Council minute books which can be accessed via the local library. It advised that some extracts of minutes are held within the files the Council has undertaken to retain, and are also within the dossiers provided by the complainants so are therefore already in their possession. It said that to look through every minute book for matters relating to the request would be manifestly unreasonable as it would be too burdensome to deal with and would disrupt the Council's ability to perform its core functions.
50. This would also fall true of newspaper articles; however to the best of the Council's knowledge the clippings in its possession have either been shared with the complainants or provided by them within the dossiers.
51. Further the Council said that, in response to this request, it has not provided recorded information that has previously been shared with the complainants or provided by them as it assumes that they continue to hold the same (please refer to paragraph 19 of this notice where the Council raised this matter with the complainants).
52. The Commissioner considers that for the Council to provide information which it has already released to the complainants, and additionally for it to provide information in scope which is available in the minute books in the local library is an unnecessary diversion of resources, ie manifestly unreasonable. She therefore finds this exception to be engaged.

² <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

The public interest

53. Regulation 12(1)(b) requires that where particular exceptions are engaged then a public interest test is to be carried out. Regulation 12(4)(b) is subject to a public interest test. The test is whether the public interest in the information being disclosed outweighs that in the exception being maintained.

The public interest in the information being disclosed

54. The Commissioner accepts that there is a public interest in public authorities being transparent on their use of public money, and in this case there appear to be wider questions about the use of ERDF funding.

The public interest in the exception being maintained

55. The Council has argued that the exception should be maintained as the strain on resources, particularly on a small district authority such as Rossendale Borough Council, would unreasonably and disproportionately get in the way of it with dealing with its day to day work. It argued that as the minutes and newspaper articles in scope are available for public consumption at the local library (and as many have been provided as evidenced by the documents in the complainants' dossiers), it cannot see, in this particular case, how the Council spending an inordinate amount of time on searching through such records to ascertain which were or were not already in the complainants' possession would, for example, inform more effective public participation in environmental decision making or inform public debate, particularly having regard to the age of this matter and the numerous organisations that this complaint has been through for consideration.
56. The Council asserts that there has been no wrongdoing on its part which has been confirmed by all the other agencies that have investigated this matter to date. It said: "*the complainants are consumed by this matter but their failure to accept the numerous findings made against their complaints should not place the Council in a detrimental position in having to continually be distracted from delivering other services*". The Council said it has given the complainants appropriate advice and assistance as to where the information can be obtained should they choose to go and look for it.

Balance of the public interest

57. The Commissioner recognises that there is a public interest in protecting authorities from members of the public who use information rights under the EIR (and other rights) as a means to raise personal complaints and grievances. In this case, the complainants' concerns about funding they believe they are entitled to receive date back more than 20 years. The

complainants have pursued the matter with various independent bodies, each of which has concluded that there has been no wrongdoing. Further, the Council has engaged with the complainants over the last 20 years and has provided numerous documents, investing a significant amount of its time and resources on this matter.

58. The Commissioner finds that as this aspect of the requested information is publicly available, and as the cumulative effect of dealing with the complainants' concerns for over 20 years is having an adverse impact upon the Council's ability to carry out its functions, it is not in the public interest to allow a situation to form where two individuals effectively prevent a public authority from being able to carry out its functions.
59. The Commissioner is also mindful that there have been a number of independent investigations into this matter, all of which have concluded that the Council has not done anything inappropriate. In her view this weakens any value in further exacerbating the burden on the Council with questions relating to the same issues.
60. The Commissioner has therefore weighed up the public interest issues in this case and has decided that the Council was correct to reach the conclusion that for it to provide some of the requested information would be manifestly unreasonable as this is already available to the complainants. It is in the public interest for the exception to be maintained in order that the Council can protect its ability to act for the public it serves as a whole. The Commissioner therefore considers that the Council was able to apply regulation 12(4)(b) to this aspect of the requested information.

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

61. The Council has sought to rely on regulation 12(5)(b) in relation to *Documents 3* and *4* in their entirety, which are correspondence between the then Chief Executive and the Borough Solicitor.
62. Regulation 12(5)(b) provides an exception from the disclosure of environmental information which would adversely affect:
 - the course of justice;
 - the ability of a person to receive a fair trial; and
 - the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.
63. There is a presumption in favour of disclosure.
64. The course of justice has a wide meaning and public authorities can consider claiming this exception when they get requests for:

- court or tribunal records;
- material covered by legal professional privilege; and
- information whose disclosure would prejudice investigations and proceedings of either a criminal or disciplinary nature.

65. The Council has cited that it wishes to claim 'legal professional privilege' or 'LPP' in respect of *Documents 3* and *4*. Based on the papers in its possession, the Council is not aware that these have previously been shared without restriction, placed in the public domain or that privilege has been waived. It said:

"The Council seeks to continue to rely on LPP under Regulation 12(5)(b) as to not do would adversely affect the interest of justice, particularly as the complainants continue to threaten legal action. Disclosure would undermine the general principles of LPP and therefore the Council maintains its position under this exception."

66. The Council said that it was relying on the advice limb of LPP because no litigation was underway at the time of the request. Having seen the withheld information the Commissioner is satisfied that it consists of communications between a solicitor and a client for the dominant purpose of seeking and giving legal advice. More generally, the Commissioner notes that the information also falls within the wider category of information covered by the exception, namely material covered by LPP. However, as the complainants have intimated that they intend to issue court proceedings for the monies they say they are owed, LPP could also apply in relation to court or tribunal records.
67. The Commissioner is of the view that disclosure of information which is subject to LPP will have an adverse effect on the course of justice. This is because the principle of LPP would be weakened if information subject to privilege were to be disclosed under the EIR. She considers the likelihood of this happening to be more probable than not. Having regard to the Council's arguments, the nature of the withheld information and the subject matter of this request, the Commissioner is satisfied that disclosure of the requested information would have an adverse effect on the course of justice and she therefore finds that the exception at regulation 12(5)(b) is engaged.

The public interest

68. Regulation 12(1)(b) requires that, where the exception in regulation 12(5)(b) is engaged, then a public interest test should be carried out to ascertain whether the public interest in maintaining the exception outweighs the public interest in disclosing the information. In carrying out her assessment of the public interest test, the Commissioner has

applied the requirement of regulation 12(2) which requires that a public authority shall apply a presumption in favour of disclosure.

The public interest in the information being disclosed

69. The Commissioner considers that there is a strong public interest in disclosing information that allows scrutiny of a public authority's decisions. In her view this helps create a degree of accountability and enhances the transparency of the process through which such decisions are made. She considers that this is especially the case where the public authority's actions have a direct effect on the environment.
70. Disclosure of the information would serve the public interest in knowing whether a public authority has behaved lawfully in carrying out its duties as a public authority.

The public interest in the exception being maintained

71. The Commissioner considers that there is a strong public interest in the Council not being discouraged from obtaining full and thorough legal advice to enable it to make legally sound, well thought out and balanced decisions for fear that this legal advice may subsequently be disclosed into the public domain. The Commissioner considers that disclosure may have an impact upon the extent to which legal advice is sought which, in turn, would have a negative impact upon the quality of decisions made by the Council, and that this would not be in the public interest.
72. The Council has argued that the public interest in maintaining the exception is a particularly strong one and to equal or outweigh that inherently strong public interest usually involves factors such as circumstances where substantial amounts of money are involved, where a decision will affect a large amount of people or evidence of misrepresentation, unlawful activity or a significant lack of appropriate transparency. The Council maintains that the information shows no sign of unlawful activity, misrepresentation or evidence of a significant lack of transparency and that it relates only to the complainants' interests.
73. Notwithstanding the fact that the case dates back over 20 years, the Council has also argued that to release the memo between the then Chief Executive and Borough Solicitor would undermine the general principle of LPP and the ability to safeguard legal advice given. In addition, the Council has also argued that the matter is still 'live' as the complainants could use the information as grounds to pursue further legal action even though the matter has been dismissed by the various investigating bodies.

Balance of the public interest

74. In considering where the balance of the public interest lies, the Commissioner has given due weighting to the fact that the general public interest inherent in this exception will always be strong due to the importance of the principle behind LPP: safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice, which in turn is fundamental to the course of justice.
75. The Commissioner notes that despite the passage of time, the legal advice is still current. She accepts that this factor carries considerable weight in favour of maintaining the exception as disclosure would reveal the legal basis of the Council's strategy in such scenarios. She acknowledges that this would result in adverse effect to the course of justice by revealing the Council's legal strategy to potential opponents and undermining the principle that legal advice remains confidential. In the Commissioner's view, this weighs heavily in the balance of the public interest test in this case.
76. The Commissioner acknowledges that the complainants have a personal interest in accessing the information. She also notes that the complainants have concerns that the Council has been involved in wrongdoing.
77. However, the Commissioner has not been presented with any compelling evidence that this is the case, nor does she consider that it falls within her remit to determine whether it is the case. She also considers that the matter of ERDF funding has already been the subject of other dispute procedures, which provide mechanisms for such issues to be addressed and concerns about malfeasance can be progressed in other arenas than under the EIR. The Commissioner is concerned that the complainants might be trying to use the EIR to continue their personal legal grievances with the Council via another channel. She does not consider that the EIR was created for this purpose.
78. Whilst the Commissioner acknowledges the complainants' interest in this matter, she does not consider that this factor meets the threshold of an equally strong countervailing consideration which would need to be adduced to override the inbuilt public interest in protecting LPP.
79. Furthermore, the Commissioner considers that the public interest in the context of the EIR refers to the broader public good and, in weighing the complainants' interests against those of the Council and its ability to undertake funding related matters and inquiries on behalf of the wider public, the Commissioner does not consider that the private interests of the complainants tip the balance in this case.

80. The Commissioner does not consider that the arguments in favour of disclosure in this case carry significant, specific weight. She has determined that, in the circumstances of this particular case they are outweighed by the arguments in favour of maintaining the exception under regulation 12(5)(b).
81. The Commissioner has, therefore, concluded that the Council has correctly applied the exception and that, in this case, the public interest favours maintaining the exception.

Procedural breaches

Regulation 5(2) - Duty to make environmental information available on request

Regulation 14(2) – Refusal to disclose information

82. Regulation 5(2) of the EIR states that information should be made available: "*as soon as possible and no later than 20 working days after the date of receipt of the request*". In this case, the Council took more than 20 working days in which to respond; it therefore breached regulation 5(2) in this regard.
83. If a public authority wishes to withhold information in response to a request, regulation 14(2) of the EIR requires it to provide the requester with a refusal notice stating that fact within 20 working days after the date of the request. The Council failed to do this thereby breaching regulation 14(2) of the EIR.

Other matters

84. During a recent search for information the Council's Finance team located an operational file of a former Conservation Officer, dating back to 1994, which contains documents and correspondence relating to the CAP funding, copy invoices supplied by the complainants, handwritten notes and some photographs.
85. The Council considers the content of this file to fall outside the remit of the ERDF funding matter under consideration in this request, but explained that some of these documents had been disclosed in an attempt to assist the complainants in understanding the difference in the monies they had received by way of a grant. The Council did not disclose those documents which appeared to originate from the complainants, such as copy invoices and letters written by them, as it considered these are documents the complainants should reasonably hold. The Council said it had made this assumption by comparing the information it has retained against that which appears in the various dossiers submitted by the complainants. However, the Council has

Reference: FER0690148

advised it is willing to provide the complainants with a further copy should they no longer be in possession of them.

Right of appeal

86. 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@hmcts.gsi.gov.uk

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

87. 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.

88. 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

**Carolyn Howes
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