

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 27 September 2012

**Public Authority:** London Borough of Waltham Forest

**Address:** Town Hall  
Forest Road  
Walthamstow  
E17 4JF

#### **Decision (including any steps ordered)**

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1. The complainant has requested a copy of a viability assessment submitted in support of a proposal for the redevelopment of the Walthamstow Greyhound Stadium site.
2. London Borough of Waltham Forest (the "council") confirmed that the information was held but refused the request under the exceptions relating to internal communications and the confidentiality of commercial or industrial information. During the course of the Commissioner's investigation the council disclosed a redacted version of the viability assessment. It confirmed that the redacted information was being withheld under the exception relating to the course of justice.
3. The Commissioner's decision is that the council has failed to demonstrate that the withheld information engages the exceptions relating to the course of justice and the confidentiality of commercial or industrial information.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose to the complainant an unredacted version of the viability assessment.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Background

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6. The request relates to proposals by a housing association, London and Quadrant ("L&Q"), to develop the land occupied by Walthamstow Greyhound Stadium.
7. Walthamstow Greyhound Stadium was closed in August 2008 and sold to L&Q acting in a commercial partnership with Yoo Capital Ltd. The purchase was with the intention of bringing forward a residential-led mixed use development. L&Q took vacant possession of the site on 1 September 2008 and in July 2011, submitted a planning application which set out an intention to develop the site for residential accommodation and other leisure and community uses, etc.<sup>1</sup>.
8. There has been widely reported public opposition to the proposed development from those who wish to see the site used again for Greyhound racing and others who are concerned that the proposals do not meet the council's guidelines for the provision of affordable housing<sup>2</sup>.
9. The council's planning policy sets out that any major housing development proposals should consist of a minimum 50% affordable housing. All applications for development which propose affordable housing delivery below this level have to pay for an independent development viability assessment (a "viability assessment") and submit sufficient information to fully justify the level of shortfall<sup>3</sup>.
10. In this instance, L&Q indicated that the scheme was not sufficiently viable to enable compliance with the level of affordable housing identified in the council's policy. In July 2011, L&Q submitted a viability assessment, which also addressed the viable level of section 106 (of the Town and Country Planning Act 1990) contributions<sup>4</sup>.

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<sup>1</sup> See L&Q's website here: <http://www.lqgroup.org.uk/services-for-residents/media-centre/press-releases/2010/8/15/walthamstow-stadium--june-july-and-august-updates-and-faqs/>

<sup>2</sup> See, for example, the "Save our Stow" campaign website: <http://saveourstow.wordpress.com/>

<sup>3</sup> See the council's guidance, published May 2011: <http://www.walthamforest.gov.uk/Documents/affordable-housing-in-waltham-forest-guidance.pdf>

<sup>4</sup> See <http://www.walthamforest.gov.uk/documents/no22-viability-methodology-statement.pdf>, and: <http://democracy.walthamforest.gov.uk/documents/s24800/4.%202011.0898%20Background%20Document.pdf>

11. Within this context, the requester asked the council to provide a copy of the viability assessment and associated information.

## **Request and response**

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12. On 5 December 2011 , the complainant wrote to the council and requested information in the following terms:

*“(1) I request to have sight of all dialogue between the council and L&Q and their professional advisors in connection with the financial viability of their submitted scheme for the redevelopment of the Walthamstow Greyhound Stadium site.*

*(2) I further request disclosure of the viability assessment itself.*

*(3) I further request the reasoning behind the council's agreement to non-disclosure of the viability assessment on the grounds of commercial confidentiality and in this regard we request explanation of the commercially confidential reasons that arise to support this decision.*

*(4) I further request the explanation of the reasoning that to even disclose the commercially confidential issues would in itself somehow compromise the commercial position of the applicant.”*

13. The council responded on 5 January 2012. In relation to (1), it refused the request, stating that the query was formulated too generally. The council invited the complainant to provide clarification in this regard. In relation to (2), the council stated that the information was not held. In relation to (3) and (4) the council stated that it considered these were not valid requests but were rather requests for an 'explanation' or 'reasoning'.
14. Following an internal review the council wrote to the complainant on 5 March 2012. The review upheld the decision in relation to request parts (1), (3) and (4); in relation to part (2), the council confirmed that it did hold the requested information and that this was being withheld under the exceptions for internal communications and adverse affect to the confidentiality of commercial or industrial information.

## **Scope of the case**

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15. The complainant contacted the Commissioner to complain about the way his request for information had been handled.

16. During the course of the Commissioner's investigation the council disclosed information falling within the scope of requested parts (3) and (4), specifically, a letter from L&Q to the council which set out its views about the sensitivity of the viability assessment. At the prompting of the Commissioner, the council also disclosed a redacted version of the viability assessment to the complainant. It also stated that, in withholding the redacted information it also wished to rely on the exception regarding adverse affect to the course of justice, provided by regulation 12(5)(b).
17. The Commissioner has agreed with the complainant that his investigation will be confined to a consideration of the council's decision to withhold the unredacted version of the viability assessment.

## Reasons for decision

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

18. Regulation 12(5)(b) provides that the disclosure of information can be refused if its disclosure would adversely affect, "the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature."
19. In the Information Tribunal hearing of *Kirkaldie v Information Commissioner and Thanet District Council* (EA2006/001) the Tribunal stated that the purpose of this exception was reasonably clear and that:

*"...it exists in part to ensure that there should be no disruption to the administration of justice, including the operation of the courts and no prejudice to the right of individuals or organisations to a fair trial. In order to achieve this it covers legal professional privilege, particularly where a public authority is or is likely to be involved in litigation".*

In this hearing the Tribunal decided that legal professional privilege (LPP) is a key element in the administration of justice and that advice on the rights and liabilities of a public authority is a key part of the activities that will be encompassed by the phrase "course of justice".

20. The Tribunal in *Woodford v IC* (EA/2009/0098) confirmed that the test of "would adversely affect" for this exception would be met by the general harm which would be caused to the principle of LPP, without needing to demonstrate that specific harm would be caused in relation to the matter covered by the information.
21. The Commissioner considers that regulation 12(5)(b) is not limited to excepting only information that is subject to LPP. The wording of the

exception has a broad remit encompassing any adverse effect to the course of justice generally; this allows for documents that are not subject to LPP to still be covered by the exception, as long as disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature. The Tribunal affirmed this view in the case of *Surrey Heath Borough Council v Kevin McCullen and the ICO* (EA/2010/0034) when they acknowledged that the regulation covered more than just LPP.

22. In *Rudd v IC & Verderers of the New Forest* (EA/2008/0020) the Tribunal clarified that 'the course of justice' does not refer to a specific course of action but "a more generic concept somewhat akin to 'the smooth running of the wheels of justice'" (paragraph 29).
23. The council has argued that the viability assessment is legally privileged as it was part of documentation referred to in confidential communications between the council and a solicitor from its legal and democratic services department (the "legal advisor"). The purpose of these communications was to provide legal advice on the way in which the viability assessment could be relevant to the determination of a planning application.
24. In determining whether the exception is engaged the Commissioner has considered when the legal advice in question was provided.
25. According to the chronology provided by the council, on 25 April 2012, the viability assessment was the subject of discussion in a meeting involving its legal advisor and other council officers. The purpose of the meeting was to finalise the terms of a report on L&Q's planning application and specifically included consideration of advice to be given to members on matters referred to in the viability assessment. The advice itself – the purported legal advice, was provided at a meeting on 8 May 2012.
26. The Commissioner's published guidance sets out his position that, when carrying out the public interest test a public authority should consider the circumstances at the date of the request or when it actually deals with the request, provided this is within the statutory time for compliance<sup>5</sup>. This is supported by the Information Tribunal's comment in

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<sup>5</sup> See the ICO website here:

[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/the\\_public\\_interest\\_test.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/the_public_interest_test.ashx),

and here:

[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~media/documents/library/Environmental\\_info\\_reg/Detailed\\_specialist\\_guides/eir\\_effect\\_of\\_exceptions\\_and\\_the\\_public\\_interest\\_test.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Detailed_specialist_guides/eir_effect_of_exceptions_and_the_public_interest_test.ashx)

*Department for Business, Enterprise and Regulatory Reform v Information Commissioner and Friends of the Earth* (EA/2007/0072, 29 April 2008), at paragraph 110<sup>6</sup>.

27. In this case the request was made on 5 December 2011. The council's response was issued on 5 January 2012 and its internal review decision sent on 5 March 2012. Although the Commissioner's guidance specifically addresses the timing of the public interest test he considers that the same principle can be applied to the timing of the application of an exception. In short, when considering whether an exception is relevant, public authorities should have regard for the circumstances at the time a request is received or at the time a response is issued.
28. The Commissioner notes that the viability assessment only became the subject of legal advice after the council had issued its internal review response and over 100 working days after the date of the request. He, therefore, considers that the council's decision to apply the exception is not based on a correct depiction of the relevant circumstances when the request fell to be considered.
29. The Commissioner provided the council with his initial view that it seemed unlikely that the exception was engaged by the withheld information. The council advised the Commissioner of its intention to maintain its reliance on the exception. In support of its position the council directed the Commissioner to the judgement handed down by the court of appeal in *Birkett v DEFRA (2011 EWCA Civ 1606)*<sup>7</sup>.
30. The council has argued that the judgment suggests that there is scope for an authority to reconsider exemptions/exceptions upon which it relies through both the administrative and legal review stages.
31. As noted above, the Commissioner accepts that a public authority has the right to claim an exception for the first time either during his own investigation or before the Information Tribunal. However, he does not agree that the Birkett court of appeal decision has the effect that the council is arguing in this case.
32. In Birkett, the judge describes a scenario where a public authority "mistakenly" neglects to rely upon an exemption in its original refusal. This accords with the view provided in the Commissioner's guidance. However, with regard to the council's wish to translate the entitlement

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<sup>6</sup> Available online here:

[http://www.informationtribunal.gov.uk/DBFiles/Decision/i181/DBERRvIC\\_FOEFinaldecision\\_w eb0408.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i181/DBERRvIC_FOEFinaldecision_w eb0408.pdf)

<sup>7</sup> Available online here: [http://www.39essex.com/docs/news/birkett\\_v\\_defra\\_c3-11-1094.pdf](http://www.39essex.com/docs/news/birkett_v_defra_c3-11-1094.pdf)

to apply exceptions retrospectively into a general principle, the Commissioner does not accept that this is a correct reading of the Birkett decision.

33. The Commissioner considers that the instructive intent of the scenario is confined to situations where an authority could have relied upon an exemption or exception at the time of the request but erroneously failed to do this. Having determined that, at the time of the request and within the statutory time for compliance, the withheld information did not fall within the scope of the exception now cited by the council, the Commissioner has, therefore, concluded that the exception is not engaged. As he has found that the exception is not engaged he has not gone on to consider the public interest arguments.

### **Regulation 12(5)(e) – commercial confidentiality**

34. Regulation 12(5)(e) of the EIR provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect “the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest”.
35. The Commissioner considers that in order for this exception to be applicable, there are a number of conditions that need to be met. He has considered how each of the following conditions apply to the facts of this case:
- 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?

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

36. The Commissioner considers that for information to be commercial or industrial in nature, it will need to relate to a commercial activity either of the public authority concerned or a third party. The essence of commerce is trade and a commercial activity will generally involve the sale or purchase of goods or services for profit.
37. The Commissioner notes that the viability assessment was produced for the purposes of supporting an application by L&Q to further its commercial ends. The document contains information about valuations, development costs, funding and financing costs, etc., which were

submitted in support of L&Q's proposals for developing the former Walthamstow Stadium site.

38. The Commissioner considers that the information is clearly commercial in nature, and has concluded that this element of the exception is satisfied.

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

39. In relation to this element of the exception, the Commissioner has considered whether the information is subject to confidentiality provided by law, which may include confidentiality imposed under a common law duty of confidence, contractual obligation or statute.

*The council's view*

40. The council has argued that the information is subject to a duty of confidence provided by law. The council provided the Commissioner with a copy of a letter from L&Q which accompanied the final version of the viability assessment, sent to the council in July 2011. This letter sets out L&Q's understanding that the contents of the viability assessment are highly sensitive and that the information should be considered to be confidential and not disclosed, either in response to a request for information or by other means.
41. The council has stated to the Commissioner that it considers that the information contained in the viability assessment was provided on the strict understanding that it was and would remain confidential. It explained that the information has not been shared with any officers beyond those who actually need to access it. The council confirmed that this is its standard practice which has been adopted in relation to other viability assessments submitted by L&Q and other developers. It submitted to the Commissioner that it considered that it was reasonable for L&Q to ask for this confidentiality and to expect it to be maintained.

*The complainant's view*

42. The complainant has argued that the letter from L&Q to the council (see paragraph 16) suggests that an earlier version of the viability assessment report which was provided to the council did not contain an explicit confidentiality clause and that this could, therefore, have been disclosed.

*The Commissioner's view*

43. The Commissioner considers that "provided by law" will include confidentiality imposed on any person under the common law of confidence, contractual obligation, or statute.



44. The council has not provided any submissions to suggest that the confidentiality in this case has been imposed under contractual obligation or statute. Therefore the Commissioner has considered whether a common law duty of confidence applied in this case, by considering the following points:

- Whether the information has the necessary quality of confidence;
- Whether the information was shared in circumstances importing an obligation of confidence

#### **Does the information have the necessary quality of confidence?**

45. The Commissioner considers that information will have the necessary quality of confidence if it is not otherwise accessible, and if it is more than trivial. The Commissioner further considers that information which is of importance to the confider should not be considered to be trivial.

46. The council has not provided the Commissioner with any specific arguments to suggest that the report has the necessary quality of confidence. However, it is clear from the evidence provided by the council that this information was provided to it by L&Q with an expectation that it would be treated in confidence. Having viewed no evidence to the contrary, the Commissioner considers it unlikely that the report is otherwise accessible.

47. Having viewed the withheld information, it clearly relates to a development which will have an effect on the local area. The Commissioner therefore considers that the information in question is not trivial. He is satisfied that the information does have the necessary quality of confidence and, as a result has gone on to consider whether the information was shared in circumstances importing an obligation of confidence.

#### *Was the information shared in circumstances importing an obligation of confidence?*

48. Although there is no absolute test of what constitutes a circumstance giving rise to an obligation of confidence, the judge in *Coco v Clark*<sup>8</sup> suggested that the 'reasonable person' test may be a useful one. He explained:

*"if the circumstances are such that any reasonable man standing in the shoes of the recipient of the information would have realised that upon reasonable grounds the information was being provided to him in*

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<sup>8</sup> *Coco v A N Clark (Engineers) LTD* [1969] RPC 41.

*confidence, then this should suffice to impose upon him an equitable obligation of confidence”.*

49. In *Bristol City Council v Information Commissioner and Portland and Brunswick Squares Association* (EA/2010/0012), the Tribunal accepted evidence that it was “usual practice” for all documents containing costings to be provided to a planning authority on a confidential basis, even though planning guidance meant that the developer was actually obliged to provide the information in this case as part of the public planning process.

50. In applying the “reasonable person” test in this instance the Tribunal stated:

*“in view of our findings ... that at the relevant time the usual practice of the council was that viability reports and cost estimates like those in question were accepted in confidence (apparently without regard to the particular purpose for which they were being provided) ... the developer did have reasonable grounds for providing the information to the Council in confidence and that any reasonable man standing in the shoes of the Council would have realized that that was what the developer was doing.”<sup>9</sup>*

51. On the basis of the explanations provided by the council, the content of the withheld information and the above criteria, the Commissioner accepts that the information was shared in circumstances importing an obligation of confidence. From the arguments supplied by the council, the Commissioner considers that the circumstances gave rise to an explicit obligation of confidence due to the wording used in the report, and due to the assurances shared between the developer and the council when discussing the information in question. The Commissioner therefore concludes that the requested information is subject to a duty of confidence which is provided by law and considers that this element of the exception is satisfied.

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

52. The Commissioner considers that to satisfy this element of the exception, disclosure would have to adversely affect a legitimate

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<sup>9</sup> Published online here:

[http://www.informationtribunal.gov.uk/DBFiles/Decision/i392/Bristol\\_CC\\_v\\_IC\\_&\\_PBSA\\_\(0012\)\\_Decision\\_24-05-2010\\_\(w\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i392/Bristol_CC_v_IC_&_PBSA_(0012)_Decision_24-05-2010_(w).pdf)

economic interest of the person (or persons) the confidentiality is designed to protect.

*Whose interests?*

53. In this case, the withheld information was provided by L&Q to the council so the Commissioner considers that it is the interests of the confider (i.e., the person providing the information) that are relevant. The council has confirmed that it is L&Q's legitimate economic interests that confidentiality is designed to protect.
54. In cases where a third party's interests are at stake, the Commissioner considers that public authorities should consult with the third party unless it has prior knowledge of their views. It will not be sufficient for a public authority to speculate about potential harm to a third party's interests without some evidence that the arguments genuinely reflect the concerns of the third party. In line with this approach, in addition to its own submissions in this regard, the council provided detailed representations from L&Q itself.

*Legitimate economic interests*

55. The Commissioner considers that legitimate economic interests could relate to retaining or improving market position, ensuring that competitors do not gain access to commercially valuable information, protecting a commercial bargaining position in the context of existing or future negotiations, avoiding commercially significant reputational damage, or avoiding disclosures which would otherwise result in a loss of revenue or income.
56. In this instance, submissions from L&Q confirm that the relevant economic interests identified in the withheld information relate to the financial viability of the proposed development.

*Disclosure would cause harm*

57. The Commissioner considers that in assessing whether disclosure of information would cause harm, public authorities need to consider the sensitivity of the information at the date of the request and the nature of any harm that would be caused by disclosure.
58. The Tribunal in *Elmbridge Borough Council v Information Commissioner and Gladedale Group Ltd (EA/2010/0106)* accepted that, in order for the exception to be engaged, "...disclosure would have to adversely affect a legitimate economic interest of the person the confidentiality is designed to protect and that this requires consideration of the sensitivity of the

information and the nature of any harm that would be caused by disclosure.”<sup>10</sup>

59. The Commissioner considers that broader arguments, such that the confidentiality provision was originally intended to protect legitimate economic interests at the time it was imposed will not be sufficient if disclosure would not actually impact on those interests at the time of the request.
60. In EA/2010/0106, the request was for a viability report for a new development submitted as part of a planning application. The council and the developer asserted that disclosure could harm the developer's interests, but did not accept that they needed to demonstrate that harm would result. The Tribunal found that the exception was not engaged, saying that “statements by interested parties that harm might or could be caused are insufficient [...] The use of words such as ‘could’ or ‘may’ do not in our view provide evidence of harm or prejudice to the required standard of proof”<sup>11</sup>.
61. The Commissioner, therefore, considers that it is not enough that disclosure might cause some harm to an economic interest. In order to engage the exception, a public authority needs to establish (on the balance of probabilities – i.e., more probable than not) that disclosure would cause some harm.
62. This approach is supported by European Directive 2003/4/EC on public access to environmental information. The EIR are intended to implement the provisions of the Directive. Article 4 paragraph 2 of the Directive sets out a duty to interpret exceptions in a restrictive way. Taking into account this duty, the wording “*where such confidentiality is provided by law to protect a legitimate economic interest*” (as opposed to “*where such confidentiality was provided...*”) indicates that the confidentiality of this information must be objectively required at the time of the request<sup>12</sup>.
63. In addition to the duty to interpret exceptions restrictively, the Commissioner notes that the implementation guide for the Aarhus Convention (on which the European Directive and ultimately the EIR

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<sup>10</sup> Paragraph 18, here:

[http://www.informationtribunal.gov.uk/DBFiles/Decision/i479/\[2011\]UKFTT\\_EA20100106\\_\(GRC\)\\_20110104.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i479/[2011]UKFTT_EA20100106_(GRC)_20110104.pdf)

<sup>11</sup> Paragraph 24, Ibid.

<sup>12</sup> [http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:041:0026:0032:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:041:0026:0032:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:041:0026:0032:EN:PDF)

were based) gives the following guidance on legitimate economic interests:

*"Determine harm. Legitimate economic interest also implies that the exception may be invoked only if disclosure would significantly damage the interest in question and assist its competitors."<sup>13</sup>*

64. The council has stated that it has substantial grounds to believe that disclosure of the information would adversely affect L&Q's legitimate economic interests. It has argued that it is more than likely that, once disclosed, the information would be made more widely available through publication on social networking and websites and assumptions made about costs, profit and income would be more widely disclosed. As a result of this, the council considers that L&Q would be put in a disadvantageous position compared with competitors in an already difficult market.
65. The Commissioner notes that the submissions made by the council and L&Q identify relevant economic interests and explain how disclosure would result in information relating to these interests being disseminated. The submissions also sketch out the purported negative effects of disclosure.
66. However, the Commissioner is not satisfied that the council, as the body ultimately responsible for responding to requests nor indeed L&Q itself, have provided sufficient detail in this regard. In stating that disclosure would result in information falling into other parties' hands simply describes the global nature of disclosures made under the EIR. In suggesting that disclosures would result in L&Q being put in a disadvantageous position compared with competitors the council does not explain the nature of the disadvantage or the role of competitors in the context of L&Q's development plans and does not provide any tangible evidence that disclosure would produce such an effect.
67. The Commissioner is concerned that, in this instance, the council has simply defined the information and the supposed effects of disclosure to align with the wording and terms of the exception and the Commissioner's guidance.
68. During the course of his investigation the Commissioner provided the council with his initial view that the exception did not appear to have been engaged and the council was given several opportunities to clarify its position and submit further arguments in this regard.

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<sup>13</sup> <http://www.unece.org/fileadmin/DAM/env/pp/acig.pdf>

69. The council confirmed that it was operating in reliance on the arguments provided to it by L&Q in this regard and agreed to seek further submissions and provide these to the Commissioner.
70. Further arguments subsequently provided to the Commissioner via L&Q reiterate the point that the disclosure of the withheld information would enable other parties to view “highly sensitive and confidential” information. Access to the information would enable competitors to see the analysis undertaken by L&Q when considering a site for development. According to the argument provided, competitors could use the information to their advantage, significantly disadvantaging L&Q on a commercial level.
71. Having considered these final submissions the Commissioner is not satisfied that the council has demonstrated what form the competition to L&Q’s application takes and how disclosure of the information would result in harm being caused to L&Q’s economic interests.
72. The Commissioner interprets the wording of ‘would adversely affect’ in regulation 12(5) to set a relatively high threshold in terms of likelihood which has to be met in order for any of the 12(5) exceptions to be engaged. In other words it is not sufficient that disclosure may or could have some level of adverse effect, but rather that disclosure ‘would’ have an adverse effect. In the Commissioner’s opinion this means that the likelihood of an adverse effect must be more substantial than remote.
73. In cases where an authority has failed to explain the nature of an implied adverse effect and failed to demonstrate the causal link between any such adverse effect and the disclosure of information, the Commissioner considers that he is not obliged to generate relevant arguments on an authority’s behalf.
74. Having considered the council’s submissions the Commissioner is not satisfied that it has demonstrated what form the competition to L&Q’s application takes. Furthermore he does not consider that the council has explained, in anything more than general terms which suggest that a proper analysis has not taken place, how disclosure of the information would result in harm being caused to L&Q’s economic interests.

**Would the confidentiality be adversely affected by disclosure?**

75. In order for the exception to be engaged the Commissioner considers that it must be shown that disclosure would adversely affect a legitimate economic interest of the person the confidentiality is designed to protect.

76. In this case, the Commissioner does not consider that it has been shown that disclosure of the information would adversely affect the economic interests of L&Q. As he has concluded that the exception is not engaged, the Commissioner has not gone on to consider the public interest arguments.

## Right of appeal

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77. 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: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

78. 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.

79. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
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