

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 9 March 2020

Public Authority: Hastings Borough Council
Address: Queens Square
Hastings
TN34 1TL

Decision (including any steps ordered)

1. The complainant has requested a copy of a report held by Hastings Borough Council (the council) which relates to advice about the repair and potential realignment of certain footpaths within Hastings Country Park.
2. The council provided the complainant with a copy of the report in a redacted format. It advised that the information that had been withheld was exempt from disclosure under regulation 12(5)(e) of the EIR.
3. The Commissioner's decision is that regulation 12(5)(e) is engaged in respect of only part of the withheld information. However, the Commissioner is satisfied that the public interest favours maintaining regulation 12(5)(e) in respect of this information.
4. With regards to the remaining information that has been withheld by the council, the Commissioner has concluded that regulation 12(5)(e) is not engaged.
5. The Commissioner also finds that the council has breached regulation 5(2) as it failed to provide its response to the request within 20 working days. In addition, by failing to issue a refusal notice within the same prescribed time frame, the council has breached regulation 14(2) of the EIR.
6. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.

- Disclose the withheld information with the exception of that which is highlighted as being exempt from disclosure within the Confidential Appendix FER0832391.
7. The council 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.

Request and response

8. On 5 July 2018 the complainant wrote to the council and requested information in the following terms:

'Following an FOI request (80591946)¹ for a list of Coffey reports you have identified a report titled:

"Ecclesbourne Glen Footpath Diversions-Options Assessment – June 2016"

Please supply me with a copy of this report under EIR.'

9. Following the Commissioner's intervention, on 16 October 2018 the council provided the complainant with a copy of the '*Ecclesbourne Glen Footpath Diversions-Options Assessment*' (the Options Assessment Report) as requested. It advised that certain information contained within this report had been withheld as it was subject to the exception at regulation 12(5)(e) of the EIR. The council went on to say that when making its decision it had given consideration to the following:

*'-Is the information commercial or industrial
-Is the information subject to confidentiality provided by law
-is the confidentiality protecting a legitimate economic interest
-Would disclosure adversely affect the confidentiality.'*

10. The council also confirmed that it had considered the public interest test and that the factors in favour of disclosure were '*transparency and accountability*' and those factors '*against disclosure*' were as follows:

¹ https://www.whatdotheyknow.com/request/list_of_all_reports_produced_by#incoming-1183754

'-Adverse effect on the economic interest of the owners of Rocklands Caravan Park.

-Maintaining commercial confidences

-In al [sic] the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosure.

-If the information is disclosed it could be used to seek harm on the owners commercial interests.

-The release of this information could lead to further harassment to the owners.

-Constant bad publicity by SEG hampers the owners ability to be able to eventual y sel [sic] their land and business for a fair value.

-Accusations against owners of Rocklands for al eged [sic] criminal offences and responsibility for landslip.

-Harm to their good reputation, both of themselves and their business.'

11. The council also confirmed that personal data consisting of the names, email addresses, telephone numbers and addresses of third parties contained within the Options Assessment Report had been withheld.
12. On 7 November 2018 the complainant submitted two separate sets of correspondence to the council, both of which contained a request for an internal review of the council's decision.
13. The council's internal review response of 13 December 2018 advised the complainant of the following:

'The Options Assessment report dated June 2016 was produced by Coffey. Parts of this report have been refused as it contains reports from other sources which were used and included to produce Coffey 2 this includes the Oscus report dated 18 January 2013.

As you are aware following the First Tier-Tribunal (FTT) Decision Notice EA/2017/0084-Hastings Borough Council v Information Commissioner dated 26 March 2018, Coffey 2 was partly refused.

The FTT decided that Coffey 2 which included Oscus 2013 will not be released and that the Information Commissioner's initial decision was wrong in law. It is the same for the Options Assessment report dated June 2016 as it is the same concept, aspects of both Coffey 2 and Oscus 2013 were used and included to form the Options Assessment report dated June 2016.

Hastings Borough Council will not be disclosing the full version of the Options Assessment report dated June 2016 requested for the reasons given above.'

Scope of the case

14. The complainant had originally contacted the Commissioner on 5 September 2018 to raise concerns about the council's failure to respond to his request. He then contacted the Commissioner again on 4 March 2019 to complain about the council's internal review decision, focusing particularly on the exception at regulation 12(5)(e), and also its general handling of his request.
15. The Commissioner considers the scope of her investigation to be whether the council was correct to have applied regulation 12(5)(e) of the EIR to the information which it has withheld in response to the complainant's request. In addition, she has considered the council's compliance with the procedural aspects of the EIR, as requested by the complainant.

Reasons for decision

Is the information environmental information?

16. Information is 'environmental information' and must be considered for disclosure under the terms of the EIR, rather than the Freedom of Information Act 2000 (FOIA), if it meets the definition set out in regulations 2(1)(a) to 2(1)(f) of the EIR.
17. Regulation 2(1)(c) of the EIR says that any information on measures such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements or factors of the environment listed in regulation 2(1)(a) and 2(1)(b) will be environmental information. One of the elements listed under 2(1)(a) is land.
18. The Options Assessment Report requested by the complainant contains geotechnical advice relating to the repair and realignment of a number of public footpath routes within the Ecclesbourne Glen area of Hastings Country Park.
19. The Commissioner is satisfied that the information that has been withheld can be considered to have an affect on the land and its use,

and that it fits squarely into the definition of environmental information set out within regulation 2(1) of the EIR.

Regulation 12(5)(e)-commercial confidentiality

20. Regulation 12(5)(e) of the EIR states that a public authority can refuse to disclose information, if to do so would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
21. The exception can be broken down into the four-stage test which was adopted by the Information Rights Tribunal in *Bristol City Council v Information Commissioner and Portland and Brunswick Squares Association (EA/2010/0012)*², 24 May 2010. All four elements are required in order for the exception to be engaged and are as follows:
 - Is the information commercial or industrial in nature?
 - Is the information subject to confidentiality provided by law?
 - Is the confidentiality required to protect a legitimate economic interest?
 - Would the confidentiality be adversely affected by disclosure?
22. For clarity, if the first three questions can all be answered in the positive, the fourth question will automatically be in the positive. This is because, if the information was disclosed under the EIR, it would cease to be confidential.
23. The Tribunal in case EA/2010/0012 deliberately set out the four stages of the test in a particular sequence; given the nature of each of the questions, it is apparent that it is the most logical order to follow when determining whether the exception is engaged. As a result, in most instances where the Commissioner is required to consider the application of regulation 12(5)(e), she will take into account each of the four elements of the test in the same order set out by the Tribunal.
24. In this case, the council has placed considerable weight on the First-tier (Information Rights) Tribunal decision in the case of Hastings Borough

2

[http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i392/Bristol CC v IC & PBSA \(0012\) Decision 24-05-2010 \(w\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i392/Bristol_CC_v_IC_&PBSA_(0012)_Decision_24-05-2010_(w).pdf)

Council v IC EA/2017/0084³ (to be referred to as the Tribunal case throughout this decision notice) in support of its decision to apply regulation 12(5)(e) to the withheld information. That case relates directly to decision notice FS50650700.⁴

25. The Commissioner has found it useful to note that in the Tribunal case a slightly different approach was taken when consideration was given to the four stage test set out in paragraph 21 of this decision notice. The Tribunal stated that confidentiality was a '*key issue*' in its consideration of whether regulation 12(5)(e) was engaged and considered this stage of the test first. It was only once it had been determined that the withheld information did attract a duty of confidentiality that the Tribunal then went on to consider what it described as the '*second substantive issue of whether the information is commercial or industrial*'. The Tribunal then considered whether the confidentiality was required to protect a legitimate economic interest.
26. Having considered the particular circumstances of this case, when determining if regulation 12(5)(e) is engaged, the Commissioner has decided that it is appropriate for her to consider each of the four stages of the test in the same order that they were set out in the Tribunal case.

Is the information subject to confidentiality provided by law?

27. 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.
28. The Commissioner has not been made aware of any statutory duty of confidence in this instance. She has therefore gone on to consider the common law of confidence, which has two key tests:
 - Does the information have the necessary quality of confidence? This involves confirming the information is not trivial and not in the public domain.

3

[http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2167/Hastings%20Borough%20Council%20EA.2017.0084%20\(26.03.18\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2167/Hastings%20Borough%20Council%20EA.2017.0084%20(26.03.18).pdf)

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013849/fs50650700.pdf>

- Was the information shared in circumstances importing an obligation of confidence? This can be explicit or implied.
29. As already stated in paragraph 24 of this decision notice, the council has relied heavily on the outcome of the Tribunal case in support of its decision to withhold certain information in response to the complainant's request. It has argued that the redactions which were made to the Options Assessment Report before its release to the complainant were necessary because this information was also contained within reports that had been the subject of consideration in the Tribunal case.
 30. In the Tribunal case consideration was given to the council's decision to withhold part of a report (the Coffey 2 Report) in response to an information request that it had received. This report contained geotechnical advice about landslips which had affected both the Ecclesbourne Glen area of Hastings Country Park and a neighbouring caravan park (the site). The Tribunal accepted that the withheld information could be linked to two other reports (a geotechnical report and a drainage report) which had previously been supplied to the council by the site owners, and that there was an expectation that such information would be treated in confidence. The Tribunal went on to conclude that the council had been correct in its decision to withhold this information.
 31. The Commissioner regards it to be pertinent to note that the Coffey 2 Report was not withheld by the council in its entirety; it was primarily only that information which was based on, or linked to, information contained within the two other reports which had been provided to the council in confidence by the site owners. Therefore, the Tribunal case decision did not extend to all the information that identified, or related to, the site in connection to the landslips. Indeed, some detailed information about the landslips and the site that was contained within the Coffey 2 Report was disclosed in response to the requester in that case.
 32. With regards to the request which is currently under consideration, the council has withheld all that information which is contained within pages 1-5 of the Options Assessment Report. In addition, it has made some minor redactions to information contained within the remaining parts of the document.
 33. Having considered the withheld information, the Commissioner is not persuaded by the council's arguments that it is all subject to a duty of confidence.
 34. Firstly, the Commissioner regards the information that has been withheld, in part, to be inherently the same as, or so similar to,

information which is already in the public domain that any claim that it is subject to a duty of confidence would carry very little weight. She regards other reports that had been published by the council at the time of the request to be particularly pertinent to this point.

35. Furthermore, the Commissioner considers the content of a letter which the council sent to Natural England on 1 September 2015 (which was released following an information request), erodes any possible claim that the information which has been withheld on page 10 of the Options Assessment Report attracts a duty of confidence. Of most relevance to this point is the following extract from the correspondence to Natural England:

'The engineer's proposal is to install an extensive surface water drainage system within Ecclesbourne Glen, to help manage ground water coming down from the caravan site.'

This will require a network of trenches in the Glen, backfilled with rocks then topsoil. There is no clear identification as to where these trenches would eventually channel water to.'

36. In addition, with specific reference to that information which has been withheld that is contained within the first part of the Options Assessment Report, the Commissioner views this to be intrinsically linked, both in nature and context, to information that is set out (and was released by the council) in the latter pages of the same report. The Commissioner has therefore had some difficulty in establishing the reasoning behind the council's contrasting approach to these two sets of information.
37. The Commissioner also regards the focus of some of the withheld information to be on matters that relate solely, and directly, to the footpaths. Furthermore, part of the withheld information is based on the observations of the engineers who carried out an inspection of the relevant areas in the country park where the footpaths exist. They are not records of observations taken from reports, or any other information, provided by the site owners. They are matters of fact about what the engineer can see in front of them, and what any member of the public could see if standing in the same position.
38. The Commissioner accepts that the degree of confidentiality which is attributed to a set of information can be affected by a number of factors, including the purpose for which the information is given, held or to be used. However, in this instance, it is her view that the council's representations do not provide sufficient justification for all the redactions which were made to the Options Assessment Report. As far as she is aware the site is not accountable for the repair of the footpaths, or any decision which is reached in relation to any temporary,

or permanent, route diversions within the country park. Given this, the Commissioner is not persuaded that part of the withheld information, if disclosed, would reveal anything about the site which could be deemed to be private or sensitive, or that it would impact or have an effect on the site in any substantive way.

39. The Commissioner is therefore satisfied that the information that has been withheld, in part, is not subject to any obligation of confidence as claimed by the council. Given this, the exception at regulation 12(5)(e) is not met with regards to this information and it should therefore be released to the complainant in response to his request.
40. However, the Commissioner does agree with the council that the comments made, and decisions reached, in the Tribunal case are directly relevant to her consideration of the remaining information that has been withheld. This is because she regards this particular information to be in the same vein as that information which the Tribunal determined was subject to a duty of confidence. Given this, in order not to contradict the Tribunal's decision, it is the Commissioner's view that she must reach the same conclusions set out by the Tribunal in respect of this information.
41. As a result, the Commissioner is satisfied that the information that has been withheld by the council which is not subject to paragraph 39 of this decision notice is not trivial in nature, and it has the necessary quality of confidence. As this stage of the test is met in respect of this particular information, she has gone on to consider whether such information is commercial or industrial in nature.

Is the information commercial or industrial in nature?

42. The Commissioner considers that for information to be commercial or industrial in nature it will need to relate to a commercial activity. The essence of commerce is trade, and a commercial activity will generally involve the sale or purchase of goods and services for a profit.
43. In the Tribunal case the Commissioner was described as having taken a restrictive approach to the issue of whether the information that had been withheld was commercial or industrial.
44. In light of the Tribunal's comments, where she has deemed it to be relevant and appropriate to do so, the Commissioner has taken a broader approach to this particular issue in her consideration of the council's handling of other requests that relate to the same site, the landslips and Ecclesbourne Glen.
45. The Commissioner asked the council to respond to a number of specific questions about how it handled this particular request. One question

asked the council to confirm '*why it believes that the specific information requested does relate to a commercial activity*' as set out within regulation 12(5)(e) of the EIR.

46. The council did not provide a direct response to this question, or indeed any of the other questions that had been set out by the Commissioner. Instead it advised that it had withheld parts of the report for the reasons provided in its refusal notice to the complainant. It then went on to refer to the Tribunal case stating that '*the remainder of these questions are all answered within that decision notice.*'
47. The Commissioner has therefore considered whether there is sufficient information contained within the council's response to the complainant, and the Tribunal case decision, for her to be persuaded that the withheld information that she regards to attract a duty of confidentiality is commercial or industrial.
48. The council has not provided any indication in its representations to the complainant that it has considered any party other than the site owners (and their business) when applying regulation 12(5)(e). The Tribunal also focussed on the commercial interests of the site owners. As a result, the Commissioner has considered this stage of the test in this context and not in relation to any other party.
49. The request under consideration relates to the same landslips that were of some relevance to the information that was withheld in the Tribunal case. However, the Commissioner recognises that there are some important differences which need to be taken into account.
50. The Coffey 2 Report primarily contained technical advice that related to the management of land stability following the landslips. The Options Assessment Report contains, in the main, technical advice that relates directly to the issue of the damaged footpaths and their repair, or possible realignment.
51. As far as the Commissioner is aware, whilst certain footpaths are located close to land owned by the site owners, the original footpaths did not encroach on such land, nor have any temporary diversions that are in place. Proposals for a permanent realignment also do not appear to include the area of the site. However, in saying this, the Commissioner does accept that any consideration of the current state, and future realignment, of the footpaths is likely to take into account some information that relates to the landslips, and that this, in turn, may also relate in some way to the site.
52. The Tribunal made the following comment in support of its decision that the information that had been withheld in that case was commercial:

'To a greater or lesser extent the disputed information may give indications of costs or problems which might (or might not) restrict the use which the property could be put and the expenditure which might need to be incurred to ensure the continued exploitation of the asset. It is rather hard to see a more commercial piece of information than that.'

53. It is the Commissioner's view that the above comments are not relevant to all of the withheld information contained within the Options Assessment Report. However, given that she has already determined in paragraph 39 of this decision notice that some of the withheld information is not confidential (and should therefore be released), her consideration of whether the information is commercial is now restricted to cover only the remaining part of the information which was withheld by the council.
54. The Commissioner is mindful that the broader definition of a commercial activity set out in the Tribunal case decision does not give the council *carte blanche* to deem every piece of information about the landslips that refers directly, or indirectly, to the site to be of a commercial nature.
55. However, the Commissioner accepts that, given the nature and content of the remaining withheld information, it must be viewed in the same context as that information contained within the Coffey 2 Report which the Tribunal case concluded did constitute commercial information for the purposes of regulation 12(5)(e). She also acknowledges that it must then also follow that this information *'relates to a major asset of a business venture'* as described by the Tribunal.
56. The Commissioner is satisfied that, for the same reasoning set out in the Tribunal case, the disclosure of the remainder of the withheld information would have an effect on how the site owners could use their land and run their business. This, in turn, is likely to have some effect on the site owners' revenue and expenditure.
57. The Commissioner, following the principles of the Tribunal case, has therefore concluded that the information that has been withheld (that she has not already determined in paragraph 39 of this decision notice should be released) relates to a commercial activity for the purposes of regulation 12(5)(e) of the EIR and that this stage of the test is met.

Is the confidentiality required to protect a legitimate economic interest?

58. In the Commissioner's view, in order to satisfy this element of the test, disclosure of the confidential information would have to adversely affect

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

59. The Commissioner 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.
60. It would appear from the representations made by the council that it believes the disclosure of the withheld information would cause harm to the economic interests of the site owners.
61. In the Tribunal case consideration was also given to whether the disclosure of information contained with the Coffey 2 Report would cause harm to the legitimate economic interests of the site owners. In that case the Tribunal had regarded it to be of some relevance that a site licence was still subject to negotiation between parties. It stated that *'there is a legitimate economic interest in trying to reach an agreement on site regulation which meets both legitimate environmental concerns and the fair treatment of an established business'*.
62. At the time of the complainant's request, agreement had been reached on the *'site regulation'* referred to by the Tribunal. However, the Commissioner still regards some elements of the Tribunal's consideration of this stage of the test to be relevant to this case.
63. Whilst it may have been the case that the licence itself had been issued by the time of the complainant's request, the council was still investigating certain matters relating to the landslips, including the management of land stability in Ecclesbourne Glen. Given that the site had also been affected by the landslips, the Commissioner is satisfied that there was a realistic possibility that further discussions and, or, negotiations would be necessary with the site owners about the issue. She is therefore mindful that this was a matter that still had an impact on the site, as well as the surrounding area, at the time of the request.
64. The Commissioner regards it to be appropriate to again bear in mind that the rationale for her decision must follow the reasoning of the Tribunal decision, not contradict it. She would therefore refer to the following comments made in the Tribunal case which she is satisfied are not only relevant to the licence, but can also be extended to cover related matters that are linked to the landslips and the site:

'While there is clear evidence of economic harm caused to the business, teasing out the contributions of the landslide (with consequent reduction in the number of pitches) and the campaigning about the landslide as the causes of that harm presents some challenges. However it is clearly

foreseeable that further disclosure would have resulted in more adverse publicity and some economic harm would flow from that.'

65. Having taken all factors into account, the Commissioner is satisfied that, despite the fact that the site licence has now been issued, 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 site owners. In addition, she must follow the same conclusion reached by the Tribunal that the disclosure of the withheld information would also result in the '*adverse publicity*' and that '*some economic harm would flow from that.*'
66. The Commissioner therefore accepts that the disclosure of the withheld information that she has determined to be confidential would adversely affect the legitimate economic interests of the site owners and that this stage of the test is met.

Would the confidentiality be adversely affected by disclosure?

67. Although this is a necessary element of the exception, should the first three tests set out in paragraph 21 be met, the Commissioner considers it inevitable that this element will also be satisfied. In her view, disclosure of truly confidential information into the public domain would inevitably harm the confidential nature of that information by making it publicly available and this would harm the legitimate economic interests that have been identified.

The public interest test

68. As the exception under regulation 12(5)(e) is engaged, the Commissioner has gone on to consider whether the public interest in the disclosure of the requested information outweighs the public interest in maintaining the exception in this particular instance. When carrying out the test the Commissioner must take into account the presumption towards disclosure provided in regulation 12(2) of the EIR.
69. In this case, the council had advised the complainant that it considered the factors in favour of disclosure to be transparency and accountability.
70. The Commissioner is mindful of the possibility that, given the time that has passed since the complainant submitted his request, there may have been some developments in relation to access to the footpaths and that some of the damaged sections may have now reopened. However, her consideration of matters must take into account the position at the time of the request, not the circumstances as they stand at the present time.

71. The Commissioner accepts that there is a public interest in knowing what options are available to the council in relation to the repair, or permanent diversion, of the footpath routes which were damaged by the landslips. This is an area which is not only used by the local community but also tourists to the area; therefore, it is important that the council provides sufficient information about the options which are being considered in relation to the rectification of the damage caused across the country park.
72. However, the Commissioner has taken into account the fact that the council has already released some of the information contained within the Options Assessment Report. This, together with other information that is already in the public domain, goes some way in providing the public with details of the effect that the landslips have had on the footpaths and the remedial action which is being considered, or taken.
73. In addition, the Commissioner has already found earlier in this decision notice that the council's arguments were not sufficient for her to be able to conclude that all of the withheld information is confidential and therefore certain additional information should be released into the public domain. This will also provide the public with further insight into the contents of the technical report commissioned by the council about the footpath options.
74. In this instance, there are wider factors at play which the Commissioner regards to have had an effect on the expectations of confidentiality to the information that has been withheld. The cause, and effects, of the landslips have been the subject of some contention, and she is aware that the site has received some negative publicity following their occurrence.
75. The Commissioner is aware that there is strong feeling amongst certain interested parties about what caused the landslips and this has, understandably, resulted in a greater level of interest in any actions taken that may relate in some way to this. She accepts that it is not unreasonable for the local community to want to be properly informed of matters relating to the landslips, particularly given the severe damage that they have caused to the landscape and amenities within the country park. However, there is, in the Commissioner's view, a balance to be struck between what is truly in the public interest, and the site owners' right to a certain level of privacy in the running of their business.
76. The council's response to the complainant, and to the Commissioner, references harassment that it states that the site owners have been subjected to. It also makes reference to the consideration of this same point in the Tribunal case.

77. The complainant has provided the Commissioner with a police report which he believes provides evidence that no harassment has occurred in the way that has been described by the council.
78. After consideration of the public interest factors relevant to this case, the Commissioner is satisfied that any conclusions she might reach in relation to this point would not actually affect the balance of those factors in favour of, and against, disclosure so significantly that it would alter her final decision. Given this, the Commissioner does not regard it to be necessary, or appropriate, to become embroiled in a debate about the validity of any claims of harassment that have been made.
79. The Commissioner regards the arguments for transparency and accountability to carry some weight in support of disclosure in this particular case. However, given the information which is already in the public domain about the specific matter of the footpath management and options, she has had some difficulty establishing what value there would be to the public should the relevant information be released. However, in contrast, she regards the potential harm caused to the site owners right to run their business with some degree of privacy, to be real and significant.
80. Having taken all relevant factors into account, the Commissioner is satisfied that the disclosure of that information that she has determined is subject to regulation 12(5)(e) would not be in the public interest. The harm disclosure would cause to the site owners weighs the balance heavily in favour of withholding the information in this instance.

Procedural matters

81. The complainant has requested that the Commissioner also consider the general handling of his request by the council.

Regulation 5(2)-duty to provide environmental information

82. Regulation 5(1) of the EIR states:

(1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

83. Regulation 5(2) states:

(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

84. The complainant submitted his request to the council on 5 July 2018 and the council provided its response on 16 October 2018.
85. The Commissioner is aware that the council has received a high volume of requests relating to the landslips and associated issues. She also appreciates that this has placed some burden on its limited resources. However, as the council failed to provide any information to the complainant within 20 working days of the complainant's request, she must find that the council has breached regulation 5(2) of the EIR.

Regulation 14-refusal notice

86. Regulation 14(1) of the EIR states:

If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

87. Regulation 14(2) states:

The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

88. Whilst the council had advised the complainant in its original response to his request that it regarded some of the information requested to be subject to regulation 12(5)(e), it failed to issue this refusal notice within the statutory 20 working days. As a result, the Commissioner has found that the council has breached regulation 14(2) of the EIR.

Right of appeal

89. 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@justice.gov.uk

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

90. 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.
91. 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
SK9 5AF