



Neutral citation number: [2025] UKFTT 00547 (GRC)

Case Reference: FT/EA/2024/0295

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

**Heard by Cloud Video Platform
Heard on: 14 February 2025
Decision given on: 20 May 2025**

Before

**JUDGE STEPHEN ROPER
MEMBER KATE GAPLEVSKAJA
MEMBER MIRIAM SCOTT**

Between

RICHARD HORDLE

and

THE INFORMATION COMMISSIONER

Appellant

Respondent

Representation:

For the Appellant: in person

For the Respondent: did not appear and was not represented

Decision: The appeal is Allowed

Substituted Decision Notice:

The Tribunal's Decision Notice in case reference FT/EA/2024/0295, set out below, is substituted for the Information Commissioner's Decision Notice reference IC-277740-H0B4, dated 31 May 2024, with regard to the request for information made to Ellingham, Harbridge and Ibsley Parish Council by Richard Hordle dated 4 October 2023.

Substituted Decision Notice

1. Subject to paragraph 2 below, Ellingham, Harbridge and Ibsley Parish Council (the "Council") must disclose all of the information it holds within the scope of the request made to it by Richard Hordle dated 4 October 2023, or claim any relevant exceptions to disclosure pursuant to the Environmental Information Regulations 2004 (the "Regulations").

2. The Council may not withhold any of that information in reliance on regulation 12(5)(f) of the Regulations.
3. If the Council withholds any information pursuant to any other exception in the Regulations then it must cite the applicable exception and its reasons.
4. Any withholding of information by the Council will be subject to the rights given under section 50 of the Freedom of Information Act 2000 (as applied by regulation 18 of the Regulations) to make a new complaint to the Information Commissioner.
5. The Council must take the steps in accordance with paragraph 1 above (and/or paragraph 3 above, if applicable) within 35 days of this decision being sent to it in accordance with the directions below, or (if there is an application to appeal this decision) within 28 days after being notified of an unsuccessful outcome to such application or any resulting appeal.
6. Failure to comply with this decision may result in the Tribunal making written certification of this fact pursuant to section 61 of the Freedom of Information Act 2000 (as applied by regulation 18 of the Regulations) and may be dealt with as a contempt of court.

Directions

The Information Commissioner is directed to send a copy of this decision to Ellingham, Harbridge and Ibsley Parish Council within 14 days of its promulgation.

REASONS

Preliminary matters

1. In this decision, we use the following terms to denote the meanings shown:

Appellant: Richard Hordle.

Commissioner: The Information Commissioner (the Respondent).

Council: Ellingham, Harbridge and Ibsley Parish Council.

Decision Notice: The Decision Notice of the Commissioner dated 31 May 2024, reference IC-277740-H0B4, relating to the Request.

Duty to Disclose: The duty of a public authority to make available on request any environmental information which it holds, pursuant to regulation 5(1) (set out in paragraph 24).

EIRs: The Environmental Information Regulations 2004.

FOIA: The Freedom of Information Act 2000.

Four Conditions: The four conditions set out in paragraph 39 which must be met for regulation 12(5)(f) to be engaged.

Public Interest Test:	The test, pursuant to regulation 12(1)(b) (set out in paragraph 31), as to whether, in all the circumstances of the case, the public interest in maintaining the exception to the Duty to Disclose outweighs the public interest in disclosing the information.
Request:	The request for information made to the Council by the Appellant, dated 4 October 2023, as set out in paragraph 6.
Requested Information:	The information which was requested by way of the Request.
Withheld Information:	The information falling within the scope of the Request which was withheld by the Council by way of redactions (and which was provided to the Tribunal in connection with the appeal by way of a closed bundle).

2. Unless the context otherwise requires (or as otherwise expressly stated), references in this decision:
 - a. to numbered paragraphs are references to paragraphs of this decision so numbered;
 - b. to any regulation are references to the applicable regulation of the EIRs;
 - c. to any section are references to the applicable section of FOIA; and
 - d. to the Commissioner's "investigation" mean the Commissioner's investigation, for the purposes of section 50 (as applied pursuant to regulation 18), of the Appellant's complaint relating to the Council's response to the Request.

Introduction

3. This was an appeal against the Decision Notice, which (in summary) decided that the Council was entitled to refuse to disclose the Withheld Information on the basis that regulation 12(5)(f) (interests of the information provider) was engaged and that the Public Interest Test favoured maintaining the exception to the Duty to Disclose. The Decision Notice did not require the Council to take any steps.
4. We considered whether it was necessary for us to provide a closed decision. We concluded that it would not be necessary, on the basis that the reasoning behind this decision can be sufficiently understood without us needing to refer to the specific details of, or disclose any sensitive aspects of, the material in the closed bundle.

Background to the Appeal

5. The background to the appeal is as follows.

The Request

6. On 4 October 2023, the Appellant contacted the Council by email and requested information in the following terms:

“...I would formally request a copy of the communication sent to the parish council from Somerley in response to a proposed meeting between PC and Somerley regarding matters that I had brought to the attention of the PC...”

7. The Council responded on 31 October 2023 confirming that it held information within the scope of the Request, but stated that this was withheld on the basis that regulation 12(5)(f) was engaged and that the Public Interest Test favoured maintaining the exception.
8. The Appellant asked the Council for an internal review in respect of its response. On 14 November 2023, the Council responded. It considered that it did not need to undertake an internal review (on the basis that it would be an “unreasonable burden”, given its size and resources) but nevertheless provided a copy of an email within the scope of the Request (see paragraph 11), although it redacted some of the content of that email, citing regulation 12(5)(f).
9. On 18 December 2023, the Appellant contacted the Commissioner to complain about the Council’s response to the Request. Amongst other things, the Appellant considered that the Council should not have treated the Request as being made under the EIRs, rather than under FOIA, without his consent.
10. The Commissioner subsequently issued the Decision Notice.

The Decision Notice

11. The Commissioner recorded in the Decision Notice that the Withheld Information comprised redactions from an email responding to a request for a meeting to discuss a blocked or contaminated culvert on the Somerley Estate.
12. In the Decision Notice, the Commissioner concluded (in summary) that:
 - a. the Withheld Information fell within the scope of the definition of “environmental information” in regulation 2(1), as it related to ‘water’ and ‘discharges’ and therefore the Council was correct to handle the Request under the EIRs;
 - b. disclosure of the Withheld Information would adversely affect the interests of the confider and therefore regulation 12(5)(f) was engaged; and
 - c. in respect of the Public Interest Test, the public interest in maintaining the exception outweighed the public interest in disclosure of the Withheld Information.

The appeal

13. Regulation 18 provides that the enforcement and appeals provisions of FOIA (namely Part IV, including Schedule 3, of FOIA and Part V of FOIA) apply for the purposes of the EIRs, subject to certain modifications.
14. For the reasons we have given in paragraph 36, this was therefore an appeal against the Decision Notice pursuant to the EIRs, in accordance with section 57 as applied by regulation 18.

The grounds of appeal

15. Despite the Appellant complaining, for the purposes of the Commissioner's investigation, that the EIRs should not have been applied, the Appellant's grounds of appeal did not dispute the application of the EIRs to the Requested Information. The Appellant also did not challenge whether regulation 12(5)(f) was engaged in respect of the Requested Information. In essence, his grounds of appeal were based on his views that the Public Interest Test favoured disclosure of the Withheld Information.
16. We would briefly note that the Appellant's grounds of appeal made reference to other matters, such as the alleged causes of flooding/obstructions of the culvert referred to in paragraph 35 and allegations of collusion between the Council and the Somerley Estate regarding certain issues. However, those other matters fall outside the scope of the appeal (see paragraphs 18 and 19) and accordingly we have not addressed them in this decision.

The Commissioner's response

17. In his response to the appeal, the Commissioner generally relied on the Decision Notice as setting out his findings and the reasons for those findings, but we refer below to other relevant points set out in his response.

The Tribunal's powers and role

18. The powers of the Tribunal in determining this appeal are set out in section 58 (which applies pursuant to regulation 18), as follows:

"(1) If on an appeal under section 57 the Tribunal considers –

(a) that the notice against which the appeal is brought is not in accordance with the law, or

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may Review any finding of fact on which the notice in question was based."

19. In summary, therefore, the Tribunal's remit for the purposes of this appeal was to consider whether the Decision Notice was in accordance with the law. In reaching its decision, the Tribunal may review any findings of fact on which the Decision Notice was based and the Tribunal may come to a different decision regarding those facts. Essentially, the Tribunal is empowered to undertake a 'full merits review' of the appeal before it (so far as the Decision Notice is concerned).

Mode of hearing

20. The proceedings were held by the cloud video platform. The Tribunal Panel and the Appellant joined remotely. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way. The Commissioner did not appear and was not represented.

21. There were no interruptions of note during the hearing.

The evidence and submissions

22. The Tribunal read and took account of an open bundle of evidence and pleadings, as well as a closed bundle. The closed bundle contained the Withheld Information and some unredacted correspondence between the Council and the Commissioner in connection with his investigation, which had been redacted in the open bundle.
23. All of the contents of the bundles, including all the submissions of the parties (as well as the Appellant's submissions and evidence during the hearing), were read and taken into account, even if not directly referred to in this decision.

The relevant statutory framework¹

General principles

24. The EIRs provide individuals with a general right of access to environmental information held by public authorities, subject to some exceptions. Regulation 5(1) provides:

"...a public authority that holds environmental information shall make it available on request."

25. The term 'environmental information' is defined in regulation 2(1) which, so far as is material, states:

"...any information in written, visual, aural, electronic or any other material form on –

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

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

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements..."

26. The definition of 'environmental information' is to be given a broad meaning in accordance with the purpose of the underlying European Council Directive which the

¹ We acknowledge the Practice Direction dated 4 June 2024 (<https://www.judiciary.uk/guidance-and-resources/practice-direction-from-the-senior-president-of-tribunals-reasons-for-decisions/>) and particularly paragraph 9, which refers to the First-tier Tribunal not needing to specifically refer to relevant authorities. We include references to the applicable legislative framework, to provide relevant context, but have accordingly not set out details of the applicable case law.

EIRs implement (Direction 2004/4/EC).²

27. Therefore, pursuant to regulation 5(1), a person who has made a request to a public authority for ‘environmental information’ is entitled to have that information made available to them, if it is held by the public authority. However, that entitlement is subject to the other provisions of the EIRs, including some exceptions and qualifications which may apply even if the requested environmental information is held by the public authority. The opening wording of regulation 5(1) (that is, the wording immediately preceding the extract of that regulation quoted above) provides:

“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...”.

28. Regulation 5(3) provides that:

“To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.”.

29. Part 3 of the EIRs contains various exceptions to the duty to disclose environmental information which has been requested. It is therefore important to note that the EIRs do not provide an unconditional right of access to any environmental information which a public authority does hold. The right of access to information contained in regulation 5(1) is subject to certain other provisions of the EIRs.

30. Requests for ‘environmental information’ are normally dealt with under the EIRs rather than FOIA, pursuant to section 39(1) (which contains an exemption to disclosure of environmental information under FOIA).

Regulation 12

31. As noted, Part 3 of the EIRs contains various exceptions to the duty to disclose environmental information which has been requested. Within Part 3 of the EIRs, regulation 12(5)(f) (interests of the information provider) is applicable for the purposes of this appeal. So far as is relevant, regulation 12 provides:

“(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if–

(a) an exception to disclosure applies under paragraphs (4) or (5); and

(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

...

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

...

² See the Court of Justice of the European Union in Case C-316/01 *Glawischnig v Bundesminister für soziale Sicherheit und Generationen* [2003] All ER (D) 145 and the case of *Council for Business, Energy and Industrial Strategy v Henney and Information Commissioner* [2017] EWCA Civ 8444.

(f) the interests of the person who provided the information where that person –

(i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;

(ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and

(iii) has not consented to its disclosure...".

32. Summarising the above for current purposes, a public authority may refuse to disclose environmental information which is requested under the EIRs:
 - a. to the extent that its disclosure would adversely affect the interests of the person who provided that information (where the other conditions set out in regulation 12(5)(f) are met; see paragraph 39); and
 - b. if the Public Interest Test favours maintaining the exception to the Duty to Disclose.
33. Pursuant to regulation 12(2), a public authority must apply a presumption in favour of disclosure of environmental information.

Discussion and findings

34. We briefly address below the application of the EIRs as a preliminary point. It may be helpful if we also provide some relevant background, as provided by the Appellant in the hearing.
35. The Appellant stated that:
 - a. there had been a history of flooding in the local area, which had caused disruption and damage;
 - b. he had raised concerns with the Council about the possible causes of some flooding, which he considered related to a block culvert near to his property (on land belonging to the Somerley Estate);
 - c. he was subsequently informed that the Somerley Estate had been "quite rude" about him, which is what prompted the Request.

Application of the EIRs

36. As we have noted, whilst the Appellant stated in his complaint to the Commissioner that the Council should not have treated the Request as being made under the EIRs, his grounds of appeal did not dispute that the EIRs (rather than FOIA) applied to the Requested Information. For completeness, we find the EIRs do apply to the Requested Information, for the same reasons as given by the Commissioner in the Decision Notice (see paragraph 12) in respect of the definition of "environmental information" as set out in paragraph 25 (and having regard to the broad interpretation of 'environmental information' which is required, as referred to in paragraph 26).
37. For convenience, we use the term "information" below to refer to environmental information within the scope of the EIRs.

Engagement of regulation 12(5)(f)

38. As we noted in paragraph 15, the Appellant's grounds of appeal also did not challenge that regulation 12(5)(f) was engaged in respect of the Requested Information. Rather, his arguments were focussed on the Public Interest Test favouring disclosure of the Withheld Information and we heard detailed further submissions in respect of this during the hearing. However, as part of our 'full merits review' of the Decision Notice, we have considered whether or not the Commissioner was correct to decide in the Decision Notice that that regulation was engaged.
39. It is clear from the wording of regulation 12(5)(f) that all four of the following conditions must be met for that regulation to be engaged in respect of information which is requested from a public authority:
- a. the interests of the person (which includes organisations and companies³) providing the information to the public authority would be adversely affected by the disclosure of that information;
 - b. the person providing the information was not under, and could not have been put under, any legal obligation to provide it;
 - c. the public authority is not entitled (apart from under the EIRs) to disclose the information; and
 - d. the person providing the information has not consented to its disclosure.
40. The Commissioner argued (in his response to the appeal) that he correctly concluded in the Decision Notice that the Four Conditions were satisfied in respect of the Withheld Information and accordingly that the exception under regulation 12(5)(f) was engaged in respect of the Withheld Information. In support of that argument, he submitted that (in respect of each of the Four Conditions, respectively):
- a. he was satisfied that disclosure of the Withheld Information would be more likely than not to adversely affect the confider's interests, for the reasons we refer to in paragraph 42;
 - b. the Somerley Estate had no legal or statutory obligation to share or discuss the matter with the Council and could not have been put under any legal obligation to supply the Withheld Information to the Council;
 - c. the Council had confirmed that the information was supplied in the expectation that it would not be disclosed to a third party; and
 - d. the confider did not consent to disclosure of the Withheld Information.
41. We consider that some of those arguments (and the related points in the Decision Notice) were based on the Commissioner's supposition, rather than evidence, for the following reasons.
42. With regard to the first of the Four Conditions, paragraph 15 of the Decision Notice recorded the Commissioner's view that (as also argued in his response to the appeal)

³ In accordance with the definition of "person" pursuant to section 5 and Schedule 1 of the Interpretation Act 1978.

disclosure of the Withheld Information would be more likely than not to adversely affect the confider's interests, in that it *"would lead to a further deterioration of the relationship between the Somerley Estate and the [Appellant]"*.

43. There was, however, no evidence in respect of that alleged relationship, nor in respect of the prejudice to the confider referred to by the Commissioner, beyond the Council's mere allegation of this. In contrast, the Appellant gave evidence during the hearing (reflecting his earlier arguments in the appeal) that there was *"no relationship whatsoever"* between him and the Somerley Estate. The Appellant stated that his only contact had been with the Council. When we explored this further with the Appellant in the hearing, he explained that he had corresponded with Natural England with regard to matters relating to the local site of special scientific interest (SSSI) and the Appellant had understood that Natural England had in turn liaised with the Somerley Estate. However, the Appellant stated that he had not had any dealings personally, nor corresponded, with the Somerley Estate. The Appellant's evidence on this matter was straightforward and compelling and we accept that evidence.
44. We therefore find that the Commissioner was wrong to conclude in the Decision Notice that there would be any further deterioration of the relationship between the Somerley Estate and the Appellant should the Withheld Information be disclosed, because there was no such relationship.
45. We considered other possible ways in which the interests of Somerley Estate would be adversely affected by the disclosure of the Withheld Information. We had no further submissions on this from the Commissioner (other than his point about the alleged relationship between the Appellant and the Somerley Estate). During the Commissioner's investigation, the Council made various statements to the Commissioner in support of the Council's view that the Withheld Information could be withheld under regulation 12(5)(f), particularly with regard to the associated Public Interest Test. Aspects of these statements were redacted in the open bundle but included (unredacted) in the closed bundle and we took those into account as part of our assessment as to whether any interests of Somerley Estate would be adversely affected by the disclosure of the Withheld Information.
46. As we have noted, the Appellant believed that the Somerley Estate had been *"quite rude"* about him. He also stated in the hearing that he thought that the Withheld Information must relate to him, as he considered that everything indicated that it did. The Appellant acknowledged the possibility that the Withheld Information could be defamatory and he felt that it was wrong that he was not aware of what was said and to have *"no ability to defend myself"*. The Appellant also stated in the hearing that he thought FOIA/the EIRs was the route to seeking that information about himself from the Council.
47. As this is an open decision, we make no comment regarding the content of the Withheld Information. However (commenting theoretically), if and to the extent that the Withheld Information did constitute personal data of which the Appellant is the data subject then accordingly it would fall under regulation 5(3) as an exception to the Duty to Disclose and the appropriate route for the Appellant in seeking that information would have instead been by way of a subject access request pursuant to the UK GDPR. The possibility of the Withheld Information constituting the personal data of the Appellant (and therefore the potential exception under regulation 5(3)) was not addressed by either the Council during the investigation or by the Commissioner

in the Decision Notice or his submissions in respect of the appeal.

48. Considering a further theoretical scenario, if the Withheld Information was defamatory regarding the Appellant then we acknowledge that there could be a risk of action being taken against the Somerley Estate and which accordingly could adversely affect its interests. However, the relevant test is, of course, not whether a person's interests could be adversely affected but whether they would be adversely affected.
49. There was evidence before us that the Somerley Estate had been contacted regarding the potential disclosure of the Withheld Information and had expressed that it did not wish it to be disclosed (relevant to the fourth condition of the Four Conditions) but no evidence had been provided from the Somerley Estate regarding any prejudice to its interests. As noted above, there were merely submissions from the Council regarding its own opinion of such matters but no supporting evidence. Likewise, the Commissioner did not have sufficient evidence to support his conclusion, in the Decision Notice, that the interests of the Somerley Estate (or any other person) would be prejudiced by disclosure of the Withheld Information.
50. Accordingly, for all of the above reasons, we find that the first of the Four Conditions has not been met.
51. As all four of the Four Conditions have not been met, we therefore find that regulation 12(5)(f) was not engaged in respect of the Withheld Information.
52. Given our finding that that regulation 12(5)(f) was not engaged, it is not necessary for us to go on to consider the associated Public Interest Test.

Other comments

53. We briefly address one other minor point.
54. As we noted in paragraph 8, the Council considered that it did not need to undertake an internal review.
55. The Appellant argued during the hearing that the Council was therefore in breach of the EIRs. We also considered this point as part of our 'full merits review', notwithstanding that this issue was not addressed in the Decision Notice.
56. It is correct that a public authority is obliged under regulation 11(3) to undertake an internal review and to communicate this under regulation 11(4), provided that one has been requested in accordance with regulation 11(2).
57. However, in our view, whilst the Council considered that it did not need to undertake an internal review, in effect it did undertake an internal review by responding to the Appellant's representations in respect of its initial response to the Request and by providing information within the scope of the Request.
58. Accordingly, we find that the Council was not in breach of regulation 11.

Final conclusions

59. For all of the reasons we have given, we find that the Decision Notice involved an error of law in concluding that the exception in regulation 12(5)(f) was engaged in respect

of the Withheld Information.

60. We therefore allow the appeal and we make the Substituted Decision Notice as set out above.

Signed: Stephen Roper
Judge of the First-tier Tribunal

Date: 17 May 2025