

**Freedom of Information Act 2000 (FOIA)**  
**Environmental Information Regulations 2004 (EIR)**  
**Decision notice**

**Date:** 7 June 2018

**Public Authority:** Gloucestershire County Council  
**Address:** Shire Hall  
Westgate Street  
Gloucester  
GL1 2TG

**Complainant:** Mr Timothy Davies  
**Address:** [tim@timdavies.org.uk](mailto:tim@timdavies.org.uk)

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to the council's agreement with Urbaser Balfour Beatty, (UBB) to develop and run an Energy from Waste plant (an EfW) in Gloucestershire. The council disclosed the majority of the requested information, however, it applied Regulation 12(5)(e) to sections of a report "value for money and affordability analysis" written by Ernst & Young LLP. The complainant argues that further information from this report should have been disclosed.
2. The Commissioner's decision is that the council wrongly applied the exemption to some of the information within the report. She has also decided that the council failed to comply with the requirements of Regulation 5(2) and Regulation 14(2).

3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - To disclose the information outlined in the Annex to this notice
4. 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.

### **Request and response**

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5. On 21 March 2017, the complainant wrote to the council and requested information in the following terms:

*"Please provide:*

*(1) A list of all payments to Ernst and Young for consultancy work in relation to waste procurement, or the Javelin Park Incinerator contract;*

*(2) A list of reports produced by Ernst and Young for the council in relation to the Javelin Park Incinerator contract;*

*(3) A copy of the report produced by Ernst and Young for Cabinet on 11th November 2015, as referenced in the recent ruling of the Information Tribunal (Appeal number EA/2015/0254-6; paragraph 27).*

*Please also consider this request in the context of the Environment Information Regulations (EIR), and the recent ruling of the Information Tribunal which considered the Javelin Park Contract and Annexes as a whole, and ruled there was a substantial public interest in understanding the financial arrangements around the contract. The ruling, and recent responses the council questions, indicate that the Ernst and Young calculations play a significant role in judging both the truthfulness of information presented to the council and the public, and in evaluating the justifications for the UBB contract. As such, this document appears to form a part of the same whole as the contract, and to be of overwhelming public interest."*

6. The council responded on 20 April 2017. It provided some information however, it said that it would need more time to consider its final

response to part 3 of the request. It notified the complainant that it was therefore extending the 20 working days to respond, as required by Regulation 5(2), in applying the extension allowed for in Regulation 7.

7. On 20 May 2017 the council wrote to the complainant again. It said that due to the complexity of the case it required further time to consider the information before responding.
8. It subsequently responded on 9 June 2017. It disclosed further information but refused to provide some information falling within part 3 of the request, citing the exceptions in Regulation 12(5)(e) (commercial confidentiality) and Regulation 13(2) (personal data).
9. Following an internal review the council wrote to the complainant on 30 August 2017. It disclosed further information but it maintained its position as regards the application of Regulations 12(5)(e) and Regulation 13(2) for some information.
10. During the course of the Commissioner's investigation the council disclosed further information to the complainant.

### **Scope of the case**

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11. The complainant initially contacted the Commissioner on 21 May 2017 to complain about the way his request for information had been handled. His initial concern was that the council had not responded to his request.
12. Following this and the subsequent disclosures outlined above, the complainant wrote to the Commissioner on 12 March 2018 outlining that he still considers that further information should have been disclosed from the Ernst & Young report which he had requested in part 3 of the request. He did not however question the council's application of Regulation 13(2) to the information.
13. The Commissioner considers that the complaint relates to the council's application of Regulation 12(5)(e) to redact information from the Ernst & Young report requested in part 3 of the request.

### **Reasons for decision**

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#### Regulation 12(5)(e)

14. 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”.

15. The Commissioner considers that in order for this exception to be applicable, there are a number of conditions that need to be met. She 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?

16. The Commissioner has considered whether the withheld information satisfies the conditions above.

Is the information commercial or industrial in nature?

17. The information concerns the development of an Energy from Waste Plant in the county and, in particular, commercial and financial information surrounding the completion and running of this plant.

18. The Commissioner is therefore satisfied that the information is commercial or industrial in nature.

Is the information subject to confidentiality provided by law?

19. With regard to this element of the exception the Commissioner considers if 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.

20. The council argues that much of the information was provided to the council by the contractor in confidence. It says that it is not otherwise in the public domain, and that it is not trivial in nature. It argues that the information therefore has the necessary quality of confidence.

21. It said that the information was provided to the council during confidential negotiations. UBB was not contractually obliged to provide the council with some of the information and that it was shared in confidence and good faith because of a strong working relationship. It argues therefore that there was an expectation of confidence when the information was provided, and that the necessary obligation of confidence exists.

22. On this point the Commissioner notes that the First-tier Tribunal looked closely at the details of the contract between UBB and the council in previous Tribunal cases; *Gloucestershire County Council v ICO (Appeal numbers EA/2015/0254-6* available at [http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1996/Gloucestershire%20County%20Council%20EA.2015.0254,0255,0256%20\(10.03.17\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1996/Gloucestershire%20County%20Council%20EA.2015.0254,0255,0256%20(10.03.17).pdf) and [http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1997/Gloucestershire%20County%20Council%20EA.2015.0254,0255,0256%20\(27.03.17\)%20Addendum%20Decision.pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1997/Gloucestershire%20County%20Council%20EA.2015.0254,0255,0256%20(27.03.17)%20Addendum%20Decision.pdf)). These decisions were promulgated by the Tribunal on 10 March 2017.
23. The Tribunal held that the majority of the information within the contract was not confidential and that the confidentiality agreement contained within it was limited in its scope.
24. The information requested in this case is a report produced by Ernst & Young, acting on behalf of the council, to verify the value for money of the EfW agreement following initial delays in UBB obtaining planning permission. Following planning consent being obtained, the parties entered into a revised project plan, which updated financial agreements and other sections of the contract taking into account the time which had passed whilst planning consent was delayed. Ernst & Young's report specifically considers value for money under the revised project plan. Whilst this report was not itself written or provided directly to the council by UBB, it analyses information which was provided to the council by UBB or which was negotiated between the parties under the revised agreement.
25. Some of the information within the report updates information which the tribunal found should be disclosed from the contract in the above cases. A question for the Commissioner is therefore whether information similar to that which was previously disclosed but which has since been updated and redacted from the report can be considered to be confidential.
26. The Commissioner notes that as regards the contract the Tribunal accepted that some information was confidential but considered that the public interest in the disclosure of that information outweighed the public interest in the exception being maintained. This included information from schedule 4 of the contract, which relates to the pricing mechanism and included information such as the gate fee and figures relating to the price per tonne agreed with UBB. Although the Tribunal felt that some of this information was caught within the terms of the confidentiality clause within the contract it considered that the public interest required the disclosure of the whole of schedule 4 and ordered

its disclosure. She notes however that the council has sought to exempt the updated information for some of these figures from the Ernst & Young report, (although it disclosed the initial values following the Tribunal decision). The updated values have not been disclosed by the council.

27. The report was produced in November 2015. At that time the Commissioner is satisfied that the parties would have considered the information was confidential. It relates to financial and commercial information which the council and UBB argue lie at the heart of the profitability of the contract between the parties. The information is not trivial, nor has it been made public previously.
28. Having viewed the withheld information the Commissioner is satisfied that the information has the necessary obligation and quality of confidence in accordance with the common law of confidence test set out by Judge Megarry at the High Court of Justice in *Coco v A N Clark (Engineers) Limited [1968] FSR 415*.
29. As the requested information is commercial in nature then the disclosure will only constitute a breach of confidence if it would have a detrimental impact on the confider. This is considered by considering whether a disclosure of the information would adversely affect the legitimate economic interests of the providers.

Is the confidentiality provided to protect a legitimate economic interest?

30. The Commissioner considers that to satisfy this element of the exception disclosure would have to adversely affect a legitimate economic interest of the person the confidentiality is designed to protect. The Commissioner notes that confidentiality is clearly intended to protect both the council and UBB, and so both parties interests need to be considered as part of this analysis.
31. The council has disclosed the majority of the report either before, or during the Commissioner's investigation. It argues that the remaining redactions fall within the scope of Regulation 12(5)(e). For each individual redaction it has provided its analysis and its reasons for considering that that particular information should be withheld from disclosure. The council has therefore provided the Commissioner with significant and detailed arguments for each individual redaction it has made from the report which the Commissioner has taken into account in her consideration of this complaint.

32. The council argues that: *"As you will see, we have made redactions to information which relates to financial performance and viability. This information relates to current and projected financial information. The information is still 'active' within the project. The information also relates to commercially sensitive timescales and assumptions. This is information that was negotiated during a competitive process."*
33. The Commissioner notes that the remaining redactions from the report are relatively minimal. The redacted information is, for the most part, financial figures relating to the costs and assumptions which were used to determine whether the EfW plant would provide the council with value for money.
34. UBB considers that a disclosure of the information will undermine it in future competitive tenders and negotiations with third parties. It considers that the values and figures which it has agreed with the council in this case could be used by third party competitors to gain an advantage over UBB in the future.
35. The council's argument is much the same. For instance, it argues that some information relates to estimates of pricing it has used for the sale of spare waste capacity to third parties, and the sale of electricity from the EfW. It argues that disclosing these budgeted figures risks undermining the level playing field when negotiating the sale of these services to third parties. Third parties will be able to see the figures which the council has used when budgeting for the development of the EfW and will not therefore be willing to pay substantially more than this for these services. The council argues that this would then prevent it from obtaining best value in its future negotiations.
36. It is noted however that in the Tribunal decision outlined above the tribunal ordered the equivalent figures to be disclosed from schedule 4 of the contract.

#### The UBB's economic interests

37. The council said that as the contractor and the council would be impacted by a disclosure of the information in respect of bidding for future work. It therefore risked the potential of financial losses were the information to be disclosed.
38. It argues that UBB operates in a competitive waste market on a global scale, and that it is currently tendering for new opportunities within the UK. It has described some of UBB's current activities to demonstrate its point in this respect.

39. It argues that disclosing granular financial information, UBB's working assumptions and the timescales it has agreed to perform or deliver certain aspects of the project within, will have a significant adverse financial effect upon its commercial interests. It said that it would effectively be disclosing UBB's 'inner playbook' and that this would be disadvantageous to it in future tendering opportunities.
40. The Commissioner understands by this that the council is arguing that a disclosure of the way in which UBB approaches tenders and contracts of this type would be disclosed to its competitors, and that this would put it at a competitive disadvantage in future tendering opportunities against companies which have not disclosed equivalent information. If the information was disclosed it could be referred to by competitors when they are preparing their own bid in order to undermine or better their bid as compared to UBB's. UBB would not have the same information about their competitors which had not previously disclosed this information.
41. The Commissioner notes that in this respect the First-tier Tribunal in the appeal case did not accept the effect that a disclosure might have on UBB's future procurement exercises. It said that the scope for future procurement exercises in the United Kingdom was, in its view, limited and drew attention to the fact that one of the witnesses for the council in that case could not name another contract which UBB was likely to be bidding for in the immediate future.
42. At para 70 of the decision the Tribunal state:

*"The only other possible comparable outstanding UK procurements that we have been told about are in very different parts of the country and would arise some years after the Gloucestershire one. We do not think it is very realistic to think that disclosure of UBB's commercial position in a contract made in the UK in 2013 could prejudice its position in relation to later contracts in other parts of Europe, still less the wider world. Mr Peiro himself states at paragraph 21 of his witness statement that commercial and technical terms will vary from project to project, with new technologies and approaches being developed over time."*
43. The Commissioner notes that the hearing for the tribunal took place between 27 to 29 September and on 5 December 2016. At that time therefore UBB and the council's representatives were not able to provide details of future procurement exercises which the Tribunal considered would be impacted significantly by a disclosure of the information from the contract.



44. The Commissioner also notes that the Ernst & Young report was published on 5 November 2015, prior to this statement being made to the Tribunal. Whilst the report provides updated figures from those disclosed in the contract the Commissioner also therefore recognises that the figures were already 2 years old at the time of the request in March 2017. Although the council argues that these figures are 'current', the Commissioner considers that this gap will have impacted upon the sensitivity of the information to a certain degree.
45. The Commissioner also notes that the Tribunal considered that the issues which would arise in other procurement exercises were likely to be vary from project to project, making them different to the bids which were made in the case of this development.
46. On this point, the Commissioner considers that the costs eventually agreed in relation to the price per tonne and to gate fees etc are likely to be reflective of both the price in the current market at that relevant time, the relevant area (bearing in mind the current demand, location and potentially the demographics of the relevant area) and the costs associated with the plant in question, (again bearing in mind both the associated costs and reductions introduced by the inclusion of any new technologies or changes to any statutory requirements on waste disposal etc). In this sense there figures are likely to differ between sites, the technology used and the exact nature of the site being tendered for.
47. Nevertheless the disclosure of the financial details in this case would disclose information into the public domain which would not otherwise be available for competitors to UBB to take into consideration in the future, and it would be possible that this would unbalance the level playing field when UBB tenders against its competitors.

#### The council's own economic interests

48. The council argues that its own economic interests would be damaged through a disclosure of some of the information. It argues that some of the information in the report relates to its own commercial activities which it intends to carry out in the future.
49. For instance the report relates to the potential for selling energy produced by the plant to other parties and the costs/profits at which this might be carried out. It also refers to the potential profits and costs of allowing third parties to purchase capacity to dispose of waste at the plant. As noted above, the Tribunal considered there was a strong public interest in the disclosure of provisions about factors such as the intended returns from the electricity production by the EfW facility being disclosed.

50. The council argues that a disclosure of this information would highlight to potential customers the council's estimates and budgeting analysis in this respect. It said that this could result in the council being unable to obtain best value in its future negotiations over the provision or sale of these services in the future; third parties would analyse the figures budgeted by the council and use this the basis for their negotiations rather than the negotiations focussing around the market value, knowing that the council had set this as its base figure when analysing the financial viability of the plant. In this way the council argues that it would not be able to obtain best value in its future contractual negotiations with third parties over the services which the EfW can offer.
51. The council has outlined that although some of the figures it has redacted were assumptions or costs dated back to the earliest part of the process, and are therefore several year's old, competitors can still use indexation to provide a roughly accurate determination of the current value which those figures would represent if they were to be disclosed. In addition, competitors can already work out roughly accurate updated figures based upon the figures previously disclosed following the Tribunals judgement, although this might not take all details leading to the updated figures being taken into account.
52. The Commissioner is satisfied that a disclosure of this information would be likely to prejudice future negotiations which the council might seek to enter into, however she believes that the disclosure of the information previously, together with the changes in circumstances in the market over time and the disclosure of some figures such as the gate free previously will weaken any impact that a disclosure might have.
53. The Commissioner also considers that a disclosure of budgeted amounts or estimated figures made a number of years ago will have less of an impact upon negotiations between parties some years later. Although indexation will provide some degree of accuracy as to the current estimates for those figures, the indexation would need to reflect wider changes in circumstances over the development of the EfW, shifts in the current value of energy and supply and demand in the market for that area at the time that the negotiations are taking place in order to fully reflect any changes which had occurred over the period of time.
54. However the Commissioner does recognise that a disclosure of the information would be likely to be taken into account by third parties, and on this basis she accepts the council's arguments to a limited degree. She therefore accepts the council's argument that confidentiality is in place to protect its economic interests.

Would confidentiality be adversely affected by disclosure?

55. As the first three elements of the test have been established, the Commissioner is satisfied that disclosure into the public domain would adversely affect the confidential nature of the information by making it publicly available and would consequently harm the legitimate economic interests of the Council and UBB. She therefore concludes that the exception at regulation 12(5)(e) is engaged in respect of the withheld information and has gone on to consider whether in all the circumstances of the case the public interest in maintaining the exception outweighs the public interest in disclosure of the requested information.

The public interest

56. The Commissioner has carried out the public interest test required by Regulation 12. When carrying out this test she has taken into account the presumption towards disclosure required by Regulation 12(2). The test is whether the public interest in the exception being maintained is outweighed by that in the information being disclosed.

The public interest in the information being disclosed

57. The council said that it considered the following arguments for the information being disclosed:
1. The obligation on the council as a public authority to be open and transparent;
  2. The public interest in waste facilities in general and particularly the emotive nature of those who are living near the facility;
  3. The public interests in the value for money elements of the EfW facility; and
  4. The previous tribunal decision and the disclosures ordered there and whether or not this information would add anything or could be calculated from what has already been disclosed.
58. Even with the disclosures ordered by the Tribunal from the contract the Commissioner considers that it is impossible for the public to be fully aware of the overall value for money of the project in the long term if it is unable to analyse the full figures regarding costs and price estimates which the council was working from at the time of the revised project plan. In paragraph 63 of the Tribunal's decision over the contract it specified this as a central reason why information should be disclosed; *"In the end it is the electorate which must hold the Council as a whole to*

*account and the electorate are more able to do that properly if relevant information is available to all".*

59. The financial implications of the contract have changed from the figures previously disclosed in the contract due to the time which had been taken to obtain planning permission. This is central reason for the revised project plan being negotiated between the parties, and for the council subsequently hiring Ernst & Young to ensure that the revised terms still provided the council with value for money.
60. The report therefore provides more current, relevant figures which the council used to evaluate and inform its decisions regarding the contract and it will presumably be used as a basis for its future negotiations over pricing and costs. Currently these figures are not publicly available, and therefore the public as a whole cannot create an overall picture as to whether the EfW development provides value for money under the revised agreement.
61. The council has sought to apply redactions to information which the Tribunal considered should be disclosed. It has, in places, sought to redact information which goes to the heart of financial obligations in the contract and 'core' financial information which it has used to determine whether the contract offers value for money. As regards the financial redactions, the tribunal found at paragraph 175 that:

*"We consider that the public had (and still has) a strong and legitimate interest in knowing what a public democratically elected body has committed to financially on their behalf. The disclosure of these provisions therefore seems to us something for which there was a very weighty public interest indeed."*
62. In reference to the parties reasons for wishing more detailed information on the contract being disclosed the Tribunal state, at paragraph 62:

*"It was notable that Councillor Lunnon was somewhat non-plussed by the Tribunal's request that she identify specific redacted provisions that she would have liked to see but she did repeatedly refer to the "base tonnages", which are at the heart of the Contract and which are highly relevant to value for money and the potential issue of discouraging recycling, to termination provisions, and to Schedule 33, which she said is also relevant to the overall financial case for the Contract."*
63. The Commissioner notes that the council has redacted base tonnages figures from the report. The Commissioner notes the tribunals decision, at paragraph 109, relating to figures for 'base tonnages' where the Tribunal finds that:

*"We consider that there is a high public interest in disclosure of any provisions that may relate to what the Council is obliged to supply by way of waste and what it will have to pay and the significance of the specific provisions and the way any commercial harm would result from their disclosure was not really explained to us."*

64. The Tribunal also decided that the public interest in the disclosure of figures relating to the sale of the electricity which would be generated should be disclosed from the contract. At paragraph 216 of the decision it stated:

*"The Council expressly accepts that there is a public interest in transparency about its plans to sell electricity for wider use; in our view it is a weighty public interest"*.

65. The Commissioner notes that the council has redacted budgeted figures for the sale of the electricity to third parties. It has argued that these figures would be used by third parties as a base negotiating position when it is negotiating to sell electricity to third parties. Third parties would seek to limit the amounts which they are willing to pay to around this value, knowing that the council has established this as an affordable amount within the report. It argues therefore that this could affect its ability to obtain value for money, and as a result the public would not realise the full benefits of the profits which the EfW might otherwise achieve. This would be a loss of public money which could be used by the council to further its other public functions and the services it provides. However, the Commissioner notes that the public cannot have a full understanding of the likely benefits from the project without fully understanding the figures which the council was using to determine whether the contract, as updated, provided value for money. Whilst she also accepts that if these figures are published third parties might take account of them during negotiations, the main issue will be the market value of electricity at the time that negotiations are taking place.
66. The Commissioner also notes that the council has sought to withhold information the forecasted capital expenditure amount. This figure represents the actual costs of building the facility, including the costs of steel etc. The council argues that the CAPEX figures which were disclosed in 2017 were forecasted in 2012 however the figure redacted from this report is an updated figure from 2015. It therefore argues that it is more current and relevant and is therefore significantly more commercially sensitive. It argues that a disclosure of this information may breach its and UBB's contractual agreements with third parties. The Commissioner considers however that as a central aspect of the construction of the facility there is a very strong public interest in the

public being able to take such issues into account with its consideration of the EfW project as a whole.

67. The Commissioner also notes the Tribunal's assessment of the situation as of March 2015, wherein controversy over the project was high following a failed high court case to overturn the contract. The report was provided to the council in January 2015, shortly before this period and would have informed the council of its value for money at the time that this controversy was at its highest.

The public interest in the exception being maintained

68. The council argues that none of the information redacted from the report will prevent the public from understanding how the council has concluded that the EfW project will achieve value for money, or that it is affordable. It argues that in this respect, an external auditor's report on this has been in the public domain for some years.
69. It argues that in light of the information already available the additional public interest in the disclosure of the granular information which has been redacted from the report is substantially reduced.
70. The Commissioner notes that at the heart of the argument are figures such as the price per tonne agreed with UBB, the base tonnages, the gate fee, and the budgeted price points for the future sale of third party waste accommodation and the price of electricity to third parties. The council argues that this information is commercially sensitive to UBB and to itself. However, the complainant argues that without this information it is impossible to properly judge whether the council has obtained value for money from the development. The Commissioner agrees with the complainant's view.
71. The council also argues that a disclosure would make it less likely that the organisation would be willing to share information with the council in the future. The Commissioner notes however that companies such as UBB will consider the profitability of the contract over the long term, and the limited opportunities for other projects such as this within the short term. She also notes that the Tribunal were largely dismissive of this argument based upon the fact that the EIR and FOI regime are now well understood by organisations before they enter into such agreements. At paragraph 72 of the Tribunal's decision it addressed this argument directly, stating:

*"We cannot accept such a case. Any potential contractor seeking to do business throughout the EU must be well aware of the duties of public authorities in relation to environmental information. We do not accept that they would (or should) complain or change their behaviour in*

*response to a disclosure of information by the Council or any other public authority which was required by the EIR (or indeed FOIA), particularly, as here, following contested proceedings before the Commissioner and the Tribunal. Apart from anything else a number of express provisions in the Contract make it clear that such disclosure may have to be made.”*

72. Following the Tribunal’s reasoning the Commissioner notes the importance of the disclosure of these figures in order for the public to be able to satisfy itself that the development offers value for money. The Commissioner recognises that the information provided previously does provide an overview of the project and its affordability prior to the revised plan being agreed between the parties.
73. Whilst the council may have satisfied itself that is still the case through the commissioning of the report, it considers that it is not necessary for the public to have access to the entirety of the report in order for it to be able to satisfy itself of the same. Without a disclosure of this information the public will be largely left unable to establish in clear terms the revised agreement which the council has entered into with UBB and whether the contract (as revised) provides the public with value for money.
74. The Commissioner considers that the disclosure of the redacted information will add further understanding to the overall findings of the report, which was itself to determine whether the councils deal would provide value for money, painting a much clearer picture of the future running of the agreement.
75. The Commissioner further considers that it would be extremely difficult for the public to fully understand the financial decision making of the council in choosing the EfW as a solution to its issues without specific figures such as the its estimates used for the sale of electricity. The contract will run for 20 years and its impact upon the finances of the council are ongoing over that period. The Commissioner recognises that the solution is controversial and that various parties have sought to question the EfW as a solution to the counties waste problems.
76. Finally, the Commissioner notes that some information relating to the costs of the project to UBB would not particularly create greater transparency over the contract and its value for money as a whole. These include issues such as interest and debt rates and operating costs of UBB which do not directly affect the overall value for money to the public, but which are commercially sensitive to UBB.
77. The operating costs provide information specific to UBB rather than the contract’s value as a whole. The interest rates highlight some of its own

financial and commercial dealings with its banks and insurers. Although the Commissioner recognises that a disclosure of this information might indicate the level of financial risk taken by UBB, it also discloses deals and rates set by UBB's banks. She considers that for this information the public interest in withholding that information outweighs that in the information being disclosed.

78. The Commissioner has therefore listed the redactions which she has decided were correctly applied in the annex to this decision notice.

Regulation 5(2)

79. Regulation 5(2) requires that an authority respond to a request for information within 20 working days.
80. Regulation 14(2) provides that where a request for information is refused to any extent then the authority must provide reasons for its refusal within 20 working days.
81. However Regulation 7(1) provides that Where a request is made under regulation 5, the public authority may extend the period of 20 working days to 40 working days if it reasonably believes that the complexity and volume of the information requested means that it is impracticable either to comply with the request within the earlier period or to make a decision to refuse to do so.
82. The council wrote to the complainant in response to his request on 20 April 2017, stating that due to the complexity it would require further time. Although it initially made this claim under the FOI Act, the result was essentially an application of the delay allowed in Regulation 7 (1) of the Act.
83. However the council then wrote to the complainant again on 20 May 2017 indicating that it had still not been able to finalise its decision.
84. It subsequently provided its full response to the complainant on 9 June 2017. This fall outside of the 40 working days provided by Regulation 5(2), and Regulation 14(2) as amended by Regulation 7(1).
85. The Commissioner has therefore decided that the council failed to comply with the requirements of Regulation 5(2) and Regulation 14(2).



## Right of appeal

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86. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504  
Fax: 0870 739 5836  
Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

87. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
88. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.



**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
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**SK9 5AF**

**ANNEX**

Disclosures required from the report

EY 4

Updated capex price - disclose

RPP issued – disclose.

EY 6 Para 3.1

RPP and EYC price figures – disclose

Table 8

Nominal UC net electricity – disclose 3 figures redacted from column.

Table 9

Base case – disclose all figures redacted from table

Table 14

Affordability sensitivities – disclose all redacted figures from table

Table 15

Capex figures – disclose

SPC and bid costs – disclose

Operating costs – withhold.

Nominal tonnage payments –disclose

Contract tonnage – disclose

Base Price per tonne - disclose

Third party gate fee 3(a) – (c) – disclose all

Senior debt capital – withhold

Senior Debt interest – withhold

Gearing – withhold

Cap Expenditure figure increase in following para - disclose

Para 6.1.1

Gate fee information – disclose all

Redact sentence beginning 'UBB' - withhold.

Figure withheld in last paragraph in 6.1.1 – disclose

Para 6.1.2 – table,

Additional nominal costs and NPV – disclose table unredacted

Para 8

1<sup>st</sup> redacted para – withhold

2nd para beginning 'Sale of Electricity'– disclose redacted figures from last sentence in paragraph.