



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

Appeal Reference: EA/2018/0006

**Heard at Reading Employment Tribunal
On 12 June 2018**

Before

CHRIS HUGHES

MIKE JONES & MARION SAUNDERS

Between

DAVID BRIAN WRIGHT

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

DECISION AND REASONS

1. The appeal is dismissed.
2. The Appellant is a campaigner who wishes to preserve open spaces and the wildlife that inhabits them. He was concerned at proposals to build a park and ride scheme on land adjoining the River Thames in Wokingham.
3. In late 2016 he wrote to Wokingham Borough Council:-

"hereby I make an application under the Freedom of Information Act for all documentation relating to the intended acquisition by the Council of Broken Brow, whether from Oracle or another person or corporation, including all communications between the Council's officers and Oracle"

4. The Council resisted his request relying on section 43 FOIA (protection of relevant commercial interests), explaining that there were continuing negotiations with Oracle.

5. In seeking a review of the refusal the Appellant sought further information:-

"In the meantime I would like to make a more specific FOI request for any information which has been exchanged between the planning department and the department which is responsible for negotiating with Oracle for the purchase of the land at Broken Brow, concerning these negotiations"

"

6. On review the Council confirmed that it should have been considering a different information access regime, the Environmental Information Regulations 2004; it continued to resist supplying the information now relying on Regulation 12(5)(e):-

"the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;"

7. The Appellant complained to the Information Commissioner (IC) who investigated. She concluded the information was environmental information, and upheld the Council's reliance on regulation 12(5)(e). She noted the Council's arguments that disclosing information could harm its position and encourage others to seek to purchase the land and would make it harder to achieve best value for money in its procurement and negotiations. She noted that disclosure would aid transparency and would enable residents to have a more informed debate on the issue, but concluded that the weight of interest lay in protecting the Council's commercial position and she concluded that the Council was entitled to rely on the exemption.

8. In his notice of appeal the Appellant based his position on a Commons Library publication SN/SC/1195 last updated on 16 April 2009 "Local Authority Planning Permission" which was prepared to help MPs' staff with casework and deals with *"some issues that arise when a local authority applies for planning permission"*. His approach was that since the Council would be granting itself planning permission the guidance contained in the note was binding on the Council *"in other words a freedom of information request could obtain information about written negotiations between the local authority officers involved in development and those involved in planning"*.

9. In resisting the appeal the IC explained that the guidance note cannot cast light on the proper interpretation of the 2004 Regulations or FOIA, it was merely the

view of an employee of the House of Commons library. In any event it dealt with internal council communications. Not communications with a private seller of land and the Council had confirmed that *“the Planning department have had no involvement with any negotiations between the Council and the third party in respect of the purchase of the site.”* The exception provided by 12(5)(e) was therefore available to the Council and *“The Commissioner’s considerations as to the application of the exception, the balancing exercise and its outcome are unimpeachable and in any event are not challenged by the Appellant’s Ground of Appeal.”*

10. Prior to the hearing, the information no longer being sensitive since the negotiations had been concluded, the Council provided the Appellant with the information, however the Appellant elected to continue with his appeal. In his oral argument he again relied on the House of Commons library publication and confirmed that the basis of his appeal was the binding force of that publication. The tribunal explored its precise terms and its authority with the Appellant. On its first page it contains very specific warnings *“.. not intended to aggress the specific circumstances of any particular individual...it should not be relied upon as legal or professional advice or as a substitute for it.”*. The tribunal explained the provisions of EIR and the Appellant then stated *“I may have been misinterpreting the scope of the 2009 guidance. I should have concentrated on the 2004 Regulations”*.
11. The tribunal was satisfied that the appeal was based on a misinterpretation of guidance of only tangential relevance to the matters before it. The Appellant had advanced no evidence or argument to disturb the analysis of the issues set out in the IC’s decision notice which was clearly correct in law.
12. The tribunal dismissed the appeal.

Signed Chris Hughes

Judge of the First-tier Tribunal

Date: 25 June 2018

Promulgation date: 27 June 2018