



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

**Appeal Reference: EA/2019/0313 (P)**

**Decided without a hearing  
On 15 December 2020 and 3 March and 9 March 2021**

**Before**

**JUDGE BUCKLEY  
SUZANNE COSGRAVE  
ROGER CREEDON**

**Between**

**JENNY PERRYMAN**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

First Respondent

**NORFOLK COUNTY COUNCIL**

Second Respondent

**Mode of hearing:** This was a paper hearing consented to by the parties. The relevant code is P.

### **DECISION**

1. For the reasons set out below the appeal is allowed in part.

### **SUBSTITUTE DECISION NOTICE**

2. The public authority held no additional information within the scope of the request.

3. The public authority was entitled to withhold the information specified in paragraph 1 of the closed annex under reg 12(3) and 13(1) of the Environmental Information Regs 2004 (EIR).
4. The public authority was not entitled to withhold the information specified in paragraph 2 of the closed annex under reg 12(3) and 13(1) of the Environmental Information Regs 2004 (EIR).
5. The public authority must disclose the information specified in paragraph 2 of the closed annex within 42 days of the date of promulgation this decision.

## REASONS

### **Introduction**

1. There is a short-closed annex to this decision. It is necessary in order not to defeat the purpose of these proceedings. A redacted version of the closed annex can be published once the time limit for any appeal has expired, or any appeal has been finally determined.
2. This is an appeal against the Commissioner's decision notice FER0781869 of 6 August 2019 which held that the Second Respondent ('the Council') was correct to withhold part of the requested information in accordance with reg 12(3) and 13(1) EIR. The Commissioner found that the Council had breached reg 11 by failing to carry out an internal review within statutory the time limit.
3. The original paper hearing listed for 15 December 2020 was adjourned and the Council ordered to provide further information. The tribunal reconvened on 3 March 2021.

### **Factual background to the appeal**

4. The requested information relates to an abortive project to build an incinerator in King's Lynn which led to an agreement in 2014 that the Council pay compensation of £33.7m to the developer. The request is for information sent by the Council to Stephen Revell, who was going to write an independent report. For reasons unknown to the tribunal, Stephen Revell withdrew from the process on 15 June 2016 without completing a report.

### **Scope of the appeal**

5. The decision notice is limited to reg 12(3) and 13(1) (personal information) and reg 11. It is clear from the Notice of Appeal that Ms Perryman also asserts that the Council holds further information within the scope of the request, namely a copy of the 'final' PFI waste contract signed in February 2012. We note that Ms Perryman drew this to the Commissioner's attention in correspondence at p 4140 of the open bundle where she states:

One particular piece of information I am still waiting for is a copy of the final contract between Norfolk County Council and Cory Wheelabrator, which was signed in February 2012. It is inconceivable that someone carrying out an independent investigation (Stephen Revell) into why the incinerator contract failed, resulting in compensation payments being paid out in excess of £34m, footed by Norfolk taxpayers, could do so without them having a copy of the final, signed contract

6. In the circumstances we find that this is something which is within our remit to determine.

### **Request and Decision Notice**

7. Ms Perryman made the request which is the subject of this appeal on 14 February 2018:

Please provide me with a full copy of all the information (correspondence, documents, minutes, reports etc.) that Joel Hull provided to Stephen Revell for this investigation.

8. The Council replied to the request on 22 February 2018, refusing the request under s 14(2) of the Freedom of Information Act 2000 (FOIA) (repeat request) and reg 12(4)(b) of the EIR (manifestly unreasonable request) on the basis that it was a repeat of a previous request in October 2016 for communication between Stephen Revell and the Council.
9. The Council carried out an internal review and informed the claimant of the outcome by email dated 10 May 2018. It maintained its position that the request was for information which formed a subset of the information covered by the previous request. However, it had reviewed the redactions made to the previously disclosed material and determined that some of the redacted information was no longer commercially sensitive and could be disclosed. Further the Council had undertaken a further search for all information provided by Joel Hull to Stephen Revell and any additional information located was disclosed. Finally the Council stated it did not hold copies of the two files of information provided in hard copy to Stephen Revell.
10. Ms Perryman raised further issues and the Council responded by email dated 31 July 2018. In that email the Council stated that some names had been redacted in accordance with reg 12(3) and 13(3) EIR, on the basis that they did not hold roles sufficiently senior to reasonably expect their names to appear in the public domain and it would therefore be unfair to disclose them. The Council stated that it had otherwise provided all information within the scope of the request that it had held when the request was received.
11. In the course of the investigation the appellant highlighted references within other documents which indicated that further information might be held. The Council undertook additional searches and disclosed further information.
12. In a decision notice dated 6 August 2019 the Commissioner concluded that the withheld information was environmental and therefore the request fell to be

considered under EIR. The Commissioner limited her consideration to regs 12(3) and 13(1) – third party personal data.

13. The Commissioner concluded that the withheld information fell within the definition of ‘personal data’ in s 3(2) of the Data Protection Act 2018 (‘DPA’).
14. The Commissioner was satisfied that the public has a legitimate interest in having access to information which can create greater transparency on issues which ultimately led to the Council owing significant sums of money. She found that knowing the identity of the individuals would not add greatly to the knowledge about what occurred, because the content of the correspondence including the job roles has already been disclosed.
15. The Commissioner was of the view that the public had a legitimate interest in knowing what occurred which led to the significant costs which resulted from the project. She considered that senior officers who were responsible for the oversight of the project may expect that details of their actions may be disclosed in order for the Council itself to be accountable. The legitimate interests in the knowing the names of more junior officers is limited.
16. The Commissioner accepted that Council’s argument that it was not necessary to meet the legitimate interest in transparency for the Council to disclose the identities of mid-level and junior employees. At this level they are accountable to the Council as its employees. At a more senior level the balance may tip in favour of disclosure in order that the public may be aware of senior officers decision and actions. [Note: the Commissioner did not have before her the closed information on the grades and responsibilities of the individuals concerned].
17. The Commissioner agreed with the Council’s approach in balancing the disclosure of job roles of senior employees of third party organisations without disclosing the names of the individuals. The Commissioner concluded that it was not necessary to specifically identify them in order to meet the legitimate interests of the public in holding the Council to account, particularly given the overall disclosure of the remained for the information.
18. In conclusion the Commissioner found that it was not necessary for the Council to disclose the information in order for it to meet the legitimate interests of the public. She did not go on to consider the balance test and determined that there was no lawful basis for the processing and it was unlawful. It therefore did not meet the requirements of the data protection principle in article 5(1)(a) of the General Data Protection Reg (‘GDPR’). The Council was entitled to withhold the information under reg 13(1) EIR.
19. The Commissioner found that the Council had complied with reg 5(2) EIR but had breached reg 11 by failing to carry out an internal review within the statutory time limit of 40 working days.

## **The grounds of appeal**

20. The grounds of appeal are:

- 20.1. The decision notice does not accurately reflect Ms. Perryman's complaint and what took place. The decision notice does not record the fact that some information was only received after a long delay, nor does it deal with the fact that she is still waiting for a full copy of the signed contract.
- 20.2. The decision notice is biased in favour of the Council.
- 20.3. The decision notice is inconsistent with other decision notices.
- 20.4. The Commissioner ignored evidence showing that the Council had redacted names in blanket form.
- 20.5. The Commissioner upheld the Council's reasons for redactions and should therefore have found them guilty of breaching their own data protection.

21. In relation to the redacted names Ms Perryman argues that the council had provided the majority of names to her in response to previous requests. Further, the names appear in minutes of council meetings on the council's website.

22. The project manager for a £600 million contract would not fall within the description of junior officers who were not responsible for policy development or decision-making.

23. Ms Perryman raises a number of issues relating to a dispute over the number of previous requests she has made. Although the Commissioner has referred to this in the 'background' section of her decision notice, it is not material to her decision and is outside our remit. We have made no findings on this issue.

24. Ms Perryman also challenges the Commissioners findings on reg 5(2). She states that an incorrectly applied refusal is not compliant: some information was not supplied until June 2019 and she is still waiting for a copy of the signed contract.

## **The Commissioner's response**

25. The Commissioner sets out the complaint made by Ms Perryman to the Commissioner, and states that the complaint had three components:

- (i) a complaint about the time taken to respond to the request;
- (ii) a complaint about the reduction of names; and
- (iii) an allegation that certain other information had not been provided to her.

26. The Commissioner states that in the course of the investigation the Council released some further information to Ms Perryman resulting in the third aspect of the appellant's complaint falling away.

27. The Commissioner categorises Ms Perryman's grounds for appeal as follows:

- a) the decision notice does not accurately reflect what took place;

- b) the decision notice is biased in favour of the council; and
- c) the redacted information is not exempt from disclosure – reg 13(1) does not apply

*(a) the decision notice does not accurately reflect what took place*

28. The commissioner does not consider that the alleged deficiencies are material for the purposes of the analysis of reg 13(1).

*(b) the decision notice is biased in favour of the council*

29. The commissioner considered the arguments of both parties informed her own view as to whether the request had been dealt with in accordance with the legislative framework. The commissioner was not required to issue steps and she did not do so. The disputed matters included by the Commissioner as context have no impact on the application of the reg 13(1) exception.

*(c) The redacted information is not exempt from disclosure – reg 13(1) does not apply*

30. The Council had set out that the individuals whose names had been redacted were below 'tier 5' and were not responsible for policy development or significant decision-making in relation to the project. [Note – this is an error. The Council stated that the individuals were 'below tier 3' and 'tier 5 and below' - see p 4108 and p 4109 of the bundle.] Current employees had been asked if they consented to the release of their names and they did not. Some officers connected with the failed contract had in the past received abuse and threats in social media. In the circumstances the Commissioner considered that her decision that that disclosure of the names was not necessary was correct.

### **The Council's response**

31. The Council supports the Commissioner's opposition to the appeal for the reasons set out in her response. The anomalies raised by Ms Perryman (in relation to previous disclosure of names) are anomalies.

### **Ms Perryman's reply**

32. Ms Perryman sets out information relating to her subject access request concerning her previous requests. As this is not within our remit, we will not set this out here.

33. Ms Perryman states that her complaint to the Commissioner was primarily because her request for information was incomplete after 5 months but no reference is made to this in the decision notice. Ms Perryman did not receive some of the information until 3 June 2019, over 15 months after her original request. The information remains incomplete on 3 June 2020 because she still had not received a copy of the PFI waste contract signed in February 2012. The Commissioner wrongly states that this aspect of the appeal had fallen away. Ms Perryman raised this several times with the Commissioner but there is no evidence that it has been addressed with the Council. It has also been ignored in the Commissioner's response.

34. Ms Perryman states that she has received a blank draft contract from 2010 and numerous sections of early 2011 drafts.
35. The factual background in the decision notice is inaccurate. The details on which the decision notice is based should be accurate.
36. The decision notice is not balanced – the Commissioner only puts across the Council’s side, in order to produce a pre-determined outcome.
37. The Council begin by saying that the individuals are all below tier 3 and later says that they are all tier 5 and below. In the decision notice the commissioner says that they were all junior officers at tier 5 and below and in the response says they were below tier 5. The redacted names are not all junior officers at tier 5 and below.
38. The Commissioner did not consider the fact that the Council had provided the majority of names in response to previous requests and that some of the redactions were from minutes of public meetings, the unredacted minutes of which were available on the Council’s website. Other names were attendees at public meetings.
39. In response to different requests the Council had released some of the names in unredacted documents sent to Ms Perryman on 8 March 2018 and on 1 May 2018 (ten days earlier than the internal review in relation to the request in issue in this appeal). This included some of the same documents – the minutes of the Waste Project Board meeting of 22 October 2010. There is no evidence to suggest that these disclosures were in breach of the data protection principles. There is no evidence that anything untoward happened to the individuals as a result. The same legislative framework applied to those two requests as applies to the current appeal.
40. The Commissioner is applying the outcome of a previous decision notice, without considering further cases differently.
41. The media officer would not have a reasonable expectation that her name would not be in the public domain.
42. The Commissioner has allowed the Council to dictate the parameters for disclosure at a single cut off point of ‘tier 3 and above’.
43. There was no evidence that the Commissioner considered Ms Perryman’s arguments against the allegation of harassment, and this formed part of the Commissioner’s reasoning. It is implicit that the stated threat of harassment comes from Ms Perryman. The Commissioner should have asked the Council for evidence of their claims of harassment, threats and abuse.

**Ms Perryman’s submissions dated 26 October 2020**

44. The final submissions deal primarily with the dispute about the number of previous requests made by Ms Perryman.

### **Further information from the Council and related submissions**

45. In response to an order from the tribunal, the Council provided a closed document which set out in relation to each individual whose name had been redacted:

- 45.1. Their job title or titles
- 45.2. Their level of seniority within the Council
- 45.3. A description of the role that the individual played in the project/plans relating to the proposal to build the incinerator including the extent of any involvement in policy development or decision making.
- 45.4. Whether that individual held a public facing role, such that they would ordinarily expect the release of their name and contract details to the public.

46. The Commissioner made closed submissions on this information which are summarised in the closed annex to this decision.

47. Ms Perryman made submissions dated 29 January 2021. She stated that she was concerned that not all the redacted names had been included in the closed list. Further Ms Perryman restates that the decision notice did not consider the fact that she had not been provided with a copy of the signed contract. She submits that it is inconceivable that Stephen Revell would not have been provided with a copy of the signed contract. She repeats her earlier submissions to the effect that the concern of harassment was unsupported by evidence. She submits that one of the redacted names is a DEFRA transactor, which should be released for the same reasons given in a previous decision notice in December 2019.

### **Legal framework**

48. The relevant provisions of the EIR are regs 5(1), 12(1) to (3) and 13(1) and (2A):

#### *Reg 5 Duty to make available environmental information on request*

(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.

#### *Reg 12 Exceptions to the duty to disclose environmental information*

(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.

(2) A public authority shall apply a presumption in favour of disclosure.

(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

...



### *Regulation 13 Personal data*

(1) To the extent that the information requested includes personal data of which the applicant is not the data subject, a public authority must not disclose the personal data if –

(a) the first condition is satisfied, or

(b) the second or third condition is satisfied and, in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.

(2A) The first condition is that the disclosure of the information to a member of the public otherwise than under these Regulations –

(a) would contravene any of the data protection principles, or...

49. Personal data is defined in s 3(2) of the Data Protection Act 2018 (DPA) as:

Any information relating to an identified or identifiable living individual

50. Article 5(1) GDPR states that personal data must be processed 'lawfully and fairly'. In order to be lawful, one of the lawful bases of processing in article 6(1) GDPR must apply. The only potentially relevant basis here is article 6(1)(f):

Processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which requires protection of personal data, in particular where the data subject is a child.

51. The case law on article 6(1)(f)'s predecessor established that it required three questions to be answered, which we consider are still appropriate if reworded as follows:

1. Is the data controller or a third party pursuing a legitimate interest or interests?
2. Is the processing involved necessary for the purposes of those interests?
3. Are the above interests overridden by the interests or fundamental rights and freedoms of the data subject?

### **The task of the Tribunal**

52. The tribunal's remit is governed by s.58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved exercising discretion, whether she should have exercised it differently. The tribunal may receive evidence that was not before the Commissioner and may make different findings of fact from the Commissioner.

### **Issues**

53. The issues we have to determine are:

- 53.1. Did the Council hold further information within the scope of the request?

- 53.2. Was the withheld information personal data?
- 53.3. Would disclosing the information be fair?
- 53.4. If so, are the conditions in 6(1)(f) met i.e.
  - 53.4.1. Is the data controller or the third party or parties to whom the data is disclosed pursuing a legitimate interest or interests?
  - 53.4.2. Is the processing involved necessary for the purposes of those interests?
  - 53.4.3. Are the above interests overridden by the interests or fundamental rights and freedoms of the data subject?

### **Evidence and submissions**

- 54. We have read and were referred to an open bundle of documents, which we have taken account of where relevant. We also had before us a number of closed documents including a list of redacted names and a table setting out details of each individual's job title and role (the Council's response to the tribunal's order of 18 December 2020).
- 55. We read and took account of submissions from all parties including short closed submissions from the Commissioner on the closed information provided by the Council.

### **Discussion and conclusions**

- 56. It is not in dispute and we agree with the Commissioner that the requested information is environmental information.

*Does the Council hold further information within the scope of the request*

- 57. Ms Perryman has requested information provided by Joel Hull to Stephen Revell for his investigation. Stephen Revell began to carry out an independent investigation, but he withdrew from the process without completing a report in June 2016. We have not been provided with the terms of the investigation, but references in the bundle show that the focus of the investigation was on the conduct of and involvement of the Council. The Council refers to it at p 4108 as an investigation into 'the Council's handling of the project'. At p 5195 it is described in a contemporaneous email from Joel Hull as an 'ongoing independent review in to member involvement with the contract process'. On p 5329 is a copy of a report by the project director for the Stephen Revell Review. It describes the investigation as 'The Stephen Revell Inquiry in the Member engagement of the Residual Waste Treatment Contract process'.
- 58. Ms Perryman states that she has not been provided with a copy of the final contract between Norfolk County Council and Cory Wheelabrator which was signed in February 2012. She states that she has been sent contract templates from 2010 and various draft versions from 2011.

59. Ms Perryman states that it is 'inconceivable' that Steven Revell, who was carrying out an independent investigation into why the incinerator contract failed, could do so without having a copy of the final, signed contract.
60. The Council state the information requested is a subset of information requested by the claimant on 10 October 2016, i.e. all communication (including emails, attachments and letters) between Stephen Revell and the Council relating to the investigation/report from January 2014 to date. In about October 2016 a search must therefore have been undertaken of communication between Stephen Revell and the Council which did not produce the signed contract.
61. A further search was carried out in May 2018 in relation to the current request. This resulted in additional emails being located. The Council confirmed that they did not have a copy of a pen drive that had been sent to Stephen Revell. They confirmed that two hard copy files were provided to Stephen Revell , but copies of the files had not been retained. This search also did not produce the signed contract.
62. After Ms Perryman highlighted further documents to the Commissioner that she considered should have been provided (not, at this stage, including the signed contract), and, as a result, the Council undertook a further search. It stated in an email dated 3 January 2019:

The Council holds many thousands of documents regarding this matter. The Council carried out a search within its files and the email accounts of relevant officers and provided all of the available information it found. It did not retain a copy of the memory stick or of the hard copies of information that was provided, which is why the Council stated that the information was not held.

In a situation where such a vast amount of information is held on a particular topic, it is always possible that references are made in information provided that may not be discovered through an initial search.

...

Following previous requests, where Ms Perryman has provided the Council with references to further information, the Council has subsequently provided that information if it holds it. In this instance Ms Perryman did not provide the detailed references provided to the ICO which would have allowed the Council to consider this as an additional request which it would have responded to. The Council is now carrying out a further search regarding these references along with the search for Ms Perryman's most recent request of 7 December 2018 and will provide any further relevant information that it holds as soon as possible.

63. After carrying out a further search, the Council wrote to Ms Perryman on 8 February 2019. It had located most of the documents in her list, amounting to 2903 pages of information, but stated that it was unable to find two documents (August 2010: Defra updated draft contract and August 2010: Note to Defra). The Council stated that this may be because they exceeded their retention period and have been deleted. Because of the number of documents, Ms Perryman was unable to access 309 pages of them until she received them on a memory stick in early June 2019.

64. In an undated letter at p 4139, sent in about March 2019 to the Commissioner, Ms Perryman highlighted the fact that she had not received 309 pages of the information. In particular she raised that fact that she was still waiting for a copy of the signed contract which, in her view, fell within the scope of the request.

65. This letter was followed by a telephone conversation between the Commissioner and Ms Perryman on 21 May 2019. In that letter the Commissioner states:

I write to confirm the points which you raised concerning the information requested. You stated that you are seeking from the Council the following:

1. Evidence of the role of the attendees
2. The actual position of the names redacted
3. Information held on a USB stick
4. The remaining information – 309 pages
5. Information provided via dropbox.

66. The Council sent a memory stick to Ms Perryman on 30 May 2019 containing all the information again, including the remaining 309 pages.

67. Although Ms Perryman wrote to the Commissioner on a number of occasions after receiving the additional information, she did not raise the fact that she had not received a signed copy of the contract. The tribunal infers from the decision notice that the Commissioner assumed that any outstanding documents had been included in the information sent to Ms Perryman on 30 May 2019.

68. We have to determine whether or not the signed final version of the contract falls within the scope of the request i.e. whether it would have formed part of the information that was provided by Joel Hull to Stephen Revell for his investigation.

69. The report by the project director provided to the Stephen Revell inquiry (at p 5329 et seq) contains the following relevant information:

...throughout the procurement process the Government's standard PFI contract form had to be adhered to including the parts of this that were amended for the waste sector. (para 1.1)

...

4.1 To remain eligible for a Government grant the Defra approved contract has to be used, this is called the 'Standardisation of PFI Contracts' or 'SOPC' contract. This has been in almost continuous development and at the time the Norfolk contract was awarded version four of this contract was the required format, referred to as 'SOPC4'. As SOPC is the Government required contract format for all Government departments delivering PFI programmes it includes sector specific amendments or additions, such as required by Defra for waste projects, to make it applicable to the different sectors. These then become required drafting for PFI projects in that sector.

For waste projects, the terms and conditions set out in the Waste Infrastructure Delivery Programme Residual Waste Treatment Contract (November 2010) (Widp - Widp is the Waste Infrastructure Delivery Programme within Defra) are the relevant sector specific amendments. The Norfolk contractor therefore had to adhere to SOPC4 and Widp in order to be awarded PFI credits.

...

4.4 Where there are parts of this contract 'template' that need to be filled in to reflect the particular project, or parts of the 'template' have to be reworded to ensure the principles are adhered to as far as they relate to a particular project, this can only be

done with Defra approval and in some instances Treasury approval as well.

...

The development of these provisions by Defra is covered in the appendices:

- Appendix 1: June 2009, Widp Consultation Draft on Relevant Provisions.
- e Appendix 2: 15 December 2009, Widp Residual Waste Treatment Contract (Widp Contract): Note on Various Contractual Issues (also referred to as the 'Direction of Travel Paper').
- e Appendix 3: 31 August 2010, Widp Residual Waste Treatment Contract (also called the 'Model Contract / Project Agreement').
- Appendix 4: 29 November 2010, Revised Widp Project Agreement.

4.5 On 03 September 2010 it was confirmed that the Cory Wheelabrator breakage costs were on market and accepted by Widp, the Waste Infrastructure Delivery Programme team in Defra. The Planning Termination Costs were then capped at £20.5m and Permitting Termination Costs were capped at £19.5m. By 09 September 2010 the AmeyCespa breakage costs had further reduced to Defra's satisfaction from between £27m and £22m to between £23 and £18.7m.

This dialogue had to continue until Defra was satisfied on all the commercial positions reached, which occurred on 16 September 2010:

'Following completion of our commercial review (which incorporates review of derogations from SOPC4), on the basis of the information submitted to us including that information set out in the Issues Log (version 7), I am pleased to confirm that we are content for you to close dialogue on this project.'

On 08 December 2010 Defra approved the appointment of the Preferred Bidder following the Executive Widp Team's review of the Pre-Preferred Bidder Final Business Case.

In July 2011 the County Council submitted its Final Business Case which included all of the contract positions including those relating to termination. The Defra standard for review of a Final Business Case was six weeks. It took six months with the commercial review having apparently concluded in August 2011.

70. As well as attaching the appendices set out above, the report sets out some of the contractual terms in full. On the basis of this report it appears that the terms of the contract were from standard Defra contracts or subject to approval by Defra, were finalised in 2011 and, in so far as they were relevant to the issues to be determined by Stephen Revell, were set out in this report itself or in its appendices. In the light of this and given the focus of his investigation, it is unsurprising that Stephen Revell was not also provided with a copy of the signed contract from 2012. It would not have been necessary for the purposes of his investigation.

71. Taking into account the fact that none of the emails from Joel Hull in the bundle state that a copy of a signed contract from 2012 was provided to Stephen Revell, and the fact that none was located in any of the Council's searches focussing on correspondence with or information provided to Stephen Revell, we find, on the balance of probabilities, that Stephen Revell was not provided with a copy and it therefore falls outside the scope of the request.

72. Note: Although it is not relevant to our decision, we note from documents in the bundle that on 17 February 2012 Ms Perryman made a request under the Freedom of Information Act for 'full details of the agreement Norfolk County Council signed

with Cory Wheelabrator in February 2012. We do not know the outcome of this request, but we note that the Council stated in its response that it had made a commitment to publishing the contract documents on its website by the end of March 2012.

*Particular issues raised by the claimant outside the scope of the appeal*

73. We have not based any of our conclusions on a finding that there is any risk of harassment by Ms Perryman. Further we note that the Commissioner did not base her conclusions in the decision notice on any risk of harassment by Ms Perryman. We do not therefore need to consider Ms Perryman's submissions on this point.
74. We have not based any of our conclusions on the number of previous requests made by Ms Perryman. Nor did the Commissioner, albeit that this was set out in the background facts. We do not therefore need to make any findings as to the number of previous requests made by Ms Perryman or to consider her submissions on this point.
75. We agree with the Commissioner that we have no power to consider the Commissioner's practical case handling processes.

*Application of regulation 13*

76. We conclude that the information requested was personal data. A person's name is obviously personal in nature and relates to that individual and it is clearly possible to identify the owners from this information.
77. We have concluded that disclosure would be in breach of the first data protection principle in relation to some of the names and not in relation to others. The individual names are identified in the closed annex.
78. We deal firstly with the names in relation to which we find that disclosure would not be lawful.
79. We accept that there is a general public interest in the decision making process which led to the payment of large amounts of public money in compensation. We do not accept that disclosure of the names of these employees of the Council are necessary for that interest. The substantive content of the documents has been provided to Ms Perryman. The job title of the individual has also been provided. There was a project board in place, whose members should, in our view, expect to be accountable to the public at large. None of these employees were on the project board. They can be held accountable internally by the Council, as its employees. It is not necessary for the legitimate aim of scrutinising this project for their individual names to be made public. Disclosure is therefore not lawful and their names are exempt under reg 13(1). Further detail on our reasoning is provided in the closed annex.

80. We note that some of the redacted names appear in documents already released to Ms Perryman or in public documents. The Council states that these are 'anomalies'. We must consider whether or not the conditions in reg 13 are satisfied on the facts before us. If disclosure would not be necessary, for the purposes of a legitimate interest, then processing is unlawful and the information is exempt, whether or not it has previously been disclosed or appears elsewhere in the public domain.
81. In relation to the rest of the names we find that disclosure is necessary for the purpose of the legitimate interest involved. The individuals involved that were employed by the Council were senior employees (3<sup>rd</sup> tier or 4<sup>th</sup> tier) and either on the project board or had a significant role in relation to the project. Further detail is set out in the closed annex. One of the individuals was not employed by the Council, but was on the project board and at a senior level, with a significant role. In the view of the tribunal, individuals employed at this level with this level of involvement in the project are publicly accountable as individuals for the decisions that they make or to which they contribute. This is strengthened by that that the cancelled contract was large, involving the use of £600m of public funds, and that the termination payment was of over £33m of public money. Therefore the tribunal takes the view that the identity of the individual concerned can contribute something to the public's understanding of the circumstances which led to the contract being cancelled. The tribunal therefore finds that disclosure is necessary for the purpose of the legitimate interests.
82. The tribunal has then considered whether the legitimate interests are overridden by the interests or fundamental rights and freedoms of the data subject and if disclosure would be fair. Although the Council has stated that other employees have been subject to harassment, the tribunal takes the view that the identity of Council employees at this level and other senior employees is likely to be in the public domain and therefore any risk of harassment would not be caused by this particular disclosure. We accept that there is evidence that the individuals have not consented to the disclosure of their names, but the tribunal finds that individuals at this level working for public bodies cannot reasonably expect their identities to be kept private. We find that the legitimate interests are not overridden by the rights and freedoms or legitimate interests of the data subjects. Taking into account all the matters set out above and the additional matters set out in the closed annex the tribunal finds that disclosure would be fair.
83. On the basis of the above, the tribunal concludes that the disclosure of the names of these employees would be lawful and fair, and this information is not exempt under reg 13.

Signed Sophie Buckley

Judge of the First-tier Tribunal

Date: 24 March 2021