



**IN THE FIRST-TIER TRIBUNAL**  
**GENERAL REGULATORY CHAMBER**  
**INFORMATION RIGHTS**

**Case No. EA/2011/0254**

**ON APPEAL FROM:**

**The Information Commissioner's  
Decision Notice No: FS50362315  
Dated: 21 September 2011**

**Appellant: Eur Ing Chris Gore**

**Respondent: Information Commissioner**

**Second Respondent: Local Government Ombudsman**

**On the papers: 27 February 2012**

**Date of decision: 23 March 2012**

**Before**

**ROBIN CALLENDER SMITH**  
Judge

and

**MALCOLM CLARKE and RICHARD FOX**  
Tribunal Members

**Representation:**

For the Appellant: in person

For the Respondent: Edward Capewell, Counsel instructed by the Information Commissioner

For the Second Respondent: Tony Child, DAC Beachcroft LLP

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**Subject matter:**

**FOIA**

Absolute exemptions

- Prohibitions on disclosure s.44

**Environmental Information Regulations 2004**

Exceptions, Regs 12 (4) and (5)

- Breach of Confidence (5) (d)

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**Case No. EA/2011/0254**

**DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal upholds the decision notice dated 21 September 2012 and dismisses the appeal.

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**REASONS FOR DECISION**

Introduction

1. Eur Ing<sup>1</sup> Chris Gore (the Appellant) indicated on 14 May 2010 that he would like a complete set of documentation relating to a complaint he had made to the Local Government Ombudsman (LGO) about Cornwall Council.

The request for information

2. This request was formalised on 28 June 2010 when he confirmed he was seeking "... *The 'complete set' of paperwork, that is all the paperwork, that the LGO used to come to the 'The final Decision' given in the letter of 14 April 2010.*"
3. On 2 July 2010 the LGO responded to the Appellant. It clarified that the request was for the contents of the Appellant's complaints file. It explained that some of the information was exempt on the basis of s.44 of the FOIA and some on the basis of Regulation 12 (5) (d) of the Environmental Information Regulations 2004 (EIR) by virtue of s. 32 (2) of the Local Government Act 1974.
4. After some correspondence on 14 September 2010 the LGO told the Appellant it had completed an internal review. It disclosed some of the withheld information to the Appellant but upheld the application of s.44 FOIA and Regulation 12 (5) (d) to the remainder
5. The disputed information relates to Notes to the Ombudsman On 14 May 2010 and a Draft letter dated 1 April 2010.

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<sup>1</sup> A professional engineering qualification.

### The complaint to the Information Commissioner

6. The Information Commissioner found that the information in both of the documents containing the requested information fell within the meaning of environmental information under Regulation 2 (1) EIR. He did this on the basis that the nature of the information would inform the public about the matter under consideration and would therefore facilitate effective participation by the public in environmental decision making.
7. He found that the disputed information broadly related to a complaint made by the Appellant to the LGO about Cornwall Council's decision not to take action to stop developments on a number of sites which the Appellant felt breach planning regulations. He found that the disputed information related to an activity and measure likely to affect the elements and factors referred to in Regulations 2 (1) (a) and (b) and was environmental information.
8. The IC considered the public interest arguments in relation to the requested information. The LGO had acknowledged that disclosure could contribute to public understanding of its decision-making process and that there was a general public interest in accountability and transparency.
9. However, the LGO argued that the statutory restriction from disclosing information obtained as part of – or in the course of – its investigations was vital in encouraging frankness and openness on the part of those providing information to it. The LGO believed that disclosure would go against the reasonable expectation of confidentiality on the part of those providing information in the course of its investigations. It stressed that an environment which discouraged the provision of information to it for fear of disclosure would have an adverse effect on its ability effectively to discharge its functions.
10. The IC accepted that was a valid public interest argument in favour of maintaining the exception. Although the LGO could resort to exercising its

statutory powers to compel third parties to provide it with information, that would not be a good use of public funds and resources in the context of voluntary cooperation and supply of information.

### The appeal to the Tribunal

11. Eur Ing Gore, in his representations to the Tribunal dated 29 November 2011, focused on two points on the basis that the LGO had admitted that disclosure of the two documents in question "would contribute to the public understanding of its decision-making process" and "enhance the accountability and transparency of its investigation process".
12. His first point was that, based on the IC's description of the two documents being withheld, the information contained within them should already have been disclosed within documents already released in the case. The information could not be classified as confidential if it had already been released.
13. His second point was that if there was information in those two documents which had not been released then, based on the LGO's assertions, "disclosure would contribute to a better understanding" that information would allow him (the general public) to have a better understanding of the LGO's reasoning which led him to (what he characterises as) "the perverse decision not to uphold my complaint against Cornwall Council, based on the grounds that I was 'too far away to suffer injustice', a reference to the fact that the two properties about which he was enquiring abutted his properties boundary, one directly and the other across a country public footpath.
14. In his view there was no justifiable reason why those documents should not be released to him.

## Evidence

15. The Tribunal had the benefit of seeing the withheld information on a closed and confidential basis and has been able to satisfy itself about the particular nature of the information in question.
16. It has also considered the written witness statement of Neville Jones, a Deputy Ombudsman reporting to one of the two Local Government Ombudsmen currently in post, 9 February 2012.

## Conclusion and remedy

17. The Tribunal notes that under Part 3 of the Local Government Act 1974, Local Commissioners – more commonly known as Local Government Ombudsmen – may investigate complaints alleging maladministration and in deciding whether or not to investigate a complaint to act in their own discretion.
18. There are wide powers such Ombudsmen possess in terms of requiring the attendance and examination of witnesses and in respect of furnishing information and producing documents under the provisions of the Act. Failure to comply with the requirement of a Local Government Ombudsman in respect of s. 29 may lead to a fine or imprisonment for contempt of court.
19. There is a statutory restriction in s. 32 (2) of the 1974 Act on the disclosure of information obtained by a Local Government Ombudsman or any person discharging or assisting in the discharge of a function of a Local Government Ombudsman. That exists in part to protect people who are under a legal compulsion to provide a Local Government Ombudsman with information against the possible consequences of disclosure of that information.

20. The Tribunal is satisfied that the statutory restriction on the disclosure of information in s.32 (2) of the 1974 Act applies regardless of the relevance of the information obtained and regardless of whether it is influential in a Local Government Ombudsman's consideration of any complaint. It is clearly sufficient that the information was obtained "in the course of or for the purposes of an investigation" under Part 3 of the 1974 Act.
21. Because of the confidential nature of every investigation conducted under this process, the wide powers of compulsion given to the LGO and the statutory restrictions provide a statutory framework constituting the context in which requests for the disclosure of information under EIR falls to be considered.
22. The Tribunal agrees that it is clear the parties submitting information to the LGO only do so on the basis that they expect such information to be held in absolute confidence, particularly because of the statutory prohibition that exists. Investigation reports published by the LGO are anonymised with place and party names being replaced with aliases and initials. To disclose such information would breach the basis of confidentiality and has the potential to cause complainant and witnesses to withhold information or curtail evidence to protect them from exposure in any future requests that may be made under EIR.
23. The Tribunal also accepts that it is possible that the knowledge that such disclosures might be made could prevent or dissuade members of the public from making a complaint in the first instance, diminishing a strong element of accountability and scrutiny which currently exists.
24. The Tribunal has seen the disputed information and agrees that it contains all the necessary elements requiring the protection of confidentiality in the circumstances claimed above. To release this information would be to discourage others to use the confidential process which is currently in place.



25. The Tribunal has conducted the balancing test required to be considered and performed in relation to Regulation 12 (1) (b) and – in particular – the wider public interest in maintaining the confidentiality provided for in s. 32 (2) (3) of the 1974 Act. That public interest would be undermined if the documents requested in this case were disclosed to the Appellant.
26. The Tribunal has no difficulty in deciding unanimously – on the balance of probabilities – that the public interest in maintaining the exception significantly outweighs the public interest in any disclosure of the disputed information.
27. There is no order as to costs.

[Signed on original]

**Robin Callender Smith**

Judge

23 March 2012