

Your ref:  
My ref: 3596628/Davies



Sent by email to: [request-504392-df60dce1@whatdotheyknow.com](mailto:request-504392-df60dce1@whatdotheyknow.com)

**Samantha Woolley**  
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8 November 2018

Dear Mr Davies

## **ENVIRONMENTAL INFORMATION REGULATIONS 2004 (EIR) – INTERNAL REVIEW**

Your request for an internal review has now been considered and I am able to provide you with the outcome. In undertaking this review, I have considered your request for information afresh and in doing so I have considered the following items of correspondence relevant to your request for review:

1. Your request for information received on 31 July 2018
2. The Council's email acknowledging your request dated 7 August 2018
3. The Council's responses to your request dated 29 August 2018 and 12 October 2018
4. Your request for an internal review received on 18 October 2018
5. The Council's email acknowledging your request for internal review dated 19 October 2018

I have also consulted the relevant officers, and considered the requirements of the Freedom of Information Act 2000 (FOI) and Environmental Information Regulations 2004 (EIR) regimes in so far as they apply to your request, including relevant guidance from the ICO. I have set out below a brief chronology and then shall deal with the points relevant to my review of this matter.

### **Chronology**

Your original request for information dated 31 July 2018 requested:

*1) A list of building, land and heritage assets disposed of (i.e. the council no longer owned the asset) by the council between 2014/2015 and the date on which you received this request, including:*

- Name of the asset
- What type of asset is it - building, land or heritage?
- Address (if applicable)
- Postcode (if applicable)



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- UPRN (if possible)
- The date it was disposed of
- The type of disposal (for example sale, community asset transfer, etc)
- The valuation of the asset at the point it was classified as an asset held for sale (both lower amount and fair value less, if possible)
- How much it was sold for? (if applicable)
- Who it was sold to?
- How it was disposed of (open market, auction, etc)

2) A list of building, land and heritage assets acquired by the council between 2014/2015 and the date on which you received this request, including:

- Name of the asset
- What type of asset is it - building, land or heritage?
- Address
- Postcode
- UPRN (if possible)
- The date it was acquired
- Who was it acquired from?
- How much did it cost?
- Is it now classed as an investment property?

3) How many land, building and heritage assets did the council have as of

a) the beginning of 2014/15

b) the date on which you received this request

The Freedom of Information Team acknowledged your request in a letter to you dated 7 August 2018 which detailed that your request would be considered under the Freedom of Information Act 2000.

The Freedom of Information Team responded in part to your request on 29 August 2018 (answering question 3 only) and informed you that we were still collating a response to questions 1 and 2.

The Freedom of Information Team then responded to your questions 1 and 2 by a further letter dated 12 October 2018. Although some of the information was provided, some information was withheld on the basis that its disclosure would, or would be likely to, prejudice the commercial interests of the Council or another person (section 43(2) of the FOI).

Your request for an internal review was received on 18 October 2018. It stated as follows:

*"I am appealing against the use of the section 43 exemption.*

*The council said that it had withheld information from the response because it was "commercially sensitive". Unhelpfully the council did not specify which exact information had been withheld using this exemption. As a result I am left to guess that this is referring to the following information:*

*Question 1:*

*The sale price*

*Who the asset was sold to*

*Question 2:*

*The purchase price  
Who the asset was bought from*

*The council claims this information is commercially sensitive. I strongly believe that it is not.*

*Firstly, these details refer to completed transactions. Public knowledge of these transactions - which I should stress involve the sale of publicly-owned assets and the use of public money - would in no way impact anyone's commercial interests.*

*Secondly, anyone who might be interested in details of individual asset sales or purchases is already able to obtain this information from the Land Registry. Is the council claiming that the land registry records should also be withheld because they are 'commercially sensitive'? Clearly it could not argue this and, as a result, there is no case for withholding this information.*

*Even if there were a case, the public interest in revealing this information strongly outweighs the public interest in withholding it (especially as the latter argument is so flimsy). We are in the middle of a period of unprecedented pressure on local government finance and, as such, there has never been a more important time for the public to have full oversight of how local authorities spend their money and manage the land and buildings that they own. Furthermore, this case has been strengthened since the introduction of flexible use of capital receipts in March 2016, as this gave councils the power to sell assets in order to fund certain revenue costs. People have a right to know what councils are doing in this area."*

The Freedom of Information Team acknowledged your request for an internal review on 19 October 2018.

### **The applicable information regime**

At the outset of my review I considered whether your request fell within the FOI or the EIR regimes (as the applicable exemptions from the requirement to disclose are different under each).

In my view this request should be dealt with as a request under the EIR because it concerns environmental information. "Environmental information" is broadly defined in the legislation and previous ICO decision notices confirm that information relating to land registration (including the ownership of land) should be dealt with under the EIR regime.

### **Response outside statutory timeframes**

I can see that the response to questions 1 and 2 was outside of the statutory deadline. I apologise on behalf of the Council for this delay. My understanding is that the delay was caused as a result of the time it took to collate the information and time pressures on the applicable teams collating this information.

### **Information withheld and application of FOI 43(2)**

I apologise that the letter to you dated 12 October 2018 did not identify which information had been withheld. Having reviewed your request and the information subsequently provided to you, I can see that the following information has been withheld:

- *Disposed assets:* Valuation of the asset when classified as held for sale

- *Disposed assets:* Sale price
- *Disposed assets:* Name of purchaser
- *Disposed assets:* How it was disposed
- *Acquired assets:* Seller
- *Acquired assets:* Purchase price
- *Acquired assets:* Whether the property is an investment property

The letter stated that this information had been withheld on the basis that it contained commercially sensitive information (FOI section 43(2)).

I have identified above that the request should have been dealt with under the EIR regime so the exemption under FOI is not the correct exemption. However, a similar exemption exists in the EIR under Regulation 12(5)(e). This permits public authorities to withhold information if disclosure would adversely affect "*the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest*".

Having considered this exemption, I agree with you that it was not an appropriate exemption to apply. The information withheld cannot be said to be commercially sensitive because (a) the applicable transactions have been completed and (b) the information in respect of ownership and purchase price is generally publically available in title documents (which can be obtained from the Land Registry).

### **Disclosure of information**

Please now find enclosed the remainder of the information requested (except information that is not held by the Council or has been withheld on basis of EIR Regulation 12(3) (see below)).

I can confirm that the following information has now been disclosed:

- *Disposed assets:* Sale price
- *Disposed assets:* Name of purchaser (except where this would disclose personal information about an individual)
- *Disposed assets:* How it was disposed (the "DISPOSAL TYPE" has been changed, but please note that we do not hold the information to the level of open market or auction etc.)
- *Acquired assets:* Seller
- *Acquired assets:* Purchase price

In relation to your question as to whether any of the acquired assets are now investment properties, the answer is no.

We have not provided information about the valuation of the disposed assets when classified as held for sale because this information it is not held by the Council (none of the disposal assets were classified as 'assets held for sale').

### **Application of EIR Regulation 12(3)**

Some information about the purchasers of disposed assets has been withheld from the attached information on the basis that it constitutes the personal data of individuals. The applicable exemption from the EIR is Regulation 12(3). This states:

*"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."*

EIR Regulation 13 states (as amended by the Data Protection Act 2018):

*"(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... [REMAINDER NOT TRANSCRIBED]"*

*"(2) The first condition is that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene any of the data protection principles... [REMAINDER NOT TRANSCRIBED]"*

This exemption is designed to protect the unlawful release of an individual's personal data. Having reviewed the applicable ICO guidance, my view is that the name of individuals can be validly withheld on this ground.

I have set out below the reasons as to why this exception is engaged by considering the following questions provided in ICO guidance.

**1. Is the information personal data, as defined by the DPA?**

The name of individuals clearly constitutes personal data relating to identifiable people. I am not aware that any of these individuals are deceased.

**2. If so, does it relate to the requester or someone else?**

The information relates to the individual owners of the properties.

**3. If it relates to someone else, would disclosure to a member of the public contravene any of Data Protection Act 2018 principles?**

The first principle of the DPA 2018 is that data should be processed lawfully, fairly and in a transparent manner. The most relevant element of the first principle is the principle of fairness. We can only disclose information to you if to do so would be fair to the relevant individuals.

Having considered the relevant guidance around the application of the fairness principle, my view is that disclosure of the information would be unfair as the applicable individuals are unlikely to expect that their names would be disclosed publically by the Council.

Although there is a general public interest in transparency, I cannot see how the disclosure of the specific names of the individuals that purchased the properties would be of any general benefit to the public.

**Conclusion**

You will find attached to this letter the remainder of the information requested by you (except the information not held by the Council and/or constituting personal data, as discussed above). I apologise that this information was not provided to you in the first instance.

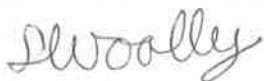
**Next Steps**

I do hope that this internal review addresses the issue you have raised.

If you are not satisfied with the outcome of the review you may wish to appeal to the ICO, at the following address:

Compliance Team (Complaints)  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Yours sincerely

A handwritten signature in cursive script, appearing to read 'S Woolley'.

**Samantha Woolley**  
Solicitor  
Warwickshire Legal Services