

CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting:	3 rd March 2015
Report of:	Head of Legal Services and Monitoring Officer
Subject/Title:	Notice of Motion – Open and Transparent on Lyme Green DIP Report
Portfolio Holder:	Councillor J P Findlow, Governance

1.0 Report Summary

- 1.1 The purpose of this report is to consider and respond to the following motion which was moved by Councillor S Corcoran and seconded by Councillor K Edwards at the Council meeting on 11th December 2014 and referred to Cabinet for consideration:

“The Council commits to being open and transparent and welcomes the comments of Judge Fiona Henderson in the information tribunal on the Lyme Green DIP report.”

2.0 Recommendations

- 2.1 That Cabinet notes the decision of the first tier tribunal and, in particular, that it supports the Council's actions in respect of the level of disclosure of the Lyme Green DIP Report.
- 2.2 That Cabinet notes the work being undertaken on the transparency agenda and confirms that this evidences the Council's commitment to putting residents first in ensuring openness and transparency to enable effective involvement and scrutiny by residents.

3.0 Reasons for Recommendations

- 3.1 As set out in the Background section of this report, the decision of the first tier tribunal evidences that the Council has disclosed as much information as it is able to do lawfully and fairly in respect of the Lyme Green DIP Report.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 N/A

6.0 Policy Implications

- 6.1 In light of the Legal Framework and the comments of the First Tier Tribunal in their decision of 12 November 2014, disclosure of any further information from the Lyme Green DIP Report is likely to be unlawful.

7.0 Implications for Rural Communities

- 7.1 None

8.0 Financial Implications

- 8.1 None

9.0 Legal Implications

- 9.1 None

10.0 Risk Management

- 10.1 Not applicable

11.0 Background and Options

- 11.1 This report addresses the issues raised by the motion referred to in paragraph 1.1.
- 11.2 The motion relates to the decision of the First Tier Tribunal of the General Regulatory Chamber (Information Rights) regarding the disclosure of a report prepared by the Designated Independent Person (DIP) appointed by the Council to investigate allegations of misconduct against Council Officers in relation to the development of a waste transfer site at Lyme Green, Macclesfield.
- 11.3 The history of this matter is as follows:
- 11.3.1 On 2 January 2013, the Council received the request for the disclosure of the DIP report. At that time, the Council was still considering that report, its implications and what should be done.
- 11.3.2 The Council considered the request under the Freedom of Information Act 2000 ('FOIA'). It refused to disclose the DIP report, relying on a number of exemptions under FOIA on grounds it contained personal data; was information provided in confidence; disclosure would prejudice free and frank exchange of views for the purpose for deliberation or would otherwise prejudice the conduct of public affairs; that it was subject to legal professional privilege and that disclosure would prejudice any investigation into improper conduct.

11.3.3 On 17 June 2013 a summary of the DIP report was published on the Council's website.

11.3.4 On 10 December 2013 the Commissioner provided his decision and rejected the Council's arguments in part. He ordered the Council to disclose a redacted version of the DIP report. The Council complied with his order.

11.3.4 An appeal was then lodged against the decision of the Information Commissioner to the First Tier Tribunal by way of a letter. The basis of the appeal was for disclosure of the redacted parts of the DIP report.

11.3.5 The Tribunal issued its Decision Notice on 12 November 2014 and dismissed the Appeal by unanimous decision. The decision was issued in the name of the Tribunal Judge, Fiona Henderson. The full decision can be found at:

[http://www.informationtribunal.gov.uk/DBFiles/Decision/i1419/Turner,%20Ben%20obo%20Macclesfield%20Express%20EA.2014.0009%20\(12.11.2014\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i1419/Turner,%20Ben%20obo%20Macclesfield%20Express%20EA.2014.0009%20(12.11.2014).pdf)

11.4 The Tribunal was clear in its decision that disclosure of the full DIP report would be unlawful and unfair. It was "...satisfied that the purpose of a DIP report is not to provide a comprehensive review of what went wrong and what processes need to be amended to prevent a similar situation in the future. That role was fulfilled by the Audit Report which was published in full whose purpose was 'to establish whether controls procedures or policies have been compromised and identify the steps that need to be taken to prevent a re-occurrence, and the action plan adopted by the Audit and Governance Committee.'" (Paragraph 35 of the Decision Notice).

11.5 The Tribunal further found that disclosure of the names of individuals would be a breach of the data protection principles.

11.6 The Tribunal therefore concluded that transparency could be achieved through the publication of the conclusions of the DIP Report (but not the recommendations) in summary form together with the publication of the Audit report and action plan.

11.7 It is clear from the decision of the Tribunal that the Council has undertaken all action that it can, within the confines of the legal framework, to be transparent and open in relation to the Lyme Green DIP Report.

11.8 The Council is strongly committed to working openly and transparently as evidenced by the inclusion in the Council's three year plan of this aspiration. To ensure that this is achieved the Chief Operating Officer has been designated as the Transparency Champion for the Council and there is currently a Transparency Project in place to ensure that Cheshire East is able to meet its own commitment to openness, as well

as to fulfil the requirements of legislation and the Local Government Transparency Code.

12.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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