



Neutral citation number: [2025] UKFTT 00226 (GRC)

Case Reference: FT/EA/2024/0145

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

**Heard by Cloud Video Platform
Heard on: 3 December 2024
Decision given on: 24 February 2025**

Before

**TRIBUNAL JUDGE ROPER
TRIBUNAL JUDGE MATON
TRIBUNAL MEMBER TAYLOR**

Between

JULIAN VEASY

Appellant

and

**(1) THE INFORMATION COMMISSIONER
(2) DEVON COUNTY COUNCIL**

Respondents

Representation:

For the Appellant: in person

For the Second Respondent: Richard Hanstock, Counsel

The First Respondent did not attend and was not represented.

Decision: The appeal is Dismissed.

REASONS

1. In this Decision the following terms have the following meanings:

Appeal:	the appeal by the Appellant against the Commissioner's Decision;
Commissioner:	the Information Commissioner;
Commissioner's Decision:	the Commissioner's decision dated 27 March 2024 which is the subject of this Appeal;
DCC:	Devon County Council;
Decision Notice:	the notice of the Commissioner's Decision;
DPA:	the Data Protection Act 2018;
EIR:	the Environmental Information Regulations 2004;
the First Request:	see paragraph 12;
Form 2:	the form known by this term and served on the Neighbouring Owners by DCC under s130A(6)(a) Highways Act 1980;
the Neighbouring Owners:	the owners of land adjoining the Appellant's land;
the Requests:	the requests for information made by the Appellant to DCC which are the subject of this Appeal;
the Requested Information:	the information which was the subject of the Requests;
the Second Request	see paragraph 12;
the Third Request	see paragraph 12.

2. This is an appeal by the Appellant against the Commissioner's Decision.

3. The hearing was conducted via the Cloud Video Platform. The Tribunal was satisfied that this was a fair and just way to conduct the hearing and to decide the Appeal. The Appellant attended, assisted by his wife, and DCC was represented by Counsel. The Commissioner declined to attend, but provided a

written Response to the Appeal, which the Appellant, DCC and the Tribunal had the opportunity to consider in advance of the hearing.

4. The Tribunal received a bundle of submissions and evidence in advance of the hearing. The Tribunal also received a closed bundle, containing the information which was the subject of the Second and Third Requests and unredacted copies of correspondence between DCC and the Commissioner, and which had been disclosed to the Appellant in redacted form. The closed bundle was not disclosed to the Appellant, and had been the subject of an application by the Commissioner to withhold this material from the Appellant on the basis that disclosing the material would defeat the purpose of the Appeal. The Tribunal was content to proceed on the basis that this material be withheld from the Appellant on that basis.
5. During the hearing, the Appellant gave evidence regarding signs which he said had been erected by the Neighbouring Owners, and which might be relevant to the Appeal, although no specific evidence of the form and content of the signs was available to the Panel. These signs and their relevance are discussed at paragraphs 56 to 57 below. Having heard representations from the parties as to whether further evidence on these matters should be provided after the hearing, Judge Roper made case management directions dated 5 December 2024 requiring the Appellant to submit further evidence as to these signs and inviting the Commissioner and DCC to make further submissions on any such evidence.
6. Further to those directions the Tribunal received further evidence from the Appellant dated 14 December 2024, and submissions from Counsel for DCC in response to that further evidence, dated 20 December 2024. No further submissions were received from the Commissioner, although the Tribunal saw an email dated 16 December 2024 which indicated that the Commissioner had received the Appellant's further evidence.
7. The Panel met on 10 January 2025 to consider the further evidence and submissions alongside the other evidence and submissions in the case.
8. The Tribunal is grateful to Counsel and to the parties for their time and assistance in providing submissions and evidence.

Background

9. The Appellant owns a property in the administrative area of DCC.
10. There was some discussion between the parties regarding whether or not this matter had arisen out of a "dispute" between the Appellant on the one hand

and the Neighbouring Owners on the other. Whether this characterisation is accurate is not, in the Tribunal's view, relevant for the purposes of this Appeal and the Tribunal makes no finding on it. This aspect is discussed further at paragraph 44 below.

11. On 18 September 2023 and 21 September 2023, the Appellant made the Requests. The Tribunal was not provided with copies of the Requests. DCC's response and the decision notice recite the Requests using slightly different wording. The Appellant confirmed at the hearing that the wording in the Decision Notice was an accurate reflection of the Requests.

12. The Requests were as follows:

- a. *"Firstly, I would like to know the costs, paid by the council after the beginning of February 2023, to remove trees on the part of Bere Ferrers footpath 2 on the land owned by [the Neighbouring Owners]"* (the "First Request");
- b. *"Secondly, I would like to know if the £500 informal consultation fee for a diversion proposal was born by the council or by [the Neighbouring Owners]"* (the "Second Request");
- c. *"I require: a copy of form to that was sent (to [the Neighbouring Owners]) as a response to Form 1 that I served on Devon County Council in January 2023."* (the "Third Request").

13. DCC responded on 11 October 2023, refusing all of the Requests, stating that:

- a. information in the First Request had previously been provided to the Appellant;
- b. information in the Second Request was exempt from disclosure by reference to regulation 13 EIR; and
- c. the Third Request was being dealt with under a separate internal review following a complaint by the Appellant.

14. On the same day the Appellant requested an internal review by DCC, and supplemented the First and Second Requests.

15. On 20 October 2023 DCC responded to the Appellant regarding the internal review:

- a. providing updated information relating to the First Request;
- b. maintaining its response regarding the Second Request;

- c. maintaining its response regarding the Third Request and withholding the information by reference to regulation 13 EIR.

16. On the same day, the Appellant complained to the Commissioner.

17. The Commissioner carried out an investigation and issued the Decision Notice on 27 March 2024.

18. The Appellant appealed to the Tribunal.

The Appeal

19. The Appellant appeals against the Decision Notice. By the time of the hearing further discussion had taken place regarding the detail of the Requests.

20. In his Grounds of Appeal dated 9 April 2024 the Appellant referred to an updated request to DCC regarding the costs of tree felling, which he says was submitted on 2 November 2023 regarding “any documentation that justifies the tree felling costs on the Bere Ferrers footpath 2, from February 2023”. The Decision Notice, and this Appeal, do not relate to this updated request.

21. In his Reply dated 7 June 2024 to the Commissioner’s Response to the Appeal, the Appellant stated that he wished to withdraw his appeal in relation to the First Request. Accordingly, the Tribunal has not considered the Commissioner’s Decision insofar as it relates to the First Request.

22. In his Grounds of Appeal, the Appellant stated that the information within the Second Request had already been disclosed to the public and did not need to be dealt with as part of his complaint. In his Reply he requested that the Tribunal allow the Appeal in relation to the part of his complaint relating to the Second Request. However, at the hearing the Appellant agreed that, because the relevant information had been disclosed publicly, this did not need to be dealt with by the Tribunal.

23. Accordingly, the Tribunal has considered the Appeal only in relation to the Third Request.

Relevant law

Information law

24. The Requests were made pursuant to the EIR. There was no dispute that this was the correct regime. The Tribunal agrees that the EIR is correct regime as, taken together, the Requested Information falls within limbs (a), (b) and (c) of

the definition of “environmental information” in regulation 2 EIR (see paragraph 27 below).

25. At the outset of the hearing, the Tribunal gave Mr Hanstock the opportunity to make submissions on any exemptions to the requirement to disclose which DCC might wish to rely on in addition to those referred to in the Decision Notice. None were raised. The Tribunal has not identified any other relevant exemptions in its deliberations.

26. Regulation 5 EIR provides as follows:

Duty to make available environmental information on request

5.—(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.

(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

27. Regulation 2 EIR defines terms used in the EIR. It provides that:

“environmental information” [means] any information in written, visual, aural, electronic or any other material form on—

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

[...]

28. The general disclosure requirement in regulation 5 is subject to a number of exemptions. So far as material for this Appeal, regulation 13 EIR provides for an exemption as follows:

13. (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

(b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded.

[...]

29. “Personal data” in the EIR has the same meaning as in Parts 5 to 7 DPA. Section 3(2) DPA provides that “personal data” means “any information relating to an identified or identifiable living individual” to which Part 2, Part 3 or Part 4 DPA applies.

30. “The data protection principles” in the EIR means the principles set out in Article 5 of the United Kingdom General Data Protection Regulation and in sections 34(1) and 85(1) DPA. The principle directly relevant in this Appeal is the first data protection principle, the requirement that the processing of personal data be lawful, fair and transparent. That principle is expanded in s86 and Schedule 9 DPA.

31. The processing of personal data is lawful only if and to the extent that at least one of the conditions in Schedule 9 DPA is met. The only such condition potentially relevant for the purposes of this Appeal is that in paragraph 6 of Schedule 9, that the processing is necessary for the purposes of legitimate interests pursued by a third party or parties to whom the data is disclosed.

Obstruction of highways

32. The Third Request relates to Form 2, a form produced by local highway authorities, such as DCC, under a statutory process provided for in s130A Highways Act 1980.

33. So far as material, s130A provides as follows:

130A Notices to enforce duty regarding public paths.

(1) Any person who alleges, as respects any highway for which a local highway authority other than an inner London authority are the highway authority—

(a) that the highway falls within subsection (2) below, and

(b) that it is obstructed by an obstruction to which this section applies,

may serve on the highway authority notice requesting them to secure the removal of the obstruction from the highway.

(2) A highway is within this subsection if it is—

(a) a footpath, bridleway, or restricted byway, or

(b) a way shown in a definitive map and statement as a restricted byway or a byway open to all traffic.

[...]

(5) A person serving a notice under subsection (1) above must include in the notice the name and address, if known to him, of any person who it appears to him may be for the time being responsible for the obstruction.

(6) A highway authority on whom a notice under subsection (1) above is served shall, within one month from the date of service of the notice, serve—

(a) on every person whose name and address is, pursuant to subsection (5) above, included in the notice and, so far as reasonably practicable, on every other person who it appears to them may be for the time being responsible for the obstruction, a notice informing that person that a notice under subsection (1) above has been served in relation to the obstruction and stating what, if any, action the authority propose to take, and

(b) on the person who served the notice under subsection (1) above, a notice containing the name and address of each person on whom notice is served under paragraph (a) above and stating what, if any, action the authority propose to take in relation to the obstruction.

(7) For the purposes of this section the persons for the time being responsible for an obstruction include the owner and any other person who for the time being—

(a) has possession or control of it, or

(b) may be required to remove it.

(8) A notice under subsection (1) or (6) above shall be in such form and contain such information as may be prescribed by regulations made by the Secretary of State.

34. A notice under s130A(1) is referred to as “Form 1”; a notice under s130A(6)(a) is “Form 2”; and a notice under s130A(6)(b) is “Form 3”. The form and content of these notices is prescribed by the Removal of Obstructions from Highways (Notices etc.) (England) Regulations 2004.

Discussion

Is Form 2 personal data of the Neighbouring Owners?

35. DCC and the Commissioner argue that the entirety of Form 2 constitutes personal data of the Neighbouring Owners. The Appellant disputes this.

36. There is no dispute that the names and contact information of the Neighbouring Owners and of the DCC officer who prepared the form, which are included in Form 2, are personal data. The Appellant has indicated that he would be content with disclosure of Form 2 with redactions to remove such information.

37. The Decision Notice provides little reasoning for the Commissioner’s conclusion that the entirety of Form 2 constitutes personal data. In his Response to the Appeal the Commissioner submits that it would be possible for third parties to identify the Neighbouring Owners from the data in Form 2 and other available information, and that they would learn something new from the content of Form 2.

38. The Appellant, whom the Tribunal appreciates was not legally represented in the Appeal, does not provide a legal argument for the entire Form 2 not being personal data.

39. Having considered the parties’ submissions the Tribunal finds that Form 2 does constitute personal data of the Neighbouring Owners.

40. The content of the form is, unarguably, “information”, and in the Tribunal’s view it is information which relates to identifiable individuals, i.e. the Neighbouring Owners. That information includes that Form 2 was addressed to the Neighbouring Owners, on a particular date, and that it gave them particular information about an alleged obstruction. All of this information relates to living individuals and so is personal data. The same principles would apply if this were a letter written by DCC to the Neighbouring Owners rather than a statutory form.

Would disclosure breach the data protection principles?

41. As noted above, the Tribunal considers that the only data protection principle relevant in this Appeal is the first principle. This is the principle on which the Commissioner focusses in the Decision Notice, and no party to this Appeal has submitted that any other principle ought to be considered.

42. To determine whether disclosure of Form 2 would breach the first data protection principle the Tribunal must consider whether disclosure would be necessary for the purposes of legitimate interests pursued by the Appellant. In *South Lanarkshire Council v Scottish Information Commissioner* [2013] UKSC 55 ("*South Lanarkshire*"), the UK Supreme Court stated at [18] in the context of the predecessor provision, condition 6 in Schedule 2 to the Data Protection Act 1998, that this test involved three steps:

- a. Is the data controller or the third party or parties to whom the data are disclosed pursuing a legitimate interest or interests?
- b. Is the processing involved necessary for the purposes of those interests?
- c. Is the processing unwarranted in this case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject?

Would disclosure further a legitimate interest of the Appellant?

43. The Appellant says that his interest in the disclosure of Form 2 is in determining whether DCC has complied with the law regarding the service of Form 2 and the process for dealing with the alleged highway obstruction more generally. In the Tribunal's view this is plainly capable of being a legitimate interest.

44. The Appellant also has a private interest in resolving the issue of an alleged obstruction on a footpath near to land which he owns. In the Decision Notice the Commissioner found that the Appellant had a legitimate interest, "regarding how [DCC] is acting in respect to a dispute relating to the public footpath". The Appellant disagrees that there was a "dispute" regarding this between him and the Neighbouring Owners. In the Tribunal's view the question of the existence of a dispute is academic in the context of this Appeal, as the Appellant's interest in the route of the path does not depend on whether or not he and his neighbours agree on the matter, and the Tribunal makes no finding on it. Whether or not there is a "dispute", the Appellant can be said to have an interest in the question of the routes by which others are lawfully permitted to, and do as a matter of fact, walk in the vicinity of his land.

45. The Tribunal finds that each of these is a legitimate interest of the Appellant.

Is disclosure necessary?

46. The Tribunal then needs to consider whether disclosure of Form 2 would be necessary to further either or both of these interests.
47. In the Decision Notice the Commissioner states that “[n]ecessary’ means more than desirable but less than indispensable or absolutely necessary”. In *South Lanarkshire* the UK Supreme Court held at [5] that “‘necessary’ means ‘reasonably’ rather than absolutely or strictly necessary”, and said that “in ordinary language we would understand that a measure would not be necessary if the legitimate aim could be achieved by something less”.
48. Is disclosure of Form 2 to the Appellant necessary for the purposes of ensuring transparency regarding DCC’s compliance with the law? In the Tribunal’s view the disclosure of Form 2 is not necessary for this purpose, as there are other means by which he could pursue the same interests, which would be less intrusive to the privacy of the Neighbouring Owners.
49. Other mechanisms exist for ensuring compliance by local authorities with their legal duties. The Appellant has complained to the Local Government and Social Care Ombudsman regarding its handling of the DCC’s response to his complaints to it regarding the footpath. The Tribunal has seen a report of the Ombudsman dated 20 December 2023, which finds no fault on the part of DCC, although it does not deal with the service of notices regarding obstructions.
50. If the Appellant is concerned that DCC has failed to comply with its statutory obligations, it is open to him to seek a judicial review.
51. It is relevant here to address the point made by the Commissioner that disclosure of Form 2 under EIR would be to the world at large. The Appellant takes issue with this as he has no intention of further disclosing the information. The relevance of this point is not what the recipient of information intends to do, but the absence of a restriction on the recipient’s use of the information following disclosure under EIR – with no such restrictions, disclosure under EIR is in legal terms made to the world. Had it disclosed Form 2 in response to the Appellant’s request, DCC would have done so free of legal restrictions on its use. In the context of the parallel provisions of the Freedom of Information Act 2000, the Upper Tribunal has held that it is important to take this into account in consideration of the “necessary” test (see *GR-N v Information Commissioner and others* [2015] UKUT 0449 (AAC), cited in *Information Commissioner v Halpin (GIA)* [2019] UKUT 29 (AAC) at [20]).

52. Disclosure as part of judicial proceedings, unlike disclosure under EIR, would not be unconstrained disclosure to the world at large.

53. Is disclosure necessary for the purposes of resolving the alleged obstruction? The Tribunal finds that disclosure of Form 2 would not meaningfully advance this. By s130A(6)(a) Highways Act 1980, Form 2 is to inform recipients that a Form 1 has been served in relation to an obstruction and what, if any, action the relevant authority proposes to take. This information does not in itself assist with the removal of any obstruction. As a recipient of a Form 3, the Appellant has had notice of the action which DCC proposes to take, which is the same information which is required to be included in Form 2.

54. The Tribunal finds that disclosure of Form 2 under the Third Request is not necessary (within the meaning outlined above) for the purposes of a legitimate interest of the Appellant.

Would disclosure be unwarranted by reason of prejudice to the interests of the data subject?

55. The finding that disclosure of Form 2 would not be necessary is sufficient to dismiss the Appeal. For completeness, this Decision also addresses the additional evidence submitted following the hearing, to the extent relevant to the question whether, if disclosure had been necessary, it would be unwarranted by reason of prejudice to the interests of the Neighbouring Owners.

56. As noted above, the Tribunal directed further evidence be provided regarding signs which the Appellant said had been erected by the Neighbouring Owners giving their names and personal information. The Tribunal has seen pictures of two signs, which indicate that the route of the path is "under discussion" with DCC; that those who have erected the signs have plans for the area; and that they request that walkers take certain measures to help with this, including using an alternative route. The signs give the first names of two individuals and an email address which does not use the name of any individuals.

57. These signs do not, in the view of the Tribunal, alter the balance of interests in favour of the Appellant. Had the signs provided fuller information they might have indicated that the Neighbouring Owners had in some way given up their right to expect that correspondence between them and DCC on the matter, including Form 2, would remain private, but this did not arise.

Conclusion and decision

58. Having considered the evidence and submissions of the parties, the Tribunal is not persuaded that the Commissioner's Decision was wrong, and accordingly dismisses the Appeal.

Signed

Date:

Tribunal Judge Maton

10 February 2025