



Freedom of Information Act 2000 (Section 50)

Environmental Information Regulations 2004

Decision Notice

Dated 21 August 2006

Public Authority: Worcestershire County Council

**Address: County Hall
Spetchley Road
Worcester
WR5 2NP**

Summary Decision and Action Required

The Commissioner's decision in this matter is that the public authority has dealt with the complainant's request in accordance with Part 2 of the Regulations. No remedial action is required.

Freedom of Information Act 2000 (the 'Act'), Environmental Information Regulations 2004 (the 'Regulations') – Application for a Decision and the Duty of the Commissioner

The Regulations were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the Information Commissioner (the Commissioner) shall enforce the Regulations. In effect, the enforcement provisions of Part 4 of the Act are imported into the Regulations. The information requested by the complainant is environmental information as defined in regulation 2 of the Environmental Information Regulations 2004.

The Information Commissioner has received an application for a decision whether, in any specified respect, the complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part 2 of the Environmental Information Regulations 2004.

Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

The Commissioner is under a duty to make a decision.



The Commissioner shall notify the complainant either that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

The Complaint

On 11 January 2005, the complainant telephoned Worcestershire County Council and requested the following information.

“A copy of a letter from [Mr X], sent to Highways Partnership, Worcestershire County Council, c/o Wychavon District Council, Pershore in June/July 2004”.

The public authority replied in writing on 31 January 2005 and refused to provide the information requested citing the exception set out in regulation 13. The complainant telephoned the public authority on 3 February 2005 and asked the authority to reconsider its decision. The public authority responded in writing on 24 February 2005, again citing regulation 13 and refusing to release the information requested.

Relevant Statutory Obligations under the Regulations

Regulation 5(1) provides that –

“...a public authority that holds environmental information shall make it available on request.”

Regulation 13 - Personal data provides that -

13. - (1) To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects ... the ... condition below is satisfied, a public authority shall not disclose the personal data.

(2) The ... condition is –

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene –

- (i) any of the data protection principles; or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress)
- and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it; and



(b) in any other case, 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 if the exemptions in section 33A(1) of the Data Protection Act 1998[7] (which relate to manual data held by public authorities) were disregarded.

Review of the case

The complainant originally contacted the Commissioner on 7 February 2005. Various communications between the complainant, the Commissioner and the public authority followed in order to clear up confusion over whether the public authority's complaints procedure had been exhausted and to establish the validity of the complaint.

On 2 March 2006, the Commissioner wrote to the public authority and asked it to send a copy of the withheld information. The authority replied in a letter dated 7 March 2006 enclosing the letter in question.

The authority also clarified its approach to handling the request. As the information requested was, in its view, the personal information of a third party, [Mr X]; the authority wanted to ask whether he would have any objections to his letter being disclosed. However, the authority was also concerned that the identity of the requester (complainant) would be obvious to [Mr X]. Therefore, the authority first asked the complainant if they would be content for his name to be revealed. The complainant refused to give the authority permission to disclose his name in any communication with [Mr X]. The authority then felt that it was not able to consult with [Mr X] to seek his permission for release.

Although it is a requirement of neither the Data Protection nor the Freedom of information Act that a public authority consults a data subject before the release of his or her information to a third party, the Commissioner recognises that, in this particular case where [Mr X] would be likely to be able to deduce the name of the complainant from the nature of the request and where the focus of that request was on information relating to Mr X, it was not unreasonable for the public authority to wish to proceed with caution.

At both the refusal and reconsideration stages of the process the authority felt that the information requested, namely a letter from [Mr X] to the Highways Partnership, Worcestershire County Council, constituted the personal information of [Mr X], release of which would breach the Data Protection Principles as set out in Schedule 1 of the Data Protection Act 1998.

The Commissioner made enquiries by telephone of the public authority as to why it considered that the information in the letter constituted personal data and as to which of the data protection principles it considered would be contravened by disclosure.

The authority responded on 1 June 2006 clarifying that the information took the form of unstructured manual information, that is information falling with the definition at section 1(1)(e) of the Data Protection Act 1998. The information consisted of an indication of the views and opinions of a person who could be identified from the information.



The complainant had argued that as the identity of the author was already known, the letter could not constitute personal information. In the Commissioner's view the fact that some of the information was known to the complainant (i.e. the name of Mr X) has no bearing upon whether that information constitutes personal data. In any event it is clear from the request that the other personal data contained in the letter was known neither to the complainant nor to other members of the public.

The authority also stated that release of the letter, in its view, would breach the first Data Protection Principle, that personal data 'shall be processed fairly and lawfully'. Guidance published by the Information Commissioner, 'Freedom of Information Act 2000, [Awareness Guidance No 1](#)', states that when considering fairness, the following questions should be taken into account.

- 'Would the disclosure cause unnecessary or unjustified distress or damage to the person who the information is about?
- Would the third party expect that his or her information might be disclosed to others?
- Had the person been led to believe that his or her information would be kept secret?
- Has the third party expressly refused consent to disclosure of the information? '

The authority verified that when it receives letters from members of the public it does not inform the sender that the letter will remain confidential or that it may be released, but believes that there is an expectation of confidentiality.

The letter constitutes the author's personal information, may cause unnecessary or unjustified distress or damage to the author if released, the author had a reasonable expectation of confidence and the authority did not feel able to ask the author for permission to release. Therefore, the Commissioner is satisfied that the information requested fits the definition of personal data and that its release would contravene the first Data Protection Principle.

The Commissioner considered whether the letter could be redacted to exclude the personal information, and the remaining information released. However, on examination, all aspects of the letter were inextricably linked with the personal information of the author and redaction was not thought possible.

Conclusion

The Commissioner is in agreement with Worcestershire County Council that the requested information should be withheld and concludes that the authority complied with the provisions of the Environmental Information Regulations and acted properly in applying regulation 13 and refusing access.



The Commissioner's Decision

The Commissioner's decision in this matter is that the public authority has dealt with the complainant's request in accordance with the requirements of Part 2 of the Environmental Information Regulations 2004.

Action Required

The Commissioner does not require any action to be taken in respect of this complaint.

Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 21st day of August 2006

Signed

Phil Boyd
Assistant Commissioner

Information Commissioner
Wycliffe House
Water Lane

Reference: FER0106205



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and protecting your personal information

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