

**Freedom of Information Act 2000 (Section 50)  
Environmental Information Regulations 2004**

**Decision Notice**

**Date: 30 April 2009**

**Public Authority:** Cardiff County Council  
**Address:** County Hall  
Cardiff  
CF10 4UW

**Summary**

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The complainant made a request for a petition supporting a proposed footpath submitted to Cardiff County Council ('the Council') by a local Councillor. This was refused under section 40 of the Act on the grounds that the information requested constituted personal data of which the applicant was not the subject, and that disclosure of the information would breach one of the data protection principles. The Commissioner's decision is that the information requested is 'environmental information' within the definition in Regulation 1(1) of the EIR. The Commissioner is satisfied that regulation 13 (which relates to third party personal data) is engaged in respect of the information, and that the public interest in maintaining the exception outweighs the public interest in disclosing the information. However the Commissioner further finds that the Council was in breach of regulation 14(3)(a) in that it failed to apply an exception under the EIR and regulation 11(4) in that the Council failed to provide the outcome of its internal review within 40 working days.

**The Commissioner's Role**

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1. As the Commissioner considers the information to be environmental in nature, he has made a decision as to whether the request was dealt with in accordance with the requirements of Part 2 of the Environmental Information Regulations (the 'EIR'). The EIR came into force on 1 January 2005, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner ('the Commissioner'). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 ('the Act') are imported into the EIR.

## The Request

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2. On 12 December 2007 the complainant wrote to the Council stating:

*"I have been told that Cardiff Council has a petition supporting the proposed footpath at Mill Road. If this is so, please would you provide me with a copy of it....."*

3. On 14 December 2007 the Council replied in the following terms:

*"For your information a 304 signature petition that was raised by a resident was presented to Council on 22<sup>nd</sup> November 2007 on their behalf by Councillor David Walker. The text of the petition itself reads:-*

*PETITION TO CARDIFF COUNTY COUNCIL*

*I welcome the new proposal by Cardiff Traffic Engineers to construct a footway on Mill Road, Lisvane, which offers a safe route along the road for pedestrians whilst protecting trees and hedgerows. I call upon Cardiff County Council to bring this project forward for completion at the start of the 2008/09 financial year."*

4. The Council declined to provide any further information to the complainant on the following grounds:

*"...as the petition contains bibliographical [sic] details it would be a breach of the Data Protection Act to provide you with a copy of the original document."*

5. The complainant requested an internal review of this decision in his email dated 18 December 2007.
6. On 16 March 2008 the complainant contacted the Commissioner because he had not yet received a decision from the Council following his request for an internal review.
7. The Commissioner contacted the Council on 22 April 2008 by telephone and in writing on 23 April 2008, highlighting the Commissioner's Awareness Guidance on the timescales for an internal review decision.
8. The Council wrote to the complainant on 8 May 2008 with the outcome of its review. Although it accepted that there had been some procedural defects in its handling of the request, it upheld the original decision stating that the information was exempt under section 40(2) of the Freedom of Information Act:

*"...because the petition is personal data as defined in the Data Protection Act 1998 and the Council considers that disclosure would contravene the data protection principles and in particular principle 1 (fair and lawful disclosure) because no condition in schedule 2 of the DPA had been satisfied, and principle 2 (disclosure would be incompatible with the purpose for which information is held)".*

## The Investigation

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### Scope of the case

9. On 8 May 2008 the complainant confirmed to the Commissioner that he wished to progress his complaint concerning the Council's decision to withhold the requested information (namely, the petition).

### Chronology

10. On 3 October 2008 the Commissioner wrote to the Council requesting a further explanation of its application of the exemption in section 40(2) and advised the Council that it considered the information might be environmental information. He invited the Council to comment.
11. On 7 November the Council responded to the Commissioner's letter. It stated that it did not consider the information to be environmental as:

*"...it does not contain any environmental information.....Whilst the petition taken as a whole may possibly allude to an environmental issue, that information itself has not been withheld."*

## Analysis

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### Is the requested information environmental?

12. The Commissioner has first considered whether the information falls within the definition of environmental information as set out in Regulation 2(1) of the EIR.
13. The Commissioner considers that the requested information falls within the definition of environmental information as set out at Regulation 2 of the EIR (see the legal annex for full details). Regulation 2(1)(c) provides that environmental information includes:

"(c) measures (including administrative measures), such as policies, 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;"
14. Although the petition contains names and addresses which themselves may not be environmental information, the Commissioner is of the view that a proposal about the future of a footpath is a measure affecting or likely to affect the elements of the environment, in particular the landscape as set out in Regulation 2(1)(a). When the measure under consideration is something that is proposed for the future the relevant consideration will be whether, if the measure were to go ahead, it would be likely to affect the elements and factors referred to in

Regulation 2(1)(a) & (b). The likelihood of a plan actually coming to fruition is not a relevant consideration. Therefore the Commissioner is satisfied that the petition, as a piece of information, does constitute environmental information and the Council ought to have considered the request under the EIR instead of the Act.

15. In reaching this view, the Commissioner is mindful of his recent Decision Notice<sup>1</sup> in which he determined that information relating to the potential sites of proposed new prisons is information on an activity or a plan which is likely to affect the elements of the environment referred to in Regulation 2(1)(a), in particular the land and the landscape.
16. The Commissioner notes that the Council considered that the requested information was exempt by virtue of section 40(2) of the Act. Since the information is environmental the Commissioner finds that section 40(2) was incorrectly applied and that the Council breached Regulation 14 in failing to apply an exception under the EIR.
17. However, the Commissioner notes that the provisions of section 40(2) are mirrored by Regulation 13 (full details are provided in the legal annex). Therefore the Commissioner has considered the Council's arguments in relation to section 40(2) in the context of Regulation 13.

### Exceptions – Regulation 13

#### Does the information requested constitute 'personal data'?

18. The exception at Regulation 13 applies to personal information relating to third parties, i.e. people other than the applicant. The Council claimed to the Commissioner that the requested information did constitute personal data as it contained the names and addresses of a number of individuals.
19. The definition of personal data is set out at section 1(1) of the Data Protection Act 1998 (the DPA) as follows:
 

*“Personal data’ means data which relate to a living individual who can be identified –*

*(a) from those data, or*

*(b) from those data and other information which is in the possession of, or likely to come into possession of, the data controller*

*and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;”*
20. The Commissioner is satisfied that the names and addresses of individuals do relate to those individuals. Further the Commissioner accepts that individuals can be identified from their name and address. The Commissioner notes the Information Tribunal's decision *England & L B of Bexley*<sup>2</sup> where the Tribunal

<sup>1</sup> Reference: FS50224851

<sup>2</sup> Appeal no EA/2006/0060

determined that knowing the address of a property makes it likely that the owner will be found, and its subsequent decision that addresses constitute 'personal data'.

21. The Commissioner is therefore satisfied that the names and addresses of signatories do constitute personal data as defined by the DPA.

### **Would disclosure contravene any of the data protection principles?**

22. The exception at Regulation 13 is engaged if disclosure of the personal information would breach any of the data protection principles, or section 10 of the DPA.
23. The Council has argued that disclosure of the signatories' details would breach the first data protection principle, which has two components:
1. Personal data shall be processed fairly and lawfully and
  2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met

### **Is the processing fair?**

24. The Council has argued that the disclosure of the information would be unfair because the signatories to the petition had not been given notice that their personal data could be disclosed to the public. Therefore the Council was of the view that disclosure would breach the first data protection principle.
25. In considering whether disclosure of the signatories would be unfair, the Commissioner has taken into consideration the following factors:
- The reasonable expectations of the individuals as to what would happen to their personal data;
  - Whether disclosure would cause any unnecessary or unjustified damage or distress;
26. The Commissioner is mindful of the Tribunal's decision in *House of Commons v ICO & Norman Baker MP*<sup>3</sup>, that the fact that a data subject was not told of a potential disclosure at the time the public authority obtained the data from them does not necessarily breach the fair processing requirements. Secondly, the fact that a data subject was not told of a potential disclosure does not render the processing unfair.
27. The Commissioner notes that generally objectors to any proposed planning application can have their details made available for public viewing. However, the purpose of the petition in this case was to encourage the Council to bring forward the plans to create a footpath. The Commissioner has not been made aware of

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<sup>3</sup> Appeal no's EA2006/0015 and 0016

any formal planning applications concerning Mill Road and the petition therefore can not be said to be a formal objection to a planning application.

28. In the circumstances of this case the Commissioner is accordingly satisfied that the petition is a private attempt by individuals to influence policy and that the signatories would have an expectation of privacy. This is further evidenced by the fact that the petition was organised privately by a constituent and submitted by a local Councillor on behalf of that constituent.
29. Release of the personal information in this case may also lead to the individuals being contacted, which may be regarded as an unwarranted intrusion into their private lives. The Commissioner is not convinced by arguments that the petition should be disclosed as the personal data has been seen by other signatories to the petition, as the signatories would not have expected their petition to be made available to the wider public once it had been submitted to the Council.
30. The Commissioner has also considered Article 8 (Right to respect for family life, home and correspondence) of the European Convention on Human Rights [1950] ('the Convention'). The Human Rights Act 1998 provides the framework for incorporation of the Convention in domestic law providing that wherever possible legislation should be read in conjunction with and given effect in a way which is compatible with Convention rights.
31. However, Article 8(2) of the Convention recognises that there are occasions when an intrusion into private and family life may be justified. One of these is where the intrusion is necessary to protect the rights and freedoms of others. In the circumstances of this case, the Commissioner does not consider the intrusion to be justified.
32. The Commissioner concludes therefore that the signatories would not have reasonably expected their details to be shared with the wider public. The Commissioner accordingly does not consider that the requirement for fairness would be met if the information were to be disclosed. Disclosure of the information would therefore not be fair, and would contravene the first data protection principle.

## The Decision

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33. The Commissioner finds that the exception provided in Regulation 13(1) of the EIR is engaged in relation to the requested information, and the Council was therefore correct to withhold that information.
34. However, the Commissioner finds that the Council ought to have considered the request under the EIR rather than the Act. In failing to deal with the request under the correct access regime, the Commissioner finds that the Council was in breach of Regulation 14(3) of the EIR.

35. The Commissioner also finds that the Council breached regulation 11(4) in failing to provide the complainant with the outcome of its internal review within 40 working days.

### **Steps Required**

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36. The Commissioner requires no steps to be taken.

### **Other matters**

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37. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern. The Commissioner notes that in the handling of this request the Council considered the complainant's reason for requesting the information. The Commissioner is of the view that, when addressing requests for information under both the Act and the EIR, disclosure under the regimes is to be regarded as a disclosure to the public at large. Public authorities should not take into consideration either the identity or perceived motive of the applicant.

## Right of Appeal

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Either party has the right to appeal against this Decision Notice to the Information 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@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website. Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 30th day of April 2009**

**Signed .....**

**Anne Jones  
Assistant Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**



## Legal Annex: Relevant statutory obligations

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### Freedom of Information Act 2000

**Section 40** provides that –

- (1). Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”
- (2). Any information to which a request for information relates is also exempt information if-
  - (a) it constitutes personal data which do not fall within subsection (1), and
  - (b) either the first or the second condition below is satisfied.”
- (3).The first 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 this Act would contravene-
    - (i) any of the data protection principles...

### Environmental Information Regulations 2004

**Regulation 2(1)** provides that:

“In these Regulations –

environmental information” has the same meaning as in Article 2(1) of the Directive, namely 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;

**Regulation 11** provides that:

“(1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant’s request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

(2) Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with that requirement.

(3) The public authority shall on receipt of the representations and free of charge –

- (a) consider them and any supporting evidence produced by the applicant; and
- (b) decide if it has complied with the requirement.

(4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.

**Regulation 13** provides that:

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

(2) The first condition is-

- (a) in a case where the information falls within any of the 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..”

**Regulation 14** provides:

(1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

(2) The refusal shall specify the reasons not to disclose the information requested, including –

- (a) any exception relied on under regulations 12(4), 12(5) or 13...”

## **European Convention on Human Rights [1950]**

**Article 8** provides that -

“(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”