

## Environmental Information Regulations 2004

### Decision Notice

Date: 14 September 2009

**Public Authority:** Norfolk County Council  
**Address:** County Hall  
Martineau Lane  
Norwich  
NR1 2DH

#### Summary

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The complainant requested information from Norfolk County Council (“the Council”) regarding landowners of three proposed mineral extraction sites. The Council refused to supply the requested information citing Regulation 12(5)(f) and Regulation 13 of the Environmental Information Regulations. The Commissioner has reviewed the requested information and has decided that the Council correctly applied Regulation 13 in this case. In view of this, the Commissioner did not consider the Council’s application of Regulation 12(5)(f).

#### The Commissioner’s Role

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1. The Environmental Information Regulations (EIR) 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 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.

#### Background

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2. The request was made by two complainants. However, one complainant agreed to withdraw the complaint in response to the Commissioner’s letter of 27 July 2009. That letter requested that the request be withdrawn due to the finding that Regulation 13 applies in this case together with the fact that the proposed mineral extraction sites MIN103 and MIN106 have been withdrawn from consideration for inclusion in the Minerals Site Allocations Development Plan and the knowledge imparted to the complainants that the landowners in question are individuals.

## The Request

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3. On 21 April 2008 the complainants made the following request for information:

“In connection with the above site proposals (Mineral extraction sites and landfill MIN97/WAS59, MIN106, MIN103, MIN107) we have information for MIN97/WAS59 about the landowner on whose behalf the submission has been made, namely the Forestry Commission. We do not, however, have this information for the other three sites, merely the names of the mineral extraction companies involved. We understand that this information will be available to the County Council and we would like to request this from you.”
4. The Council responded on 13 May 2008 refusing the request for information stating that the names and addresses of the landowners were supplied voluntarily and therefore the conditions set out in Regulation 12(5)(f) of the EIR apply. They also stated that the names and addresses of the landowners are personal data of which the applicant is not the data subject and therefore the conditions set out in Regulation 13 of the EIR apply. The Council also gave reasons as to why the public interest in maintaining the exception outweighs the public interest in disclosing the information.
5. On 19 May 2008 the complainants requested a review of the response stating that the names and addresses of the landowners were ‘required’ and so were not voluntarily given and that such names and addresses are not protected by the Data Protection Act since they are publicly available from the Land Registry.
6. The Council responded to the request for review on 10 July 2008 upholding the decision to withhold the information. In relation to Regulation 12(5)(f) EIR it stated that the landowners were not under any legal obligation to supply their names and addresses and that they had not consented to disclosure. In relation to Regulation 13 EIR it stated that release of the information would breach the first principle of the Data Protection Act as disclosure would be unfair and unlawful for the following reasons:
  - “Disclosure would constitute a breach of confidence
  - The landowners have not given consent for the release of the information
  - None of the conditions in Schedule 2 of the DPA are met.”

## The Investigation

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### Scope of the case

7. On 14 July 2008 the complainants contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner has considered whether the Council was correct to apply the exception at Regulation 13 of the EIR to the request and whether it responded to

the request in accordance with the procedural requirements of the EIR. In view of the findings the Commissioner did not consider the Council's application of Regulation 12(5)(f).

## Chronology

9. The Commissioner wrote to the Council on 28 May 2009 requesting a copy of the withheld information and further arguments to support its reliance on the exceptions within the EIR.
10. On 22 July 2009 the Council provided a substantial response including copies of the withheld information.

## Findings of fact

11. The copy of the request for information sent to the Commissioner by the complainants requested information about landowners of three proposed mineral extraction sites, namely MIN103, MIN106 and MIN107. The responses from the Council only mention two sites, namely MIN103 and MIN106. The Commissioner queried this with the Council on 24 July 2009. The Council explained that the complainants sent two letters dated 21 April 2008 identical except for the fact that one did not include site MIN107. The Council understood the letter detailing three sites to have been superseded by the letter containing two sites. As the complainant did not query the Council's interpretation during the internal review process, the Commissioner accepts that site MIN107 is outside the scope of the complaint.

## Analysis

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### Exception

#### Regulation 13

12. Regulation 13 provides an exception for information which is the personal data of any third party, where disclosure would breach any of the data protection principles contained in the Data Protection Act 1998 ("DPA"). (The relevant sections of Regulation 13 are included in the legal annex attached to this notice).
13. In order to rely on the exception provided by Regulation 13, the information being requested must therefore constitute personal data as defined by the DPA. The DPA defines personal information as:

“...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 is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual”.

14. The Council have submitted that the withheld information is personal data and having reviewed the information the Commissioner is satisfied that it falls within the description of personal data as defined by the DPA. This is because the landowners of the proposed mineral extraction sites are the focus of the withheld information and can be clearly identified from it. Furthermore, the information also consists of indications of possible intentions in relation to the data subjects' land.
15. The Council has argued that the information is exempt from disclosure because to do so would breach the first data protection principle.
16. The first data protection principle 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.
17. The full text of the first principle and a list of Schedule 2 conditions are included in the legal annex.
18. There are six conditions in the Schedule 2, but only condition 1 (consent) or condition 6 (legitimate interests) should be relevant to disclosure under the Act. Condition 1 is not relevant in this case as the Council have confirmed that all parties have specifically refused to agree to the release of the information.
19. Therefore, the only other basis on which the data could be lawfully disclosed would be if condition 6 was met. This states that:

“The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.”
20. The Commissioner's Awareness Guidance 'The exception for personal data' (AG1) states that following the Tribunal decision in *Corporate Officer of the House of Commons v Information Commissioner and Leapman, Brooke and Thomas* (EA/2007/0060 etc; 26 February 2008) public authorities should approach condition 6 as a three-part test:
  1. there must be a legitimate public interest in disclosure;
  2. the disclosure must be necessary to meet that public interest; and
  3. the disclosure must not cause unwarranted harm to the interests of the individual.
21. The Council recognised and the Commissioner acknowledges that there is a legitimate public interest in disclosure of information which would inform the

public as to the process associated with mineral development, which can generate strong feelings from the public, both for and against. There is public interest in information regarding the scale and nature of extraction and where it might take place so that the pros and cons can be aired and the public can contribute fully and on an informed basis to such debate.

22. However, the Council have submitted that the public interest has been met in that the processes for the production of the Minerals and Waste Local Development Framework as set out under the Town and County Planning (Local Development) (England) Regulations 2004 and Planning Policy Statement 12: Local Spatial Planning is being followed and this procedure provides an opportunity for the public to be consulted and to have their say. The Council have also proposed that disclosure is not necessary to meet the public interest as release of the landowners' names will not further the public interest in any material way. It has submitted that everything that anyone needed to know to form a view and make representations was amply supplied in the online information provided by the Council by way of the consultation process and provided a link to this information. The Council argues that names and addresses add nothing unless someone wants to approach the landowners to persuade them to withdraw their support.
23. The Council have also stated that as the proposed sites have now been withdrawn from consideration for potential mineral extraction, there is no particular public interest in providing the requested information. However, as the withdrawal of these sites was made after the internal review of the request the Commissioner cannot consider this argument. Nonetheless, the Commissioner does agree with the position proposed by the Council that disclosure of the requested information is not necessary to meet the public interest for the reasons stated in paragraph 22 above and therefore the second stage of the three part test is not met.
24. In relation to the third stage of the test in *House of Commons v Information Commissioner and Leapman, Brooke and Thomas* (EA/2007/0060 etc; 26 February 2008), the Council have argued that disclosure of information identifying landowners of proposed mineral extraction sites could place those landowners under undue pressure to withdraw from the scheme and result in such landowners becoming reluctant to associate themselves with future mineral extraction allocation programmes, therefore being inhibited from exercising their lawful entitlement. The Council stated that there is evidence from other mineral extraction sites of landowners being subject to abuse and threats including libellous comments being posted on websites.
25. Although the Commissioner agrees with the Council that disclosure of the requested information would cause unwarranted harm to the interests of the landowners, the third stage of the test, he has not given particular weight to this point as the second stage of the test was not met therefore disclosure of the information would already be in breach of the first data protection principle.
26. The Council added that even if the sixth condition of schedule 2 was met, disclosure of the requested information would be generally unfair and unlawful for the reasons set out in the following three paragraphs.

27. The information was provided on a voluntary basis in the expectation that the names and addresses of the landowners would not be released and as those landowners have specifically refused to consent to disclosure it would be unlawful to do so.
28. As stated in paragraph 22 and 24 above, everything that anyone needed to know to form a view and make representations was amply supplied in the online information provided by the Council by way of the consultation process. Names and addresses add nothing unless someone wants to approach the landowners to persuade them to withdraw their support which would put undue pressure on the landowners preventing them from exercising their lawful entitlements. Therefore it would be unfair to landowners to release their details.
29. Disclosure would be unlawful as the information was provided to the Council in an expectation of confidence.
30. The complainant proposed that the requested information is available from the Land Registry and therefore is already in the public domain and as such disclosure would not contravene the legislation. The Council responded to this point by stating that only in those instances where the property in question has been conveyed since registration of title to land became operable in the area will details have been registered. It further stated that if the information does reside with the Land Registry then the Council is not required to disclose the information by virtue of Regulation 6 of the EIR on the basis that information is already publicly available.
31. The Commissioner is of the opinion that the complainant's argument that Regulation 13 does not apply as the requested information is available through the Land Registry is not valid. This is because in order for the Land Registry to supply this information, they would need to be given the title number of the land and such a title number would only exist if the land was registered. In order to find this out, the Land Registry need to be supplied with a plan of the area, such as an Ordnance Survey map, and require a SIM form (search the index map form) to be completed and then for a fee they could inform whether there is a title on the land or whether the land is unregistered. If there is a title, then in return for another fee, the Land Registry could supply a copy of the register which would contain the details of the proprietor.
32. For the reasons explained in the paragraph above, the Commissioner accepts the Council's point that the information isn't necessarily available from the Land Registry. Furthermore, the Commissioner does not consider it necessary to establish for certain if the requested information would be available from the Land Registry because even if it is available, this wouldn't alter the Commissioner's conclusion in the above paragraphs that the Council cannot satisfy a DPA Schedule 2 condition in order to release the information.
33. Further more, if the Land Registry were to release the information, the Commissioner would consider that condition 5(b) of Schedule 2 DPA would be satisfied as the processing would be necessary for the exercise of a function

conferred on the Land Registry by enactment. The Commissioner is also of the opinion that just because one data controller can release information without breaching the DPA it doesn't mean that release by another data controller in another context wouldn't breach the DPA. The Commissioner has considered the DPA principles by reference to the context of the potential disclosure.

34. In addition, the Commissioner considers that disclosure of the requested information by the Council would be explicitly linked to the mineral extraction sites by the wording of the request and would therefore potentially reveal more than disclosure of the proprietors names by the Land Registry. In order to obtain the names from the Land Registry, the complainant would have to go through the two stage process described in paragraph 31 and such a disclosure wouldn't explicitly link the information to the mineral extraction site.
35. In relation to the Council's point regarding the Regulation 6 of the EIR, the Commissioner considers that this part of the legislation is not relevant in this case as Regulation 6 only applies where an applicant requests that the information be made available in a particular form or format. The Commissioner has therefore not considered the Council's point any further.
36. The complainant also advanced that the Council's argument relating to evidence of landowners being subject to abuse is not a legitimate reason for withholding information as there is recourse in law to prevent citizens abusing other citizens and that unless the Council could demonstrate a direct connection between the release of information and a particular form of abuse the arguments lacks logic and legitimacy. The Council does not agree with this position. However, as stated in paragraph 25 the Commissioner has not given particular weight to whether disclosure of the requested information would cause unwarranted harm to the interests of the landowners as disclosure would not be necessary to meet the legitimate public interest in the three stage test therefore it is already established that disclosure of the information would be in breach of the first data protection principle.
37. Another point made by the complainant is that if the landowners were private corporations or public bodies then it is surely in the public interest that the names be known. The Commissioner has not addressed this point as the landowners in this case are individuals and a decision is taken upon the facts of the case. The Commissioner is not going to speculate on what the decision would be if the circumstances of the case were different.
38. In conclusion, the Commissioner believes that the public authority has correctly applied Regulation 13 to the withheld information because disclosure would breach the Data Protection principles. The Commissioner has concluded that the processing of the personal data is not necessary for the purposes of the legitimate public interests in accordance with condition 6 of schedule 2 of the DPA and that disclosure would be generally unfair as per the first data protection principle.
39. The complainant also argued against the Council's reasons for applying Regulation 12(5)(f). However, as previously stated the Commissioner has not

considered the application of this exemption as he has found that Regulation 13 applies.

## **The Decision**

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40. The Commissioner's decision is that the Council was correct to rely on the exception at Regulation 13 of the EIR as a basis to withhold the requested information.

## **Steps Required**

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41. The Commissioner requires no steps to be taken.



## Right of Appeal

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42. 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 14<sup>th</sup> day of September 2009**

**Signed .....**

**Lisa Adshead  
Senior FOI Policy Manager**

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

## Legal Annex

### Environmental Information Regulations 2004

#### Regulation 13 - Personal data

**Regulation 13(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.

**Regulation 13(2)** The first condition is –

- (a) in a case where the information falls within any 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 the 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(a) (which relates to manual data held by public authorities) were disregarded.

### Data Protection Act 1998

#### Schedule 1

The first principle states that:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- (a) at least one of the conditions in Schedule 2 is met, and
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met”.

#### Schedule 2

Conditions relevant for purposes of the first principle: processing of any personal data:

- “1. The data subject has given his consent to the processing.
- 2. The processing is necessary-
  - (a) for the performance of a contract to which the data subject is a party, or

(b) for the taking of steps at the request of the data subject with a view to entering into a contract.

3. The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.

4. The processing is necessary in order to protect the vital interests of the data subject.

5. The processing is necessary-

(a) for the administration of justice,

(b) for the exercise of any functions conferred on any person by or under any enactment,

(c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or

(d) for the exercise of any other functions of a public nature exercised in the public interest by any person.

6. - (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

(2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied."