

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision Notice**

Date: 7 November 2011

Public Authority: Sandwell Metropolitan Borough Council
Address: Sandwell Council House
Oldbury
West Midlands
B69 3DE

Decision (including any steps ordered)

1. The complainants requested copies of correspondence between Sandwell Council and named individuals. The Council withheld the information under regulation 13 of the EIR.
2. The Commissioner's decision is that the Council was entitled to refuse the request under regulation 13 of the EIR.

Request and response

3. The complainants in this case have made a number of complaints to Sandwell Council about the burning of "permitted fuels".
4. On 26 February 2011, the complainants requested the following information from the Council:
 1. *A copy of [Council official]'s letter written to the manufacturer of the exempt fireplace, asking that they revise the advice they give to customers on the use of "permitted fuels".*
 2. *Copies of written correspondence between [Council official] and the occupants of [specified residential addresses] in respect of the burning of permitted fuels on their respective exempt fireplaces.*
5. The Council responded on 23 March 2011. It provided information relevant to the first part of the request, with personal information

redacted. The Council advised that it was withholding information relevant to the second part of the request because it was exempt under section 40(2) of the Freedom of Information Act 2000 (the Act).

6. Following an internal review the Council wrote to the complainants on 11 May 2011. It stated that the request ought to have been considered under the Environmental Information Regulations 2004 (the EIR), rather than the Act. The Council found that the information relevant to the second part of the request was exempt from disclosure under regulation 13 of the EIR.

Scope of the case

7. Following further exchanges of correspondence with the Council, the complainants contacted the Commissioner on 20 June 2011 to complain about the way the second part of their request for information had been handled. The complainants did not complain about the Council's response to the first part of their request.
8. The complainants were of the view that the information relevant to the second part of the request (the correspondence between the Council and the residents) had been wrongly refused. The complainants had no issue with the names and addresses of the residents being withheld, but wanted the content of the correspondence. Therefore the Commissioner's investigation was limited to the information contained in the correspondence between the Council and the specified residential addresses.
9. The Commissioner has inspected the withheld information and has considered the arguments put forward by the Council in its correspondence with the complainants.

Reasons for decision

Regulation 13: personal information

10. Regulation 13 of the EIR states that a public authority is not obliged to disclose information if to do so would:
 - constitute a disclosure of personal data, and
 - this disclosure would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (the DPA).

Would disclosure of the requested information constitute a disclosure of personal data?

11. 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 of the data controller or any person in respect of the individual."

12. Having inspected the information in question the Commissioner is satisfied that it does constitute personal data. Although names and addresses have been scoped out of the request, the content of the remaining information is sufficient to allow identification of the residents.

Would disclosure of the requested information breach any of the data protection principles?

13. The Council argued that disclosure of the requested information would breach the first data protection principle because it would be unfair to the residents. In support of this conclusion the Council argued that the residents would have a reasonable expectation that information relating to them would not be disclosed into the public domain.

14. The Commissioner asked the Council whether it had sought consent from the residents to disclose the requested information. The Council advised that it had not considered this necessary, as it had considered the nature of the information and had assumed that the residents would not consent to disclosure.

15. The Commissioner accepts the Council's argument in relation to the residents' reasonable expectations. This is because the residents are private individuals rather than public officials, and the correspondence contains details of complaints made about smoke emissions from their properties. The Commissioner agrees with the Council that private individuals should generally be able to expect that this type of correspondence with the Council would not be publicly disclosed. The Commissioner accepts that authorities are not obliged to seek consent if they are already of the view that the information in question should not be disclosed, and it is likely that such consent would not be given.

16. The Commissioner has considered this issue in a number of contexts, including local government, and has consistently found that private

individuals will often be entitled to greater protection than public officials. The Commissioner sees no reason to depart from that general principle in this particular case, and for this reason he finds that it would be unfair to disclose the requested information.

17. In light of the above the Commissioner finds that disclosure of the requested information would breach the first data protection principle. Therefore the exception at regulation 13 is engaged and the information has been correctly withheld.

Procedural requirements

18. The Commissioner notes that the Council originally handled this request under the Act rather than the EIR. However the Council rectified this as a result of its internal review. Therefore, although the refusal notice technically did not comply with regulation 14 of the EIR, the Commissioner does not consider that enforcement action is required.

Right of appeal

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

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals
PO Box 9300
LEICESTER
LE1 8DJ

Tel: 0300 1234504
Fax: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

20. 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.
21. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Signed

Alex Ganotis
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