

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

Date: 5 July 2012

Public Authority: Dartford Borough Council
Address: Civic Centre
Home Gardens
Dartford
Kent
DA1 1DR

Decision (including any steps ordered)

1. The complainant requested information from Dartford Borough Council ("the council") concerning a planning dispute. The council withheld some information under the Environmental Information Regulations 2004 ("the EIR") using the exceptions under regulation 12(5)(f) and 13(1), the exceptions relating to information supplied voluntarily and third party personal data.
2. The Commissioner's decision is that all of the withheld information was excepted under regulation 13(1).
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 2 December 2011, the complainant requested information from the council in the following terms (for clarity, the correspondence included a number of other requests for information that have not been included because they do not form part of this complaint):

"Point 3.21 – provide a copy of [name's] complaint and the Council's response in full.

Point 4.13 – provide a copy of the notes of the conversations made with [name] and a copy of the email sent by [name] on the 13th July 2011

and all subsequent correspondence from the Council or [name] in relation to the hedges or fences, including the letter from [name] on the 1st September 2011".

5. The council responded on 4 January 2012 and withheld information using the exception under regulation 12(5)(f).
6. The complainant requested an internal review on 8 January 2012 and said that he did not accept that the exceptions had been correctly applied to any of the withheld information.
7. The council responded on 23 January 2012. It said that it wished to maintain its position although it added that it wished to rely on regulation 13(1) in relation to one item of information.

Reasons for decision

Environmental Information

8. The Commissioner was satisfied that the request had been correctly handled under the EIR. "Environmental information" is defined by regulation 2(1)(c) of the EIR as any information affecting or likely to affect the elements of the environment. The request in this case relates to a planning dispute over a fence. The Commissioner accepts that this would affect the land.

Regulation 13(1) – Third party personal data

9. This exemption provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 ("the DPA").

Is the withheld information personal data?

10. Personal data is defined by the DPA as any information relating to a living and identifiable individual. The council applied this exception to one item of information although the Commissioner decided that the exception should be considered in relation to all of the withheld information. All of the withheld information concerns a complaint from the complainant's neighbour. For clarity, the council has already confirmed to the complainant that his neighbour made the complaint.
11. The Commissioner was also of the view that some of the withheld information represented the personal data of the complainant and should therefore have been dealt with under the rights of subject access provided by section 7 of the Data Protection Act 1998 ("the DPA"). Information that is a requester's own personal data cannot be considered under the terms of the EIR and will not therefore form part

of this notice. The Commissioner has conducted a separate assessment relating to this aspect of the complaint.

Would disclosure breach the Data Protection Principles?

12. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations

13. The council told the Commissioner that it did not consider that the disclosure of the information would have been withheld the reasonable expectations of the complainant's neighbour.
14. The council said that the complainant's neighbour had not consented to the disclosure of the information. This in itself does not necessarily mean that the disclosure would not have been within the individual's reasonable expectations although it is indicative of what the individual's expectations may have been. The Commissioner will also have regard to the nature of the information and any other relevant circumstances. In this case, the withheld information consists of the details of a complaint made by the complainant's neighbour and the response to that complaint made by the council. Details of complaints made to public authorities and the responses provided are typically treated in a confidential way. There were no circumstances in the Commissioner's view that would suggest that the complainant's expectation that this correspondence would not be disclosed was anything other than reasonable.

Consequences of disclosure

15. The council said that given that the disclosure would not have been within the reasonable expectations of the complainant's neighbour, disclosure would have been likely to cause distress. The council also argued that disclosing the information would be likely to lead to a deterioration of the relationship between the complainant and his neighbour.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

16. There is always some public interest in the disclosure of any information held by public authorities as this helps to bring about transparency and

accountability. However, the Commissioner would like to highlight here that for the purposes of the EIR, the legislation is primarily about the disclosure of information that is in the general public interest.

17. The complainant has explained to the Commissioner that he has accused the council of bias and believes that the council may have provided misleading information to his neighbour. While the Commissioner understands that the complainant has concerns about the way the matter was handled, these concerns are nonetheless primarily personal issues that the complainant may pursue via other complaint mechanisms. The Commissioner was not satisfied that disclosure of the withheld information would be proportionate in the circumstances. In the Commissioner's view, there is little wider public interest in the disclosure.
18. The complainant highlighted that he had already been provided with a significant amount of information about his neighbour's complaint and he did not consider that continuing to withhold the information would be consistent with the earlier disclosure. The Commissioner agrees with the complainant that the earlier disclosure was not consistent with the position taken by the council now. The council explained to the Commissioner that it made this earlier disclosure without consulting the complainant's neighbour. In the Commissioner's view, the fact that there has been an earlier disclosure means that it would be even less proportionate to disclose more information since the complainant had already had access to information that would typically be withheld.
19. In the balance, the Commissioner considered that there was a stronger argument for protecting the right of the complainant's neighbour to privacy in this situation given that he was satisfied that the disclosure would not have been within the reasonable expectations of the complainant's neighbour and may cause distress or conflict.

Right of appeal

20. 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

21. 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.
22. 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

Andrew White
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