

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

Decision notice

Date: 10 October 2012

Public Authority: Department of the Environment for Northern Ireland

Address: Room 6-21
Clarence Court
10-18 Adelaide Street
Belfast
BT2 8GB

Decision (including any steps ordered)

The complainant submitted a request to the Department of the Environment for Northern Ireland ("the DOE") under the Environmental Information Regulations 2004 ("EIR") for information contained in a specified Planning Enforcement file. The DOE provided the complainant with some of the requested information but withheld the remainder citing regulation 13(1) of the EIR (personal data of third parties). The Commissioner finds that the DOE has correctly applied the exception under regulation 13(1) of the EIR to the information which it withheld. The Commissioner requires no steps to be taken.

Request and response

1. On 30 November 2010, the complainant wrote to the DOE and requested information in the following terms:

RE: File Reference [number redacted]

"I wish to request photocopies of all letters contained in the above file."

2. The DOE responded to the complainant on 30 December 2010. It provided the complainant with most of the requested information, however it withheld the remainder, citing regulation 13(1) of the EIR as the remaining requested information ("the withheld information") constitutes personal data of third parties.

3. The complainant sought an internal review of the DOE's decision on 23 February 2011. The result of that review was provided to him on 7 October 2011. The reviewer upheld the original decision.

Scope of the case

4. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
5. The Commissioner has considered the DOE's handling of the complainant's request, in particular whether it correctly applied the exception under regulation 13(1) to the withheld information.

Reasons for decision

Personal Information of Third Parties – Regulation 13(1) of the EIR

6. Under Regulation 5(1) of the EIR a public authority that holds environmental information is required to make it available on request. However, that requirement is subject to Regulation 13(1) which provides that, to the extent that the information requested includes personal data of which the applicant is not the data subject and the disclosure of the information to a member of the public would contravene any of the data protection principles set out in the Data Protection Act 1998 (DPA), a public authority shall not disclose the personal data.
7. The first principle of the DPA requires that the processing of personal data is fair and lawful and that at least one of the conditions for processing in Schedule 2 is met. In the case of sensitive personal data, at least one of the conditions for processing in Schedule 3 must be met.
8. The information being withheld under regulation 13(1) of the EIR is personal data as it is on a planning enforcement file and consists of details of individuals who were involved in enforcement action being initiated by the DOE at the time of the request. The details of such individuals would also constitute sensitive personal data under section 2(g) of the DPA as the data relates to the commission or alleged commission of an offence by those individuals.
9. The Commissioner has firstly considered whether the disclosure of this information would be fair. In order to reach a view on this he has considered what would be the reasonable expectation of the

- individual(s) whose sensitive personal data is held by the Department, i.e. would they have any expectation of their personal data being provided to a third party.
10. In deciding whether disclosure of the information being withheld under regulation 13(1) would be unfair the Commissioner has taken into account a range of factors including the potential consequences of disclosing the information, i.e. what damage or distress would the individuals suffer if the information was disclosed?
 11. In most cases the very nature of sensitive personal data means it is most likely that disclosing it will be unfair. As it is information of the most private and personal nature, the reasonable expectations of the data subject is that such information would not be disclosed and that the consequences of any disclosure could be distressing to them.
 12. However, as always, it remains important to consider all the circumstances of the case. In particular it is important to consider both the reasonable expectations of the data subjects regarding their sensitive personal information and whether some or all of that information has already been put into the public domain with the knowledge of the data subject. If either factor is relevant, then it is likely that any disclosure would be fair. The Commissioner has considered whether any of these factors are relevant in this case.
 13. The Department is an investigative body with powers to investigate alleged breaches of planning law and to initiate enforcement action. The Commissioner considers that it must be able to exercise these powers fairly and thoroughly, without interference or prejudice, often acting upon information which it has received. There must be an expectation that the interests of the parties involved will be protected and all parties will be treated fairly. In order for the Department to be effectively it must be able to receive information, often personal information, which it then holds for the purposes of carrying out its investigative and enforcement functions. The individuals whose personal information the Department holds would have an expectation that their information will only be used for such purposes.
 14. The Commissioner considers that the above individuals would not have had any expectation that their personal information would be disclosed to the public. They would have had, as the Department argues, a reasonable and legitimate expectation that their information would only be used for the purposes of the enforcement - investigations and any subsequent proceedings- and would not be disclosed into the public domain. Therefore it would be unfair to disclose the sensitive personal data of those individuals and the Commissioner agrees with the Department that no legitimate interest exists which would justify such disclosure.

15. The Commissioner agrees that disclosure of the sensitive personal data of third parties would be unfair in this instance and the complainant's assertion that he already knows the identity of an individual to whom the enforcement proceedings relate is not relevant to considerations about whether the disclosure would be unfair. As disclosure would be unfair, this would be a breach of the first data protection principle. The Commissioner therefore considers that the DOE was correct to apply Regulation 13(1) in this instance.

Procedural requirements

16. The Commissioner has also noted the length of time taken for the DOE to conduct its internal review. Under regulation 11 of the EIR, a public authority has 40 working days to conduct an internal review following receipt of a complaint. The Department in this case was in breach of this requirement.

Other matters

17. The Commissioner is concerned with the length of time taken by the Department to respond to the complainant in this case. The Commissioner has further significant concerns about the delays or lack of response to his correspondence in relation to his investigation. The Commissioner has noted the details of this case in particular.

Right of appeal

18. 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

19. 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.
20. 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

**Rachael Cragg
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Information Commissioner's Office
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