

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

**Date:** 22 July 2013

**Public Authority:** Gloucestershire County Council  
**Address:** Shire Hall  
Westgate Street  
Gloucester  
GL1 2TG

**Decision (including any steps ordered)**

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1. The complainant requested copies of all photographs relating to a particular planning application and any associated or supporting documentation relating to the photographs. The council said that it wished to withhold some information using the exception under regulation 12(5)(f) of the Environmental Information Regulations 2004 ("the EIR"). This exception concerns adverse effects to the interests of the person who provided the information.
2. The Commissioner's decision is that the information was correctly withheld because it is excepted under regulation 13(1) of the EIR. This exception relates to third party personal data.
3. The Commissioner does not require any steps to be taken.

**Request and response**

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4. On 24 September 2012, the complainant requested information from the council in the following terms:

*"...we would like to make a freedom of information request under the Freedom of Information Act, 2000 in respect of all information submitted to date and relevant to the above planning application".*

5. It appears that the council responded either verbally or in written form and this resulted in a narrower request being submitted on 27 September 2012 in the following terms:

*"...We were advised by [redacted] on 12 September 2012 that they had seen somebody taking photographs from a vehicle of the building relevant to the Planning Application. These photographs were being taken from a location where we consider that a trespass may have occurred and therefore unlawful entry had been gained to the site.*

*Could I therefore ask that you provide me with details of any photographs that have been submitted to you in respect of this application together with any corresponding documentation associated with these photographs".*

6. The council provided a response on 26 October 2012. It said that the information requested was not held.

7. The complainant replied on the same day and said that he did not accept that the council had no information. He said that he wanted

*"...copies of all photographs submitted together with any supporting documentation explaining why these photographs may be relevant".*

He attached an email sent to his clients' planning consultants on 26 September 2012 by the council about the planning application which had a photograph attached.

8. The council completed an internal review on 22 November 2012. The council said that it had interpreted the complainant's request on 27 September 2012 as being only for photographs taken on or around 12 September 2012. It apologised for the misunderstanding. The council acknowledged the photograph referred to and said that this was inadvertently supplied to the planning agents. The council said that having considered the request again, it wished to withhold information using the exception under regulation 12(5)(f) of the EIR.

## **Scope of the case**

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9. The complainant contacted the Commissioner to complain about the way the request for information had been handled. It asked the Commissioner to consider whether the council had correctly refused to provide the information. It also challenged the council's decision to consider the request under the terms of the EIR.

10. For clarity, during the Commissioner's investigation, the council sought to rely on the exception under regulation 13(1) as well as regulation 12(5)(f). The Commissioner's decision involves an analysis of the use of regulation 13(1).

## **Reasons for decision**

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### **Is the information environmental?**

11. Information that meets the definition of "environmental information" set out in regulation 2 of the EIR, should be considered under the EIR. The Commissioner interprets the provisions of regulation 2 fairly broadly. Regulation 2(1)(c) basically provides that any information on measures, activities, plans etc. affecting or likely to affect the elements and factors of the environment will be environmental information. The withheld information relates to planning enforcement issues arising from a change of use of a site to a business park, which clearly affects the land and other factors. The Commissioner was satisfied that it was appropriate for the request to be considered under the EIR.

### **Regulation 13(1) – Third party personal data**

12. This exception provides that third party personal data is excepted from public disclosure under the EIR 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?**

13. The council originally relied on regulation 12(5)(f) to withhold the information. Following prompting from the Commissioner, the council agreed that regulation 13(1) was also relevant, although it applied it to only some of the information. Having considered the nature of the withheld information, the Commissioner decided that it was appropriate to exercise his discretion to consider the application of regulation 13(1) to all of the information. For clarity, the Commissioner did consider whether it was possible or appropriate for any of the information to be disclosed in a redacted form however he decided that it was not in the circumstances of this particular case.
14. Personal data is defined by the DPA as any information relating to a living and identifiable individual. The council provided the Commissioner with copies of the withheld information. It consisted of emails dated 14 September 2012 and 4 October 2012 including the associated chain of correspondence. The correspondence is from an individual and it relates to planning enforcement issues. Following his inspection of the

information, the Commissioner was satisfied that it is appropriate to consider all of the information as comprising the personal data of the individual who submitted the information. The information clearly relates to a living individual who can be identified from the information.

### **Would disclosure breach the Data Protection Principles?**

15. 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**

16. When considering whether a disclosure of personal information is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the individual. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances. Nonetheless, any views expressed by the individual can be a useful starting point.
17. In this case, the council explained that it had specifically consulted the individual. The individual confirmed to the council that they did not expect the information to be disclosed because it was provided in confidence with respect to planning enforcement issues.
18. The council explained that it considered that the individual's expectation was a reasonable one to have in the circumstances. It explained that in general, it would be reasonable for individuals contacting the council about planning enforcement to expect confidence. The council says that this is an important matter of principle in maintaining the flow of information on a voluntarily basis. As the council would wish to encourage this type of engagement to assist it in its duties, it would not normally disclose information of this nature.

### **Consequences of disclosure**

19. The council referred to the likelihood of repercussions from the disclosure causing distress to the individual. It highlighted that issues connected to this planning matter had been particularly contentious. It also said that disclosure would be likely to dissuade this individual and

others from contacting the council to report similar concerns in the future.

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

20. By way of background to this matter, the council explained to the Commissioner that the request relates to the Aston Down Trading Estate, based on a former Ministry of Defence airfield. It said that Leda Properties Ltd had purchased the site with a wish to turn it into a business park. However, local objectors considered that it should be returned to a green field site because of its location in an area of Outstanding Natural Beauty.
21. An application for a change of use was considered by Stroud District Council in c.2006 but was refused. That decision was appealed and overturned at a planning enquiry. Planning consent was then given but with significant planning conditions.
22. Since the outcome above, developments by Leda Properties Ltd and or their tenants have been monitored by the objectors and are the subject of on-going challenges. The Commissioner understands that there has been a judicial review and a further challenge is currently with the Secretary of State.
23. The council clarified that most of the planning issues concerned are the responsibility of Stroud District Council but Gloucestershire County Council has a responsibility for planning matters relating to waste. One of the properties on the site has a skip operation which falls into the council's area of responsibility.
24. The complainant told the Commissioner that it considers that there is a public interest in disclosing the information. It says:  
  
*"We consider that it is very much in the public interest that the information is provided. Some of the information requested has been obtained by default which would appear to confirm our understanding that a trespass has occurred. The councils [sic] reasons for withholding the requested information appear to be excusing the public from trespass laws in order to allow them to obtain information to submit to the council. If the public have an issue with an application then they should address this through the correct channels".*
25. The council argues that the strongest public interest is in protecting the principle of ensuring that members of the public can contact it about enforcement concerns in confidence. The council also highlighted the strong private interest that the complainant has in this matter and said that while it is obvious why the information may be helpful to it, it is

doubtful that there is a wider legitimate public interest that would outweigh the concerns it had expressed about the disclosure.

26. There is always some legitimate public interest in disclosing any information that is held by public authorities. This is because the disclosure of information helps to achieve the general aims of promoting transparency and accountability within public authorities. In turn, this can increase public understanding of the issues and involvement in the decision-making.
27. Having considered the circumstances of the case, the Commissioner is not satisfied that there is any evidence to demonstrate that the disclosure of this information ought to have been within the reasonable expectations of the individual concerned. The individual has clearly objected to the disclosure when asked and the nature of the information, the background circumstances, as well as the council's general approach to the principle involved indicates that the objection is a reasonable one. It is clear that disclosure would be likely to cause distress as well as dissuading the individual and others from contacting the council in the future.
28. As the above suggests, the scheme of the EIR is geared towards the release of information that is in the general public interest rather than private interests. Although there is some public interest, it is not clear whether or not any trespass has occurred and it is evident that proving whether it has or not is much more about the private interests of the complainant than about the wider public interest.
29. The Commissioner agrees with the council on this occasion that the stronger, wider public interest rests with ensuring that members of the public are not discouraged from engaging with public authorities when they contact them with the reasonable expectation of confidence, and ensuring that they are not subjected to distress as a result of that contact being made available to third parties with a private interest in the matter. It is the Commissioner's view that disclosure of the requested information would breach the first data protection principle because it would be unfair to the individual concerned. Regulation 13(1) was therefore engaged.

## Right of appeal

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30. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

31. 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.
32. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**