

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

**Decision notice**

**Date:** 16 January 2013

**Public Authority:** Newcastle City Council  
**Address:** Civic Centre  
Newcastle upon Tyne  
NE99 2BN

**Decision (including any steps ordered)**

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1. The complainant requested information relating to an application for permission to run surface water from the roof of a particular address. Newcastle City Council ("the council") provided some information and withheld other information using the exemption under section 40(2) of the Freedom of Information Act 2000 ("the FOIA"), the exemption relating to third party personal data. The Commissioner considered that the request should have been handled under the Environmental Information Regulations 2004 ("the EIR") and he therefore considered the equivalent exception under regulation 13(1). The complainant also alleged that the council had not identified all the information that it held.
2. The Commissioner's decision is that the council correctly applied regulation 13(1) and on the balance of probabilities, no further information was held. The Commissioner found that the council breached regulation 5(2) for failing to respond within 20 working days and regulation 11(4) for failing to conduct an internal review.
3. The Commissioner does not require any steps to be taken.

**Request and response**

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4. On 19 October 2011, the complainant requested information from the council in the following terms:

*"During August and September 2011 an application was made by [names and address], to Newcastle City Council, for permission to run surface water from the roof from [address], into the street. The two officers mainly involved were [name and job title], and [name and job title], Technical Services (Environment & Regeneration Directorate), Newcastle City Council.*

*I request information about this matter.*

*1. Copies of all documents relating to this matter, including the full record of the assessors, full assessments, comments, notes, emails, letters and any other information you hold.*

*2. Copies of all information you hold about me, including all records, correspondence and any other information you hold since July 2011.*

*3. Copies of all information you hold for [names] (Freeholders of [address]), [name] (Freeholder of [address]) and [name] (occupier of [address]).*

*4. Details of any contact or relationship between [name], Freeholder for [address] and who works for Newcastle City Council in the Environment & Regeneration Department, and [name and job title] , and [name and job title].*

*5. All information concerning [names] (who blocked the shared drain between [addresses]) of [name and address]".*

5. The council replied on 23 December 2011. In relation to point 1, the council said that it had enclosed copies of relevant information although it had redacted contact details on the basis that this information is exempt under section 40(2) of the FOIA.
6. In relation to point 2, the council identified that this was a subject access request under section 7 of the Data Protection Act 1998 ("the DPA") and it asked for proof of identity.
7. In relation to point 3, the council referred to point 1 again.
8. In relation to point 4, the council said that all those named are council employees. It said that as officers they will often interact as part of their daily workloads but it would not keep records of all their interactions.
9. In relation to point 5, the council said that it considered that this information is exempt under section 40(2).

10. The complainant requested an internal review on 3 January 2012. She queried whether the council had identified all the information relevant to the request and indicated specifically why she considered that more information was held. She also indicated that she did not accept that the council was correct to withhold any information.
11. The council failed to conduct an internal review.

### **Scope of the case**

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12. The complainant asked the Commissioner to consider the following issues:
  - Whether the council identified all the information relating to her request
  - Whether it had correctly withheld information.
  - The time taken by the council to respond to the request.
13. For clarity, the council sought to withhold the main telephone and fax number relating to the work details of two individuals. However, the Commissioner notes that the council has disclosed the name of the individual's work place in both cases and therefore this information can be found by conducting an internet search. As this information is clearly already in the public domain, it has not been considered any further by the Commissioner.

### **Reasons for decision**

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

14. Information that meets the definition of environmental information set out in regulation 2 of the EIR cannot be considered under the terms of the FOIA. Regulation 2(1)(c) of the EIR provides that information on activities affecting or likely to affect the state of elements of the environment set out in regulation 2 of the EIR will be environmental information. One of the elements listed is water. The information in this case relates to drainage and the Commissioner therefore considers that it should have been considered under the EIR.
15. The council said that some information falling within the scope of this request has already been disclosed to the complainant's solicitor. As the complainant already has this information, the Commissioner has scoped it out of his investigation of this case.

## **Regulation 5(1) – Is more information held?**

16. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities".<sup>1</sup>
17. The complainant set out her reasons for believing that further information was held in her internal review request of 3 January 2012 as follows:
- "In the email of 12 September 2011 [name] states to [name] that 'We have since received written approval by all three parties. Correspondence is attached' but nothing was included in the information you sent"
  - "In point 4, of your letter, you admit that there is often contact between [name] (Freeholders of [address]) and [name] and [name] but you have included no information. You state that you 'do not keep records of all interaction between staff members' but I asked for copies of all documents relating to the drainage matter and not about general Council work".
  - "I asked for copies of all information you hold, relating to the issue, for [name] (occupier of [address]) but nothing was included"
  - "There is no correspondence from [names] to Newcastle City Council from 23 September until 30 November but they and their solicitor, [name], made claims that there was contact during this time".
  - "There is no information included in the documents relating to a payment that the complainant believes was made by two named individuals".

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<sup>1</sup> This approach is supported by the Information Tribunal's findings in Linda Bromley and Others / Environment Agency (31 August 2007) EA/2006/0072

18. By way of background to this matter, the council said that the complainant was in dispute with her neighbours in relation to a drainage issue and there had been a number of exchanges between the council and the parties involved. The council said that it had provided this correspondence to the complainant except for some contact details which had been redacted (considered further below).
19. The council said that it had searched the email accounts of relevant members of its staff and this had identified information falling within the scope of the request which had been provided. The council explained that information relating to environmental complaints is held in the council's electronic "environcall system". The council said that it had checked the relevant addresses referred to in the request and could confirm that the system does not contain any information falling within the scope of the request. The council also said that it had checked its financial records for relevant information and had consulted relevant staff members. The council said that it would not expect relevant information to be held in any other locations. The council highlighted that the work involved was considered to be minor and it therefore would not require formal plans to be submitted that would trigger the usual planning processes.
20. In relation to the specific concerns raised by the complainant, with reference to the first bullet point above, the council said that this information had already been provided to the complainant's solicitor.
21. With reference to the second bullet point, the council said that one of the individuals named in the request is a council employee who works within the Environment and Regeneration Directorate. The council explained that he is part of the performance team for that directorate and is not involved in planning and maintenance. He is responsible for general performance and would not have been involved in this specific issue. Furthermore, the council had checked and there was no correspondence between these officers about this matter.
22. With reference to point 3, the council said that it did not hold any information relating to the individual referred to in connection with this matter, and it confirmed that there was no particular reason why it would expect to.
23. With reference to point 4, the council said that it believes that this is a reference to telephone conversations that took place, some or all of which had been referred to in the correspondence already released. The council highlighted that it does not record telephone conversations as a matter of routine.

24. With reference to point 5, the council said that there is no evidence of such a payment made by the named individual. For clarity, the council said that it understood that a payment had been made by another individual, however, the council was unable to locate any information about this either. It said that it had thoroughly checked its financial records and since it would have expected the standard fee to have been received, it can only assume that the cheque had been returned.
25. With the exception of the cheque referred to above, the council said that there was no particular reason why it would expect to hold more information beyond that already identified in relation to this matter. The council also said that no information had been deleted, destroyed and mislaid.
26. In view of the above, the Commissioner was satisfied that on the balance of probabilities, no further information was held than has not been made available to the complainant (other than the information withheld under regulation 13(1) which is discussed in more detail below). While it is apparent that the complainant had made some incorrect assumptions about the scope of the information that was held, the Commissioner considers that the complainant's concerns were reasonable in the light of the initial responses provided by the council. The council's failure to adequately address the specific concerns raised made further complaint somewhat inevitable. However, the council has subsequently explained its position more fully and there is no clear evidence available to the Commissioner pointing to the existence of additional information that has not been made available.

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

27. This exception 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"). For clarity, the information considered by the Commissioner under this exemption was as follows:
  - The work mobile telephone number of an individual
  - The work email address of the same individual
  - The work email address of a solicitor acting for the same individual

### **Is the withheld information personal data?**

28. Personal data is defined by the DPA as any information relating to a living and identifiable individual. The Commissioner was satisfied that the withheld information clearly represents information from which individuals can be identified. It is therefore their personal data.

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

29. 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**

30. The Commissioner notes that the withheld information relates to contact between the council and a member of the public and a solicitor acting on behalf of the member of the public. Communications of this nature are typically kept confidential and there are no circumstances to suggest that the individuals concerned would expect disclosure of this information. The Commissioner notes that the communications were made via work contact details however, in the case of those communications made directly by the member of the public, it is clear that the emails were being sent in a private capacity. In relation to the email address of the solicitor, the Commissioner notes that this individual works in a private firm as opposed to the public sector. Their direct email does not appear to be in the public domain. Therefore, there is nothing to suggest that disclosure of the email address would be within the reasonable expectations of the individual.

### **Consequences of disclosure**

31. In view of the above reasonable expectations, the Commissioner considers that disclosure of the information could be distressing or may result in unwanted contact.

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

32. There is always some legitimate public interest in the disclosure of information held by public authorities. This helps to promote the general aims of encouraging accountability and transparency. However, having regard to the circumstances the Commissioner did not consider that it would be proportionate to disclose the withheld information in this case. The complainant presented no particular evidence to the Commissioner that would suggest the legitimate public interest in disclosure of this information outweighs the individuals' right to

privacy. The Commissioner understands that the complainant appears to have concerns about the handling of this particular matter however disclosure of third party contact details is rarely necessary and the legitimate public interest can often be satisfied to a reasonable extent by disclosure of information in a redacted form as has occurred in this case. In the Commissioner's view, it is not necessary to disclose the contact details.

### **Procedural issues**

33. Regulation 5(2) states that a public authority should respond to a request for information within 20 working days. The council did not do this on this occasion and therefore breached this regulation.
34. Conducting an internal review is a statutory requirement under regulation 11(4) of the EIR and as the council failed to conduct an internal review, it breached this regulation.

### **Other Matters**

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35. The Commissioner would like to draw the council's attention to the fact that disclosures made under the FOIA are to the general public and not just to the individual that requested the information. It is clear that when making disclosures, the council took into account what the complainant already knew, however, the council did not make a clear distinction between information that it was disclosing under the FOIA and information that it was disclosing on a discretionary and individual basis only to the complainant. The council's attempt to withhold information that was already in the public domain also suggests that the council did not give proper consideration to the information. The Commissioner trusts that the council will make improvements when handling requests in the future.

## Right of appeal

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36. 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)

37. 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.
38. 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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