

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

Decision notice

Date: 12 February 2013

Public Authority: St Ives Town Council
Address: The Guildhall
Street An Pol
St Ives
Cornwall
TR26 2DS

Decision (including any steps ordered)

1. The complainant requested a copy of a report presented to St Ives Council ("the council") by a member of the public relating to the exclusion of dogs on certain beaches in St Ives. The council refused to supply the information, citing exemptions under the Freedom of Information Act 2000 ("the FOIA"). The Commissioner considered that the request should have been handled under the Environmental Information Regulations 2004 ("the EIR"). As the council sought to rely on the additional exemption under section 40(2) of the FOIA during the Commissioner's investigation, the Commissioner considered the equivalent exception under regulation 13(1) of the EIR. This exception relates to third party personal data.
2. The Commissioner's decision is that the information should be withheld using the exception under regulation 13(1).
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 23 July 2012, the complainant requested information from the council in the following terms:

"I would also like to request under FOI Act a copy of [name]'s report

presented to St Ives Town Councillors on 10 April 2012 and acted on by the Environment Committee at their meeting the next evening”.

5. The council responded on 24 July 2012 and said that it had decided to refuse to provide the information. It cited the exemptions under section 41, 21 and 22 of the FOIA.
6. The complainant requested an internal review on 4 August 2012.
7. The council communicated the details of its internal review to the complainant on 1 September 2012. It said that it wished to maintain its refusal.

Scope of the case

8. On 26 September 2012, the complainant contacted the Commissioner to complain about the way her request for information had been handled. She specifically asked the Commissioner to consider whether the council had correctly refused to provide a copy of the information she had requested.

Reasons for decision

Is the information environmental?

9. Environmental information must be considered separately under the terms of the EIR. Regulation 2(1)(c) of the EIR provides that information on plans, activities, measures etc. affecting or likely to affect the elements of the environment will be environmental information. One of the elements listed is land. The Commissioner has considered the purpose of an exclusion of dogs on beaches. It is clear that at least in part, the proposal is intended to protect against individuals being exposed to dog faeces and urine on the beaches. It is clear that allowing dogs on to the beaches affects the land. The information should therefore be considered under the EIR.

Regulation 13(1) – Third party personal data

10. 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”).

Is the withheld information personal data?

11. Personal data is defined by the DPA as any information relating to a living and identifiable individual. The withheld information comprises of representations made to the council by a member of the public, submitted in the form a report, relating to the issue of dogs on beaches in St Ives. The council has highlighted that the report contains a mixture of personal views and information taken from other sources, which may be publicly available. The Commissioner considered that it was appropriate to consider that the whole of the report is the personal data of the individual since it comprises of his representations, personal views and photographs. Even where sources of publicly available information have been included, the individual has still selected those sources to present his case to the council and the information therefore reflects his personal views and work on this issue. The information is also likely to represent the personal information of others whose opinions or images have been included in the report.

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. Whether or not the disclosure of information was within the reasonable expectations of an individual is not merely about consent although seeking the views of the individual concerned will often be a reliable indicator of what was expected, which is a useful starting point. The council consulted the individual concerned who confirmed that he did not wish nor expect the information to be publicly disclosed although his intention had always been to prepare a version of the document for public disclosure at a subsequent date. The council provided to the Commissioner a copy of the written objection to the disclosure sent by the individual as evidence of the individual's views. It is therefore clear that in this case the individual has clearly expressed that he did not expect the information to be publicly available. The next step is to consider whether or not this was a reasonable expectation to have had in the circumstances.

14. The council explained that it received a copy of the document which was sent to the town council office and then circulated to councillors by the individual. The council said that it was not a formal report to the council or its committees. The council explained that there are many meetings held in council offices that are not council or committee meetings. It was submitted by an individual member of the public and not commissioned or requested. It was submitted in the form of a report by the individual but the council considered that the form it took does not mean that it should depart from the usual way correspondence from members of the public is treated as confidential.
15. The complainant told the Commissioner that the author of the report had held a meeting on 10 April 2012 in the council's committee rooms where he presented a short video and a "glossy report". She said that selected sympathetic stakeholders, members of the public and town councillors were present. She said the report was subsequently circulated to other councillors not present at the meeting and according to the complainant, various other people before and after the meeting. The complainant also argued that as the council had discussed the contents of the report in the Environmental Committee meeting in April 2012 in "open session", it could not be considered to be confidential. In correspondence to the council dated 4 August 2012, the complainant made the following comments:

"As it was clearly the intended [sic] that the report and video presentation would guide the opinions and decisions of both councillors and stakeholders [name of author of the information] should have been fully aware that in a democratic society the report would be open and available for scrutiny by council tax payers who would be affected by the decisions he was trying to influence. Without this transparency our democratic system is open to abuse".

Consequences of disclosure

16. The council explained to the Commissioner that the issue of dogs on beaches is a contentious one and disclosure of an individual's personal views could lead to conflict and therefore distress. Both parties highlighted the existence of a dog owners group created to oppose the new dog control orders so it is clear that there is some strength of feeling over this matter. The council argued that disclosure could also result in the individual concerned or others being unwilling to express their views to the council in future or being less candid if they feared that the correspondence would not be kept confidential.

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

17. By way of background to this matter, the Commissioner understands that Penwith District Council was responsible for the implementation of dog control orders in 2008. In June 2008, the Chief Environmental Health Officer from Penwith District Council attended a meeting of the council where town councillors requested a review of the beach dog control orders in view of the level of complaints received from members of the public about the new arrangements. At intervals from 2008 to 2010, the town council renewed calls for a review, with representations made to Cornwall Council after Penwith District Council ceased to exist. In 2011, Cornwall Council said that it was not going to review any of the individual dog control orders but it would instead allow local town and parish councils to carry out a review for their area if they chose to do so.
18. On 17 February 2011, the town council's Environment Committee decided to recommend to council that in principle the town council carry out a review of beach dog control orders. Following this, in March 2012, the withheld information was received by the council. On 11 April 2012, the Environment Committee recommended consultation on a 24 hour seasonal ban on Porthminster, Porthmeor, Porthgwidden and Carbis Bay beaches. The Committee's recommendation was for a whole year ban on Harbour beach. Between April 2012 and November 2012, the council carried out its formal consultation process, generating 991 responses to the questionnaire and a significant amount of correspondence. The council arrived at the decision about the dog control orders on 7 November 2012 and the details were published in council minutes, including an overview of the considerations and reasons for arriving at the decision that was made. The council said that throughout the process it had posted information about the review on its website and it also published the consultation documents. The council said that records of all committee meetings are also published.
19. The complainant argued that there was strong legitimate public interest in the disclosure of the information. She said that representations were said to have been received from members of the public at the Environment Committee meeting but no evidence of this had been produced. The complainant alleged that the council relied heavily on the withheld information and according to the complainant, councillors have admitted this privately. The complainant said that in her view, the council had basically allowed a member of the public to do their research and accepted that research but are not willing to allow it to become public. The complainant said the refusal to disclose the report calls into question its reliability and undermines the principle of democratic scrutiny. In particular, the complainant expressed concern that councillors had referred to incorrect and emotive information on

Toxicariasis (a parasitic infection that is caused by roundworms that infect cats and dogs) as a reason for supporting the proposed changes to beach dog control orders. The complainant believes their understanding was based on the withheld information.

20. The council rejects the complainant's claim that it relied heavily on the contents of the withheld information. The council said that the withheld information was not, as suggested by the complainant, a fundamental document that led to the recommendation on 11 April 2012. It was one of many documents and items of correspondence that had been taken into account over the previous 5 years. The council said that it was not the case that it had received the complainant's report and suddenly decided that it was a good idea to review the dog control orders. It pointed out that it had in fact been pursuing a review of the beach dog control orders essentially since they were enacted in 2007. Since 2007, there had been correspondence with Penwith District Council and subsequently, Cornwall Council. The council said that it had consistently called for a review and had amassed a correspondence file on the topic. The council said that the arguments and information presented in the withheld report were not unique and a considerable number of representations and information had been taken into account in the review process up until the date of receipt of the document.
21. The council said that the document was not considered to be instrumental or decisive in the council's decision-making process. The Commissioner accepts that on this occasion, the complainant has not presented any strong evidence to contradict this assertion. He has taken into account how long the council had been pursuing the issue and he agrees with the council that the individual's report should be seen in this wider context. Furthermore, the Commissioner notes that the complainant is concerned about reliance on the report with reference to the Environmental Committee meeting on 11 April 2012. At this meeting, a recommendation was made. The formal decision to implement the changes was only made following further consultation with the public and the reasons for these changes were described in the public minutes. Therefore, it is clearly an over-simplification that the council relied on the report from one individual and this resulted in changes being made to the dog control orders which have not been adequately explained. In the Commissioner's view, the council has been sufficiently transparent about the reasons for the decision and the Commissioner also notes the intention to be more transparent about the contents of the particular report in future, when the individual is prepared to consent to the disclosure.
22. The Commissioner also considers that the complainant has not presented sufficiently persuasive evidence that would allow him to conclude that the disclosure of the report would have been within the

reasonable expectations of the individual concerned. The Commissioner notes that the complainant has placed a great deal of emphasis on the form that the information was presented in i.e. a report-form. She has argued that it could not be construed in the same way as correspondence from a member of the public as suggested by the council because it was clearly prepared with the intention of forming an opinion and influencing others. In the Commissioner's view, the emphasis on the form of the information is somewhat of a red-herring. The way the individual chose to present the information does not mean that different considerations should automatically apply than would otherwise be the case, for example, if the individual had simply written a letter to the council. Arguably, much of the correspondence submitted to the council about this matter and many other topics will be with the intention of forming a view and influencing others. Members of the public regularly contact public authorities for such purposes, which they are entitled to do, and this does not mean that they can expect the correspondence to be any less confidential.

23. The Commissioner notes that the complainant has questioned the reliability of the report and its factual accuracy. However, it is ultimately for the council to decide how much weight to afford to the representations it receives and ensure that it can explain its decisions appropriately. The fact that the complainant clearly wishes to challenge some of the reasons given by the council for deciding to change the dog control orders does not mean that individual members of the public who may have made comments relating to those issues, should expect the correspondence to be disclosed to account for the council's decision-making. They are generally entitled to expect confidence when making representations to the council regardless of what subsequent challenges may arise.
24. The Commissioner has also taken into account that the individual is a private individual, who made representations to the council in that capacity. This means that it is more reasonable for him to have expected confidence. As the council has explained, it was not clear when the report was submitted to the council that the individual concerned expected it to be publicly available. Nothing was said at the time to indicate this and the individual has subsequently confirmed that this had not been his intention. If there had been a previous meeting, the council has said that it was not an official council or committee meeting and its premises are often used for such purposes.
25. The Commissioner was also not persuaded by the complainant's argument that because the report was presented to a selected audience, that may have included members of the public, and subsequently may have been shared with others, this automatically means that it is appropriate for the information to be disclosed to the general public. He

was also not persuaded by the complainant's claim that the contents of the report had been discussed in open session by the council and therefore the report should be disclosed. The Commissioner has considered the minutes of the committee meeting from 11 April 2012 and there is no specific reference to the contents of the report. Even if it had been discussed to some extent more specifically, this would not warrant disclosure of the entire report as a result. In light of these considerations, the Commissioner was not satisfied that disclosure would have been within the reasonable expectations of the individual concerned.

26. The Commissioner has also had regard to the contentious background to this particular matter. He is mindful of the council's comments about the difficulties that this issue has caused amongst some members of the community and he considers that the risk of conflict resulting from the disclosure of the report is a strong possibility. The Commissioner accepts that this could cause unwarranted distress to the individual concerned.
27. Taking all of the above into account, the Commissioner formed the view that the information had been correctly withheld. It has not been clearly demonstrated that the disclosure would have been within the reasonable expectations of the individual concerned and there is a strong possibility given the background that disclosure would cause unwarranted distress. The Commissioner was not persuaded, for the reasons described above, that the complainant had presented a sufficiently strong case to justify the disclosure in the public interest. In the Commissioner's view, the disclosure would not be fair and would breach the first data protection principle in schedule 1. Regulation 13(1) is therefore engaged.

Right of appeal

28. 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

29. 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.
30. 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