

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 18 June 2014

**Public Authority:** Dartmoor National Park Authority

**Address:** Parke Bovey Tracey  
Newton Abbot  
Devon  
TQ13 9JQ

#### **Decision (including any steps ordered)**

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1. The complainant has requested details in relation to correspondence between his neighbour ([named individual]) and Dartmoor National Park Authority ("DNPA") regarding the complainant's own property, planning and enforcement issues.
2. DNPA refused to confirm or deny whether the requested information exists or is held by DNPA, in accordance with regulation 13(5) of the EIR and relies on regulation 12(5)(f) as a reason for not disclosing such information.
3. The Commissioner's decision is that DNPA had correctly relied on regulation 13(5) and regulation 12(5)(f) of the EIR. The Commissioner does not require DNPA to take any steps.

#### **Background**

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4. By way of background, the request focuses on information relating to the complainant's property and any action which may have been taken by his neighbour to involve DNPA in discussing his property.
5. Most of the requested information relates to the actions of, or in relation to a named individual who is the complainant's next-door neighbour.

#### **Request and response**

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6. On 6 December 2013, the complainant wrote to DNPA and requested information in the following terms:

"I therefore request the following:

- (i) *Copies of any correspondence since 2005 which has taken place between DNPA and the owner (named individual] or any other person at her address which directly or indirectly concerns my property or any part of it or works undertaken on it.*
  - (ii) *The date(s) of any attendances by any DNPA employee(s) or other representative(s) at ([named address])*
  - (iii) *The name(s) and job title(s) of any employee(s) or other representative(s) of DNPA who attended there*
  - (iv) *A copy of any file note(s) made of any meeting(s) which took place including the names of all persons present at any discussions*
  - (v) *If no related file notes exist, statement(s) by your employee(s) of what was discussed and what opinions were expressed on behalf of DNPA."*
7. On 6 December 2013 DNPA responded. Its decision was to neither confirm nor deny that it holds the requested information and it cited regulation 13 of the EIR to the request.
  8. Following an internal review DNPA wrote to the complainant on 9 January 2014. DNPA upheld its original decision and in relation to third party data, it affirmed its decision to neither confirm nor deny that it holds the requested information.
  9. During the investigation, DNPA also cited regulation 12(5)(f) of the EIR as a reason for not disclosing such information.

## Scope of the case

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10. The complainant contacted the Commissioner on 26 February 2014 to complain about the way his request for information had been handled.
11. The Commissioner will determine whether DNPA handled the request in accordance with the EIR. Specifically, he will look at whether DNPA was correct to rely on regulation 12(5)(f) and regulation 13 of the EIR.

## Reasons for decision

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### Regulation 13 – personal data

12. Regulation 13 provides that third party personal data is exempt from 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").
13. The first principle of DPA states that personal data must be processed fairly and lawfully. In considering where it would be unfair to confirm or deny that a complaint had been received, the Commissioner has taken the following factors into account:
  - the consequences of disclosure;
  - the data subject's reasonable expectations of what would happen to their personal data;
  - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.
14. The Commissioner acknowledges that the information requested, if held would relate to a named individual's private life and home, not of their public life (e.g. work as a public official or employee).
15. The Commissioner acknowledges that any individual considering making a complaint about a breach of planning control would have a reasonable expectation that their identity as the person making the complaint would not be released without their consent.
16. Without specific consent, the disclosure of their personal data would not amount to fair and lawful processing and would contravene the first data protection principle.

### **Duty to Confirm or Deny**

17. DNPA is of the view that to either confirm or deny the existence of a complaint, where the focus is clearly on a named third party (or where it would be easy to identify that third party) would contravene the first data protection principle. For this reason, DNPA have refused to confirm or deny whether the requested information is held by DNPA, in accordance with regulation 13(5) of the EIR.

### **Would confirmation or denial disclose personal data?**

18. The Commissioner notes that the request relates to a named individual and that confirming or denying that information is held would disclose personal data regarding that individual.

### **Consequences of disclosure**

19. Disclosure of information under the FOIA constitutes disclosure to the world at large. It is clear that confirmation of whether or not the named individual has been in correspondence with DPNA regarding this matter is not information which should be in the public domain. Its disclosure may be distressing to the individual concerned.

### **Reasonable expectations**

20. It is therefore apparent that the information requested is personal and confidential and that the individual concerned would reasonably expect such information not to be made available. Disclosing whether or not an individual has corresponded or met with DPNA regarding this matter would reveal information about them and there is a clear expectation that such information should remain confidential.

### **The balance between the rights and freedoms of the data subject and the legitimate interests of the public**

21. The complainant had argued that *"the complainant neighbour's identity is known already and the disclosure of the information requested would not be revealing something unknown previously but merely clarifying what, if any, opinion was expressed by DNPA officers."*
22. DNPA stated that this was not something within the knowledge of the DNPA. It added that it would not be lawful for it to rely on the complainant's statement as justification for releasing any relevant third party data to him, should it hold such information.

23. In some cases, if a public authority confirms that it does not hold certain data about an individual, this may itself amount to a disclosure of personal data, because it may tell the world something about that individual. Therefore, a public authority should not restrict the use of this exemption to cases where it holds the requested information. It is also appropriate for the public authority to use it where it does not hold the information, if to disclose that fact would contravene the data protection principles.
24. The Commissioner has to consider that this request has been made under the EIR and disclosure is therefore not just to the individual making the request but to the wider world. Information concerning whether an individual has made a complaint or corresponded regarding a matter is clearly private and personal to the individual concerned and would not normally be provided to third parties.
25. The Commissioner is therefore satisfied that confirming or denying whether or not the named the information requested is held, would be unwarranted by reason of prejudice to the rights, freedoms and legitimate interests of the individual in question.

### **The Commissioner's conclusion**

26. The Commissioner considers that it would be unfair to either confirm or deny whether the requested information is held.

## Right of appeal

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27. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**