

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

**Date:** 20 August 2014

**Public Authority:** Purbeck District Council  
**Address:** Westport House  
Worgret Road  
Wareham  
Dorset  
BH20 4PP

**Decision (including any steps ordered)**

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1. The complainant requested information relating to a dispute with a landowner in connection with which she had sought help from Purbeck District Council (the Council). The Council refused to disclose some of this information under a number of exemptions and exceptions from the FOIA and the EIR.
2. During the Commissioner's investigation the Council disclosed some further information. In relation to the remainder of the information, the Commissioner's conclusion is that this is covered by the exemptions in either EIR 12(3) / 13 or section 40(2) from the FOIA as it is the personal data of an individual other than the complainant and it would be unfair to that individual for this information to be disclosed. The Council is not, therefore, required to disclose this information.

**Background**

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3. The complainant was in dispute with the owner of the residential park within which she resides. This dispute was raised with the Council, which, having taken legal advice about this, declined to pursue legal action against the owner.

## Request and response

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4. The request was made initially on 12 February 2014 and went through several iterations before the final version was quoted as follows in a Council letter of 27 February 2014:

*"All information from January 2006 to date relating to [redacted] Park covering Planning & Community Services, Public Health and Housing Services, and Legal Services but not including any information relating to the other residents of [redacted] Park (such as building regulation applications for new windows or applications by residents for any other council services).*

*Additional questions:*

- 1. How many other residents have made complaints to the Council about [redacted] Park since 2010?*
- 2. Is [name redacted] the sole owner of [redacted] Park? If not, who else is part owner?*
- 3. The requester believes that there is supposed to be a hedge all around the Park. Where did this rule originate and does it still apply?*
- 4. What evidence did the Council give its barrister about the requester from 2010 onwards?*
- 5. Why did the Council support the requester for two years and then stop supporting her?"*

5. The Council responded to this request on 12 March 2014. Some information was disclosed to the complainant, but other information was withheld under the following exceptions and exemptions:

EIR 12(4)(e) (internal communications)  
EIR 12(5)(d) (confidential proceedings)  
EIR 12(5)(f) (information supplied by a third party)  
FOIA 30(1) (information held for the purposes of an investigation)  
FOIA 40(2) (personal information of a third party)  
FOIA 42(1) (legal professional privilege)

6. In response to the additional questions, answers were provided to questions 1 to 3 and 5. In response to question 4, the exemption provided by section 42(1) of the FOIA was cited.
7. The complainant responded and requested an internal review. The Council responded with the outcome of the review on 25 April 2014. No further information was disclosed at this stage.

## Scope of the case

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8. The complainant contacted the Commissioner initially on 15 May 2014 and indicated at this stage that she did not agree with the refusal by the Council to disclose some of the information she had requested. Through a later exchange of correspondence the complainant provided to the ICO the necessary background documentation.
9. During the Commissioner's investigation the Council also cited the EIR exception provided by regulation 12(4)(d) (material in the course of completion). It notified the complainant that this exception was now cited.
10. As part of the investigation, the Council was contacted by the Commissioner and recommended to disclose some of the withheld information. The Council disclosed this information to the complainant so it is not covered within the scope of this notice.
11. For the reasons given in the analysis below, the view of the Commissioner was that the remainder of the withheld information was the personal data of an individual other than the requester. As a result, the Commissioner has exercised his discretion to consider section 40(2) and regulation 12(3) / 13 even where this was not cited by the public authority. Whilst the Council cited these provisions in relation to some of the withheld information, the Commissioner has also considered these provisions in relation to parts of this information where they were not cited.
12. For the reasons given below, some of the information in question is environmental according to the definition in regulation 2 of the EIR. The Commissioner has not, however, identified in detail which parts of this information are environmental; this is not necessary as regulation 13 incorporates wholesale section 40 of the FOIA into the EIR so consideration of section 40(2) and of regulation 12(3) / 13 involve an identical process.

## Reasons for decision

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### Regulation 2

13. The first question for the Commissioner to address here is whether the information is environmental in accordance with the definition given in regulation 2(1) of the EIR, which defines environmental information as follows:

*"any information in written, visual, aural, electronic or any other material form on –*

*(a) the state of the environment, such as air and atmosphere, water, soil, land and landscape and natural sites including wetlands...*

*(b) factors, such as substances, energy, noise, radiation or waste, emissions...affecting or likely to affect the elements of the environment referred to in (a);*

*(c) measures (including administrative measures), such as policies, legislation, plans, programmes...and activities affecting or likely to affect the elements and factors referred to in (a) and (b)...".*

14. The view of the Commissioner is that some of the information in question is 'on' a plan that falls within the scope of regulation 2(1)(c). The information in question here concerns planning. The view of the Commissioner is that planning is a process likely to effect a number of elements and factors referred to in regulations 2(1)(a) and (b). Some of the information requested by the complainant is, therefore, environmental under regulation 2(1)(c) and it is correct to consider it under the EIR.

### **Section 40(2) / Regulation 12(3) / 13**

15. As mentioned above, the Council cited section 40(2) of the FOIA in relation to some of the information in question. Having reviewed this information, the Commissioner considers it appropriate to consider whether all of this information is the personal data of a third party. As some of this information is environmental, this needs to be considered under regulation 12(3) / 13, which is the EIR provision that protects against inappropriate disclosures of third party data.
16. Both of these provisions provide an exemption for information that is the personal data of an individual aside from the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of these provisions is a two-stage process: first, the information in question must constitute personal data; and secondly, disclosure of that personal data must be in breach of at least one of the data protection principles.
17. Turning first to whether the information is the personal data of any individual, personal data is defined in section 1(1) of the Data Protection Act 1998 (DPA) as follows:

*"personal data' means data which relate to a living individual who can be identified-*

*(a) from those data, or*

*(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller".*

18. Having reviewed the information in question, the view of the Commissioner is that it is all the personal data of the park home site owner. This information all relates to that individual in that it concerns various issues about the park home site and his actions in relation to it.
19. As to whether he is identifiable through this information, in much of this information this individual is named. In relation to the parts of this information where the owner is not named, the Commissioner considers it clearly the case that he could be identified in relation to this information by those with knowledge that he is the owner of this site. This could include current and former residents of that site.
20. In relation to some materials, the Council cited section 40(2) on the basis that this was the personal data of individuals other than the site owner. The Commissioner recognises that in some cases the information is clearly also the personal data of individuals other than the site owner, but his focus here is on the implications of disclosure upon the site owner.
21. Turning to whether disclosure of that personal data would be in breach of any of the data protection principles, the Commissioner has focussed here on the first data protection principle, which requires that personal data is processed fairly and lawfully and whether disclosure would be, in general, fair to the data subject. In forming a conclusion on whether disclosure would be fair, the Commissioner has taken into account the reasonable expectations of the data subject, any consequences of disclosure upon that individual and whether there is any legitimate public interest in the disclosure of this information.
22. Section 2 of the DPA lists what is to be considered *sensitive* personal data for the purposes of that Act. Included in this list is information concerning the commission or the alleged commission of an offence by the data subject.
23. Some of the information concerns the alleged commission of an offence by the site owner and therefore is sensitive personal data according to the definition in section 2 of the DPA. That this information would be the sensitive personal data of that individual is relevant here when considering his expectation about and the consequences of disclosure

upon him. The view of the Commissioner is that it is highly likely to be the case that the site owner would hold a strong expectation that this information would not be disclosed by the Council and that, as a result of this expectation, disclosure would result in distress.

24. Sensitive personal data is, by its very nature, information that individuals regard as the most private information about themselves. As disclosure of this type of information is likely to have a detrimental or distressing effect on the data subject, the Commissioner considers that it would be unfair and in breach of the first data protection principle to disclose this information. Regulation 12(3) / 13 of the EIR and section 40(2) of the FOIA are therefore engaged in relation to this information.
25. The remainder of the information in question here is not *sensitive* personal data, so whether disclosure of this non-sensitive personal data would be in breach of the first data protection principle has been considered separately. As to the expectation of the site owner about whether this information may be disclosed, this information concerns a possible breach of planning controls, which was an entirely local issue that would have resulted in an impact on only a very small number of people within that area. Given this context, the Commissioner does not believe that the data subject could be reasonably considered to hold an expectation that this information relating to a local issue would be disclosed into the public domain via the FOIA and EIR.
26. Turning to the possible consequences of disclosure upon the data subject, the expectation of privacy referred to above is also relevant here. The view of the Commissioner is that disclosure, given this expectation of privacy, would be likely to result in distress to the data subject.
27. As to whether there is any legitimate public interest in this information, the question here is, if there is public interest in disclosure, does this outweigh the factors against disclosure covered above. The Commissioner has already mentioned that the information in question relates to a local issue. Given this, the Commissioner is of the view that there is no wider public interest in disclosure of this information.
28. In conclusion the Commissioner's view is that the data subject would hold a reasonable expectation that this information would not be disclosed, that disclosure counter to that expectation would be likely to result in distress and that there is little, if any, legitimate public interest in disclosure. For these reasons he finds that disclosure would be unfair and in breach of the first data protection principle. His finding is, therefore, that the exception provided by regulation 12(3) / 13 of the EIR and the exemption at section 40(2) of the FOIA are engaged.

29. The effect of this conclusion, and that above at paragraph 24 on sensitive personal data, is that the Council is not obliged to disclose any of the information that continues to be withheld.

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

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

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** .....

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**