

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

**Decision notice**

**Date:** 22 July 2015

**Public Authority:** Surrey County Council  
**Address:** County Hall  
Kingston upon Thames  
KT1 2DN

**Decision (including any steps ordered)**

---

1. The complainant has requested an inspection report relating to a named business. Surrey County Council (the "Council") refused to provide it under Regulation 13 (Unfair disclosure of personal data) and upheld this at internal review.
2. The Commissioner's decision is that the Council should have refused to confirm or deny whether it held the requested report under Regulation 13(5)(a). In failing to conduct an internal review within the statutory period it contravened the requirements of Regulation 11(4).
3. No steps are required.

**Request and response**

---

4. Following an earlier request, the complainant requested information of the following description on 14 September 2014:

"You first logged my request for a copy of the inspection report carried out at [named business] on the 13th Jan 2014. This request was refused at that time mainly due to any pending action which SCC may have been taking etc.

Action was taken by SCC and the offending works have been removed by [named business] and the current situation is that the watercourse in question is now under normal or general maintenance so your original objection no longer apply.

I am therefore repeating my request for a copy of the inspection report carried out by TDC, SCC and others on the 9th December 2013 at [named business].

No doubt there will be a new request number.”

5. On 16 October 2014, the Council responded.
6. It refused to provide the requested information. It cited the following exception of the EIR as its basis for doing so:  
  
Regulation 13 – Unfair disclosure of personal data
7. The complainant requested an internal review on 20 October 2014. After considerable delay, the Council sent him the outcome of its internal review on 11 February 2015. It upheld its original position.

### **Scope of the case**

---

8. The complainant contacted the Commissioner on 16 February 2015 to complain about the way his request for information had been handled.
9. The Commissioner has considered whether the Council is entitled to rely on Regulation 13 as its basis for withholding the report. The Commissioner has also considered whether the Council complied with its obligations in respect of the internal review.

### **Reasons for decision**

---

#### **Regulation 2(1)(b) – interpretation**

10. Regulation 2(1) of the EIR defines ‘environmental information’. It includes “any information in written, visual, aural, electronic or any other material form on”:

‘(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements.

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, 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, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements...'

11. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner's opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor, etc. in question.
12. The Commissioner notes that the requested information relates to the state of works at a particular location and, in particular, its effect on the watercourse there. He has considered whether this information can be classed as environmental information as defined in regulation 2(1)(a) – (f) and he has concluded that it can. A watercourse plays a crucial role in the environment. It can both support life and carry disease and therefore must be carefully maintained. If not properly maintained, it can undermine the environment around it
13. The Commissioner therefore considers that the information falls within the category of information covered by regulation 2(1)(c) of the EIR. This is because the information is about an administrative measure relating to matters likely to affect the state of the environment such as water, soil and landscape in the area to which it relates.
14. The earlier request (which is referred to in this request) was refused under regulation 12(5)(b) – adverse effect on the course of justice. The Council explained that there was an ongoing enquiry about compliance with relevant legislation. The Commissioner understands that the relevant legislation is the Land Drainage Act 1991. The complainant issued a fresh request having taken this into account to the best of his knowledge.

### **Regulation 13 – Personal data**

15. Regulation 13(1) of the EIR states:

*'To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.'*

16. Regulation 13(2) of the EIR states that the first condition is –

- (a) *"in a case where the information falls within any paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene – (i) any of the data protection principles..."*

17. The Council argued that the individual who operates the business at the property in question does so as a sole trader and that information in relation to the business is his personal data. In its view, disclosure of that personal data would breach the first principle of the Data Protection Act 1998 (DPA).

### **Regulation 13(5)(a) – exclusion from the duty to confirm or deny**

18. Regulation 13 sub-sections (1) to (4) generally apply to personal data held by a public authority and considered exempt from disclosure. However, regulation 13(5)(a) further excludes a public authority from confirming or denying whether it holds information if to do otherwise would reveal personal data and contravene any of the data protection principles.<sup>1</sup>

19. The Commissioner first considered whether the information requested (if held) is personal data.

#### Is the requested information personal data?

20. Personal data is defined in section 1(1) of the DPA as:

*'.....data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller; and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any person in respect of the individual.'*

---

<sup>1</sup> Regulation 13(5)(a) states: "For the purposes of this regulation a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, to the extent that the giving to a member of the public of the confirmation or denial would contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded."

21. In determining whether information is the personal data of individuals other than the requester, that is, third party personal data, the Commissioner has referred to his own guidance.<sup>2</sup> He has looked at whether the information relates to living individuals who can be identified from the requested information and whether that information is biographically significant about them.
22. It is a well-established view of the Commissioner that information relating to sole traders is the personal data of that individual sole trader. Information about the business of a sole trader will amount to personal data, as information about the business will be about the sole trader. In this case, information about an inspection at the business in question would, if held, disclose information about the owner's compliance with any applicable regulations.
23. The Commissioner is satisfied that the information requested, if held by the public authority, would identify the owner of the business in question and connect that person to any regulatory action at the site under the Land Drainage Act 1991. It would also relate to them and be biographically significant about them. The business owner is intrinsically linked with any enforcement action at the site.
24. The Council provided the Commissioner with information which shows how the link can readily be made between the named business and its owner, the sole trader. In short, confirming or denying whether or not any information is held within the scope of the request would reveal the personal data of the individual by virtue of the fact that their business is named in the request.
25. The Commissioner therefore finds that the requested information (if held) constitutes the personal data of the individual named in the request because it relates to him/her, they have been identified in the request and would be identifiable from the requested information (if held).

Would confirming or denying that the information requested is held contravene any of the Data Protection Principles?

---

2

[http://www.ico.org.uk/for\\_organisations/data\\_protection/the\\_guide/~media/documents/library/Data\\_Protection/Detailed\\_specialist\\_guides/PERSONAL\\_DATA\\_FLOWCHART\\_V1\\_WITH\\_PREFACE001.ashx](http://www.ico.org.uk/for_organisations/data_protection/the_guide/~media/documents/library/Data_Protection/Detailed_specialist_guides/PERSONAL_DATA_FLOWCHART_V1_WITH_PREFACE001.ashx)

26. As mentioned, for regulation 13(5)(a) to apply, confirming or denying whether personal data is held must also contravene any of the data protection principles.
27. The first data protection principle states:  
*'Personal data shall be processed fairly and lawfully and, in particular shall not be processed unless –*  
*(a) at least one of the conditions in schedule 2 [of the DPA] is met....*
28. In deciding if confirming or denying whether personal data is held would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:
  - The reasonable expectations of the individual in terms of what would happen to their personal data,
  - The consequences of confirming or denying whether personal data is held, ie what damage or distress would the data subject suffer?
29. Furthermore, notwithstanding the data subject's reasonable expectations or any damage caused to them, it may still be fair to confirm or deny that their personal data is held if it can be argued that there is an overriding legitimate interest to the public (as opposed to private interests) in doing so.
30. With regards to the reasonable expectations of the data subject, the Commissioner is satisfied that the sole trader would reasonably expect that they are not publicly identified in the context of a request relating to inspection of their property. The important point to note here is that any enforcement action relating to this property would be under the Land Drainage Act 1991. A data subject would reasonably expect that they are not publicly identified in the context of enforcement action under the Land Drainage Act 1991 (unlike, for example, planning enforcement notices which are made public).
31. With regards to the consequences of revealing whether or not the public authority holds information within the scope of the request, the Commissioner is mindful of the likelihood of damage and distress it could cause to the named individual. It is quite reasonable to expect that publicly revealing whether or not any information is held in the context of the request has the potential to damage the named individual's reputation and consequently cause him/her some distress.
32. The Commissioner does not consider that there is an overriding legitimate interest to the public in issuing a confirmation or denial in this case. The public, of course, need to be assured that that the Council

takes its inspection responsibilities and duties under the Land Drainage Act 1991 seriously. However, in the circumstances of this case, the Commissioner is not persuaded that the legitimate interests of the public in knowing whether the public authority takes its inspection responsibilities seriously should be met by confirming or denying under the EIR whether an inspection report was produced relating to the property in question.

33. The Commissioner recognises that there is a public interest in knowing whether and to what extent any remedial action has been taken at a particular property following concerns raised about compliance with relevant regulations. In the circumstances of this case, the Commissioner does not consider that the legitimate interests of the public override the owner's right to privacy in connection with disclosures under the EIR. The Land Drainage Act 1991 does not include provisions whereby personal data is made public. The owner would therefore reasonably expect that any information (including confirmation or denial) would not be put into the public domain. This does not mean that the requester's concerns are not significant and can be overlooked. However, in the context of this case, confirmation or denial as to whether personal data is held would have a negative impact on the owner – this is because it would, in effect, be a disclosure contrary to that person's reasonable expectation.
34. The Commissioner considers that it would be unfair in the circumstances of this case for the public authority to confirm or deny whether it has produced an inspection report in connection with this sole trader business.
35. In view of the above, the Commissioner finds that confirming or denying whether the public authority holds information within the scope of the request would contravene the first data protection principle. The public authority should have therefore refused to comply with the request on the basis of regulation 13(5)(a).
36. The Commissioner wishes to add for the benefit of the complainant that it is immaterial whether or not he already knows the actual position – ie whether or not remedial work has been undertaken at a particular property and, where it has, the extent to which it has been done. As mentioned, the Commissioner's view is that confirming or denying under EIR (which in legal terms constitutes a disclosure to the world at large) whether the Council has produced the inspection report in question would breach the DPA.
37. The Commissioner acknowledges how unsatisfactory this is for the complainant who has legitimate environmental concerns. The Commissioner is, however, mindful of the limited extent to which public

disclosure is made under the Land Drainage Act 1991. The Land Drainage Act does not require personal data to be disclosed and the owner would not reasonably expect information about them to be disclosed (including confirmation or denial as to whether such information is held).

### **Procedural matters**

38. Regulation 11(4) states that "A public authority shall notify the applicant of its decision under paragraph (3) [the internal review] as soon as possible and no later than 40 working days after the date of receipt of the representations". The Commissioner believes that a reasonable time for completing an internal review under EIR is 20 working days from the date of the request for such a review. It must not take longer than 40 working days.<sup>3</sup>
39. The Commissioner is concerned that in this case, it took 80 working days for an internal review to be completed. In failing to complete an internal review within 40 working days, the Council contravened the requirements of Regulation 11(4). He notes that that Council has undertaken to revise its procedures in this regard.

---

<sup>3</sup> [https://ico.org.uk/media/for-organisations/documents/1613/internal\\_reviews\\_under\\_the\\_eir.pdf](https://ico.org.uk/media/for-organisations/documents/1613/internal_reviews_under_the_eir.pdf)



## Right of appeal

---

40. 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 123 4504

Fax: 0870 739 5836

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)

41. 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.
42. 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 .....**

**Alexander Ganotis**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**