

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 12 May 2015

Public Authority: The Forestry Commission
Address: England National Office
620 Bristol Business Park
Coldharbour Lane
Bristol
BS16 1EJ

Decision (including any steps ordered)

1. The complainant has requested the forestry licence for a piece of land, including the name and address of the licence applicant. The Forestry Commission (the FC) provided the licence but redacted the personal details of the licensee under Regulation 13(1) of the EIR.
2. The Commissioner's decision is that the FC has correctly applied regulation 13(1) to this redacted personal data. There are no steps to be taken.

Request and response

3. On 6 February 2015, the complainant wrote to the FC and raised some issues about use of a site of land in the local area. He then requested the following information:

"the Forestry Licence that has been issued to this site and full details of the applicant".
4. On 9 February 2015, the FC provided the complainant with a copy of the felling licence (referred to as a forestry licence by the complainant), conditions and maps. It also explained it would let the owner know of his concerns and notify the local Natural England Officer about potential disturbance to badger sets.

5. The complainant responded on the same date and asked why the name and address of the licensee had been redacted. He also asked further questions about the response.
6. On 10 February 2015 the FC explained that some of the owner's information had been redacted to comply with the Data Protection Act 1998 (the DPA). It also confirmed that it had not provided the complainant's details to the owner and agent of the land.
7. On 11 February 2015, the FC confirmed it had applied regulation 13 of the EIR to the redacted information in this case.
8. On 12 February 2015 the FC explained that the redacted information was the personal information of a third party and therefore exempt from disclosure.
9. On 23 February 2015 the complainant wrote to the FC and explained he disagreed with this ruling. He argued that he believed the public interest was in favour of disclosure. He explained he would be complaining to the ICO about this matter.

Scope of the case

10. The complainant contacted the Commissioner on 25 February 2015 to complain about the way his request for information had been handled. He provided his arguments as to why he considers it is in the public interest that the redacted information concerning the identity of the licensee should be provided to him.
11. The FC provided its arguments to the Commissioner on 16 April 2015. It confirmed its application of regulation 13(1) of the EIR to this request and also explained it considered regulation 12(5)(a) applied (adverse affect on public safety).
12. The FC has explained that it has redacted the name, address and contact details of the licence applicant and the address and contact details of the agent acting on behalf of the applicant.
13. As the complainant has not complained about the redaction of the agent's personal data, this has not been considered as part of this case.
14. The Commissioner considers the scope of this case to be concerned with the application of regulation 13(1) of the EIR to the licence applicant's name and address on the Forestry Licence.

Reasons for decision

Is the information Environmental Information

15. Regulation 2(1) of the EIR defines environmental information as, among others, information 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;" and

b) "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;"

16. In the Commissioner's view, the requested information (which is in relation to the felling of trees) falls within the definition of regulation 2(1)(c) as 'measures or activities' likely to affect the elements of the land and landscape defined in regulation 2(1)(a) of the EIR.

Regulation 13(1): third party personal information

17. Regulation 13(1) of the EIR states that a public authority is not obliged to disclose information if to do so would:

- constitute a disclosure of personal data, and
- this disclosure would breach any of the data protection principles or section 10 of the DPA.

18. 'Personal data' is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into the possession of the data controller.

19. The Commissioner is satisfied that the name and address of the relevant individual constitutes personal data.

20. The FC has explained that it considers disclosure of the requested name and address would be unfair and would therefore be a breach of principle one of the DPA.

21. It has provided the Commissioner with its arguments in support of its application of regulation 13 of the EIR. In explaining its position, the FC has referred to the criteria set out in the Commissioner's guidance to regulation 13 of the EIR and section 40 of the FOIA¹.
22. The FC has argued that the individual whose personal data has been redacted would have the reasonable expectation that his/her personal data would not be disclosed to the world at large.
23. An individual who wishes to fell growing trees is under a legal obligation to apply for a felling licence and therefore must give their personal data to the FC. However they have no expectation that this data will be disclosed upon request. They are not informed that their personal details will be made public and they have not provided their consent for such disclosure.
24. The application process/guidance informs applicants that, in most cases, their felling proposals will go on the Public Register. However, it is the details of the activities proposed that are placed on the public register, not the applicant's personal data. Details of the Register can be found on the FC website².
25. The FC has explained that the personal data is only collected so that it knows who to issue the licence to. It has explained that it is not collected with a view to future publication and that the applicant's personal data has no bearing on whether or not a licence is granted. Unlike a licence to practise in a profession or a pub licensee, it is not the applicant's professional qualifications and standing that is being taken into account when a licence is issued.
26. The FC has explained that details of a landowner who applies for a felling licence could already be in the public domain (for example on the Land Registry). However, it has explained that not all land is registered,

1

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf.

2 https://www.eforestry.gov.uk/glade/public_register_publicRegisterMap.do

particularly where it has not changed ownership in recent years, which is often the case with woodland.

27. The FC considers it would take a disproportionate effort (in both time and money) on its part to check if the personal data on the landowner was available elsewhere. It considers that it is unreasonable for it to find out or assume that the personal data is readily available elsewhere and in the public domain. It therefore considers it should work on the basis that it is not readily available.
28. The FC has also explained that tree felling does not enjoy universal support. It considers that names and addresses of landowners should not be disclosed to the public as this may lead to the landowner being subject to unwelcome attention, harassment and distress.
29. The complainant has argued that the public interest is in favour of disclosure. He has explained that the site has been the subject of various planning applications over the past four years and that mineral extraction and landfill was unanimously rejected by a full planning committee two years ago.
30. The complainant has explained that appeals against two enforcement orders have recently been heard and are pending a decision by the inspector. He has argued that at that hearing it was proved that certain invoice information given in evidence by the applicant was false and not applicable to the site. The complainant is concerned that allowing redactions in this case could lead to mistakes being made.
31. The complainant has argued that the name of the licensee should be disclosed in the cause of openness.
32. The FC has also explained that whilst it accepts that there is a legitimate public interest in the activity being licensed, it does not consider that there is a public interest in the disclosure of the details of the licence applicant. This is because it is the felling activity that is being considered and licenced, not the named individual's personal activities. It has argued that knowing who has applied for a licence would not change the outcome of the licence application which is judged on the basis of the forestry work proposed.
33. In view of the above arguments, the Commissioner is satisfied that the rights and freedoms of the individual concerned outweigh the public interest in disclosure in this case. The individual would have no expectation that their name would be placed in the public domain and disclosure may lead to unwelcome attention and distress. Although the Commissioner has given some weight to the argument in favour of

transparency, he is satisfied that the licence is based on the forestry work proposed and that there is therefore no public interest in the disclosure of the licence applicant's name.

34. In light of the above the Commissioner finds that disclosure of the requested information would breach the first data protection principle. Therefore he considers the exception at regulation 13(1) is engaged and that the information has been correctly withheld.
35. The FC has also applied regulation 12(5)(a) to this request (adverse affect on public safety). However as the Commissioner considers that the exception at regulation 13(1) applies, he has not gone on to consider this second exception.

Right of appeal

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF