

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 27 October 2015

Public Authority: Medway Council

Address: Gun Wharf
Dock Road
Chatham
Kent
ME4 4TR

Decision (including any steps ordered)

1. The complainant has requested information in response to a council letter regarding a parking restriction proposal. Medway Council (the council) provided the complainant with some information, refused other information that it considered to be third party personal data. Lastly it advised that it did not hold some of the requested information.
2. The Commissioner's decision is that the council was correct to withhold some information under regulation 13 of the EIR, but considers some information should be released. He also determined that no other information was held to the remaining parts of the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with a copy of the information as explained in paragraph 39 of the decision notice below.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. See Annex for the request of 14 April 2015
6. The council responded on the 28 April 2015 to each part of the request:
 - 1.a Line 4. – Provided planning application number.
 - B.Line 5. Part i – refused the request relying on section 40(2) of the FOIA as it considered it to be personal data.

Part ii. Advised no information held
 2. Parts a, c, d and e – refused the request relying on section 40(2) of the FOIA as it considered it to be personal data.

Part b. Provided the address.
 - 3i – Provided you with a document marked “Doc F”.
 - ii – Provided you with a website link.
 - 4.i – The council advised that the views are that of the council’s Integrated Transport Head of Service
 - ii – not applicable.
 - iii – It advised that it is accepted that the additional benefits would be that the junction remains clear at all times giving drivers better visibility and would afford pedestrians a safer crossing. This view being formed from the council’s officer’s experience.
 - 5.a. line 7. It advised that this expression was based on the experience and qualifications of the Integrated team, Head of Service and advised their qualifications.
 - b. Line 10.

i & ii –It advised that it does not hold this information.
 - 6a.Paragraph 1 of this section – The council advised the views as again being that of the Head of Integrated Transport advising their qualifications again. It also applied section 40(2) of the FOIA – personal data.
 - b. It advised the views being that of the Head of Integrated Transport

7.i. – Again advised the views as being that of the Head of Integrated Transport

ii. – Information not held

iii. – It advised most of the council's Integrated Transport Team reside in the Medway area.

7. The complainant wrote to the council on 8 May 2015 requesting an internal review. Following advice from the Commissioner, he wrote to the council again on the 26 May 2015 highlighting which parts of the request he was not satisfied with and reasons why. He advised the council the following:

- 1bi –Not satisfied that the council are relying on section 40(2) of the FOIA to refuse to provide the replies to the consultation.
- 2i –Not satisfied that the council has withheld the parts it has as personal data. – Section 40(2) of the FOIA.
- 2ii – He considers that the council would hold at least details of all who have ever had any official office at a school.
- Request 4(all of this section) – He considers that the views given will be from more than just the Head of Service. He stated that at least 2 other officers [name redacted and name redacted] were involved in this matter.
- 5bi and 5bii – He considers that the council may hold some information to these parts of his request.
- 6a –Not satisfied that the council has withheld the information it has under section 40(2) of the FOIA – Personal Data.
- 6b. He considers that other officers besides the Head of Service have also provided views.
- 7i – He considers other officers have been involved.
- 7ii. He considers that the council holds some information on this.
- 7iii – He does not consider that the council has responded correctly to the request. He states he asked something different to the response given.

8. The council provided its internal review response on the 5 June 2015. The council upheld its initial response advising that the Head of Integrated Transport is accountable and responsible for all views expressed by her officers.
9. The council also amended that where it had relied on section 40(2) of the FOIA, it was now instead relying on regulation 13(1) of the EIR, still considered to be personal data but on review determined the information is environmental.

Scope of the case

10. The complainant has advised the Commissioner that he is still not satisfied with the council's response to parts 1bi, 2a, 2c, 2d, 2e and 6a of his request being withheld under regulation 13(1) of the EIR – third party personal data – and considers the council holds or holds more information to parts 2ii, the whole of part 4, part 5bi and ii, parts 6b, part 7i, and 7ii 7iii of the request.
11. The Commissioner considers the scope of the case is to firstly determine whether the council has correctly relied on regulation 13(1) of the EIR to withhold the information it considers being third party personal data, for the parts of the request identified in paragraph 10 above.
12. He will then go on to consider whether further information is held for the other parts of the request, which are identified in paragraph 10 above.

Reasons for decision

Regulation 13(1) of the EIR – third party personal data for part 1bi of the complainant's request – full copies of all written replies to the consultation.

13. 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."

14. Regulation 13(1) of the FOIA 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 DPA.

Is the withheld information personal data?

15. Personal data is defined by the DPA as any information which relates to a living individual who can be identified from that data or from that data along with any other information in the possession or is likely to come into the possession of the data controller.
16. The information being withheld by the council is comprised of copies of the written replies made by respondents to the consultation, titled '*Informal Consultation Questionnaire Silverspot Close/ Harvesters Close/ Mierscourt Road*'.
17. The Commissioner has examined these questionnaires which the respondents returned. The questionnaires allow the respondents to tick whether they agree or disagree to the proposal and there is space to add any comments should they choose. It also asks that they provide their name, address, email and signature. The Commissioner is therefore satisfied that the questionnaires in their entirety constitute third party personal data of the respondents.
18. In the Commissioner's opinion, as the questionnaire in its current form constitutes personal data: Disclosure of the questionnaire would obviously reveal the identities of the respondents together with any comments they may have made by virtue of their names, addresses, signatures and handwriting being shown on the questionnaire.
19. The Commissioner will now go on to consider whether the council was correct to withhold the questionnaires.

Would disclosure contravene any of the Data Protection Principles?

20. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and 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 disclosure against the legitimate public interest in disclosing information.

Reasonable expectations

21. The withheld information is the personal data of members of the public living in the immediate area to the scheme. The council is of the view that that the respondents to the consultation would not anticipate having their personal information made public by the council. Whilst conditions around confidentiality were not explicitly stated, they would have been inferred or implied by the circumstance.

22. The council has also advised the Commissioner that the informal consultation questionnaires stated the following:

“Data Protection Act 1998. The data you have supplied will be used by Medway Council for the purposes of the proposed changes. Under the Data Protection Act you have a right of access to your personal records. Should you wish to exercise this right, please write to The Data Protection Officer, Medway Council, Gun Wharf, Dock Road, Chatham, Kent, ME4 4TR. A fee will be charged for this service”.

23. It considers it reasonable that the respondents would take from this that their information would not be shared with a third party.
24. The Commissioner on reading this sees that the respondents would more than likely interpret this to mean that they could access their own information, not it could be accessed by anyone who requests it.
25. The Commissioner is also of the view that, there could be a reasonable expectation that some information may enter the public domain on matters of such nature. But whether they should be identifiable from the information placed in the public domain, there may be more of an expectation that this remains undisclosed.

Consequences of disclosure

26. The council has advised the Commissioner that should the information be provided it could lead to neighbourhood conflict or personalised targeted communication, to which individuals may consider this a breach of their confidentiality.

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

27. The Commissioner must consider the weight of legitimate public interest against any prejudice to the rights and freedoms of the individual that the withheld information relates.
28. The complainant states that the council planning department points out that those who make comments about a planning application must expect that all of their comments including names and addresses will be scanned into the council’s website and available for all to see. So does not see the difference between planning and consultation about a planning matter.
29. The Commissioner sees that this is an informal consultation, rather than a formal consultation, and the council has told the Commissioner that the respondents were not informed that they would be made identifiable

from completing these questionnaires. If they did know this, it may have of changed their decision whether or not they chose to respond to or comment on the questionnaire.

30. The Commissioner is also of the view that there is always going to be public interest in matters such as parking restrictions, especially when it has the potential to affect the local residents. Allowing the residents to be as informed as possible would increase their ability to participate or comment on any potential decisions.
31. However, he also respects the fact that people may have expectations of privacy and not necessarily be identifiable when offering their comments. The Commissioner sees that being able to view the comments of the respondents holds more public interest than knowing who actually provided the comments.
32. Therefore, on consideration of the above, the Commissioner finds that any legitimate public interest in disclosing the questionnaires in their entirety does not sufficiently outweigh the rights and freedoms of the data subject's rights to privacy. And so finds that that disclosure of this information would be unfair and the council was correct to rely on regulation 13 of the EIR.

Can any of the information be provided in an anonymised form?

33. Although the Commissioner has found that to disclose the Informal Consultation Questionnaires in their entirety would be unfair, due to them containing identifiable personal data of the respondents, he has considered whether any of the information contained in the questionnaires could be provided without revealing the identities of the respondents.
34. With this, the Commissioner has reviewed the comments made in the comments section of the questionnaires. He considers that if the comments were taken from the questionnaires and reproduced on a separate document without the inclusion of names, addresses, emails, signatures, and redacting any specific reference, in the comments, to an address on the named streets then although the comments would still be the personal data of the respondents, they would be sufficiently anonymised as to not reveal their identities.
35. The Commissioner is also aware that the council has already provided the complainant with a summary of the questionnaire comments in another request under the Commissioner's case reference FS50577302 and that the information recorded in the 'tick boxes' has been disclosed to the complainant. He notes that that there were 46 responses received

from the 111 households consulted and that 33 'ticked' in favour of the proposal and 13 'ticked' against it.

36. The Commissioner appreciates that the council has provided this summary to the complainant in order to give an overview of the comments made. However the summary of responses do not show the exact comments given by the respondents and therefore only reflects the council's interpretation of the comments made. The complainant has specified it is the exact comments that he wants.
37. Given that a summary of responses has already been provided and that the comments from the questionnaire, in the Commissioner's view, can be accurately transcribed and collated without revealing the identities of the respondents, he does not see that this would be unfair or consider it unreasonable, on the respondents, for the council to provide this information as they would be unidentifiable from just the comments alone. Especially as 111 households were contacted and 46 responses were received. It is extremely unlikely, in the Commissioner's view, that anyone could deduce who made which comment, or even who responded at all from just the comments alone, when any reference to a specific address is redacted.
38. As stated above, in paragraph 31, the Commissioner does see there is a greater public interest in knowing the comments made rather than the identities of the respondents.
39. As the Commissioner is satisfied that the comments can be suitably anonymised, he finds that the council should provide the complainant with an accurately reproduced list, so not to reveal the respondents handwriting, of the comments that were provided by the respondents in the questionnaires and indicate whether each comment was 'ticked' for or against the proposal. This list should not include the names, address, emails or signatures of the respondents. And any reference to a specific address on the named streets, made within the comments, should be redacted so not to identify the respondents.

Regulation 13(1) of the EIR – third party personal data for parts 2a, 2c, 2d, 2e and 6a of the complainant's request – council officers

40. The withheld information to these parts of the request is in relation to officers of the council.

Is the withheld information personal data

41. These parts of the request that the complainant has requested is for officers full names, professional qualifications, posts held both now and previously, and what qualifies them to make express their views in this case.

42. As stated previously, personal data is defined by the DPA as any information which relates to a living individual who can be identified from that data or from that data along with any other information in the possession or is likely to come into the possession of the data controller.
43. On this the Commissioner is satisfied that the requested information is the personal data of the officers of the council as it relates to them as individuals.

Reasonable expectations

44. The council has told the Commissioner that the requested information is that of junior council officers, which is not already in the public domain. And the information requested is information that was obtained and processed by the council for recruitment purposes, so considers it would be in their reasonable expectations that this information would be processed for that purpose only.
45. It has also advised that the requested information relates to both their personal and public lives.
46. The council has advised that it has provided the details of its senior employee, as it would be within their reasonable expectations, but the junior employees would not have the same expectations.
47. The Commissioner's view on this is that it is reasonable to expect that a public authority would disclose more information relating to senior employees than more junior ones. Senior employees should expect their posts to carry a greater level of accountability, since they are likely to be responsible for major policy decisions and the expenditure of public funds.
48. However, the terms 'senior' and 'junior' are relative. It is not possible to set an absolute level across the public sector below which personal information will not be released. It is always necessary to consider the nature of the information and the responsibilities of the employees in question.
49. The council has explained to the Commissioner that these officers do not have a representative role for the council, but do correspond with the public. It considers providing the requested information of the senior officer who is accountable and responsible for the decisions to be within reasonable expectations.

Consequences of disclosure

50. The council has told the Commissioner that although it does not consider there to be potential for financial damages, it is concerned for the

emotional wellbeing of the officers becoming subject to the persistent nature of the complainants multiple requests for the junior officers personal information and sees this as the requestor clearly wishing to challenge and target their experience and expertise.

51. As no decisions are made in isolation, and all actions by junior officers are ratified by senior officials, that being the Head of Service in this case. The council considers that unwarranted distress could be caused to the junior employees on a decision taken by a senior employee.

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

52. The Commissioner must consider the weight of legitimate public interest against any prejudice to the rights and freedoms of the individual that the withheld information relates.
53. He council has advised the Commissioner that it needs to meet the wider public interest, not just that of the complainant. In doing this it has disclosed the details, experience and qualifications of the senior officer responsible in this case.
54. It also tried to be transparent in providing the summary details of the informal consultation questionnaire, to help keep the complainant and in turn the wider public, more informed on the proposal.
55. The Commissioner, in considering this part of the request, has weighed up the officers seniority. On viewing the council's pay grade scales he is satisfied that these officers are of a junior status. He has also considered the council's explanations that it is the senior employee who is responsible for final decisions made and the fact that the council has informed the complainant who this person is and their qualifications and experience.
56. Although being a junior officer does not automatically entitle complete anonymity, but it does in general carry a greater expectation that less personal information may be divulged to the public. It needs to be considered on a case by case basis.
57. The Commissioner sees that, in providing the senior officers details, this goes some way in satisfying the public interest in how and who makes the decisions. It also gives the public a point of contact within the council to be able to direct their concerns, queries and questions to on these decisions.
58. Therefore, on consideration of the above, the Commissioner finds that any legitimate public interest in disclosing the details of the junior employees does not sufficiently outweigh the rights and freedoms of the

their rights to privacy, in this case. And so finds that that disclosure of this information would be unfair and the council was correct to withhold the information under regulation 13 of the EIR.

Regulation 5(1) of the EIR – Information held/ not held

59. The Commissioner will now consider whether the council holds or holds more information to parts 2ii, the whole of part 4, part 5bi and ii, parts 6b, part 7i and 7ii of the request.

60. Regulation 5(1) of the EIR states:

"Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request."

61. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. The Commissioner must decide whether, on the balance of probabilities, the public authority holds any information which falls within the scope of the requests (or was held at the time of the request).

62. The Commissioner has focused his investigation to this part of the complaint to the identified parts of the request as well as more general searches carried out to ensure that no further information is held.

63. For part 2ii, the council advised that it does not hold any comments or representations to the consultation received other than the ones in writing.

64. For part 4 the council advised the complainant that the views were from the Head of Transport. The complainant considers that views were also formed from others and named two other possible officers for which information may be held.

65. The council has told the Commissioner that there would have been discussions but no recorded information held on this. The views would not have been recorded as it is not considered, by the council, to be a major project.

66. It has told the Commissioner that it approached the officers to see if information were held to this part of the request, where a search of their note pads was carried out and within the department and any record of recorded views would be held manually.

67. For part 5bi and ii the council again advised no information was held. It has explained that it does not hold recorded information for proof of common practice to offer meetings at customers' homes. It is merely done as part of good practice and always offered if requested or appropriate. It also advised for part 5bii, that only informal unrecorded meetings would be held in relation to parking schemes. This was again confirmed with the council's integrated transport team.
68. For part 6b, 7i and 7ii the complainant considers that other officers, other than just the Head of Service, would have given their views and named two officers as examples. Again, the council has advised the Commissioner that it does not hold any recorded information expressing views of other offices other than the Head of Service, which it has already advised the complainant. Therefore with regards to part 7ii – requesting to know if any of these officers expressing a view had any contact with the school; as there is no record of other officers views, then the council is unable to link them to contact with the school or staff in a personal or family capacity.
69. For part 7iii the complainant asked how the officers obtain their "*existing knowledge*". The council has explained that its officers from the integrated transport team experience high volume parking enquiries from around the whole authority. As a result, regular site visits are carried out at locations that have been brought to the council's attention. Such as in this case, the area has been visited by the offices. Also many of the Officers reside in the area and so would have acquired local knowledge this way. It does not consider it necessary to record any other type of information that would answer this query in any more detail.
70. The council has advised the Commissioner that in carrying out its searches it carried them out manually and electronically where relevant. As well as its integrated transport team, it carried out searches in its HR department – to see if records were held of the Head of Service having personal contact with the school.
71. It has confirmed to the Commissioner that no records have been deleted or destroyed and that there is no business purpose or statutory requirements to hold any further information.
72. The Commissioner on considering the held/not held aspect to this case has reviewed the council's responses as to why the information is not held. The complainant's expectations have also been taken into account and after specifically bringing those parts to the council's attention, further searches resulted and the council confirmed the information is not held. The Commissioner finds, on the balance of probabilities, no further information is held within the scope of the request.

Right of appeal

73. 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

74. 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.
75. 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
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