

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

Date: 1 December 2015

Public Authority: University of Oxford
Address: University Offices
Wellington Square
Oxford
OX1 2JD

Decision (including any steps ordered)

1. The complainant has requested information from the university in relation to the environmental statement commissioned to review the environmental impact of the Castle Mill student accommodation in Oxford. The university initially withheld the requested information under section 42 of the FOIA.
2. During the Commissioner's investigation it was decided that the request should have been considered under the EIR. The university reviewed the request and decided to release the requested information to the complainant, with the exception of the personal data of some external third parties, which it considered was exempt from disclosure under regulation 13 of the EIR.
3. The Commissioner has reviewed the application of regulation 13 of the EIR to the remaining withheld information and he is satisfied in this case that the exception has been applied appropriately. He therefore does not require any further action to be taken.

Request and response

4. On 10 February 2015, the complainant wrote to the university and requested information in the following terms:

"I am disgusted that in your statement to members of the university's Congregation about the Castle Mill development (as published on the university's website [here](#)) you have quoted the cost of implementing option 3 to be £30 million, even though you know this figure to be erroneous and to include double-counting (as I pointed out to you in my letter of 30 November 2014, attached).

I would be grateful if you could explain why you have promulgated this misleading figure. **I should also like a breakdown of how you have arrived at the £30 million figure that you quoted given that you had had the double-counting drawn to your attention.**

I should also like **full** details of the university's input into the "report by independent experts", as you describe the Environmental Statement, particularly into the drafting of the conclusions contained in the non-technical summary including, but not limited to, **all** revisions to the text suggested by the university."

5. The university responded on 11 March 2015. In respect of the complainant's request to receive a breakdown of how the university had arrived at a figure of £30 million, the university provided a further explanation and directed the complainant to further information that is available on the university's website. In relation to the complainant's request to see full details of the university's input into the Environmental Statement, the university confirmed that the information has been withheld under section 42 of the FOIA.
6. The complainant requested an internal review on 13 March 2015. She stated that she remained dissatisfied with the university's response to both elements of her request.
7. The university carried out an internal review and notified the complainant of its findings on 22 May 2015. In relation to the first element of the request, the university provided a more detailed breakdown of the figure quoted. Regarding the second element of the request, the university confirmed that it remained of the opinion that all recorded information falling within scope is exempt from disclosure under section 42 of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 9 June 2015 to complain about the way her request for information had been handled. Specifically, the complainant remained dissatisfied with the university's application of section 42 of the FOIA to the second element of her

request and believed the university had deliberately applied exemptions to avoid publishing the requested information.

9. No complaint was raised with the Commissioner in relation to the first element of the request. The Commissioner's investigation has therefore focussed on the second element of the request, which was for full details of the university's input into the Environmental Statement produced for the Castle Mill Development.
10. During the Commissioner's investigation it was agreed that the request should have been considered under the EIR rather than the FOIA. It is clear to the Commissioner that the requested information relates to an Environmental Impact Assessment that was carried out on the Castle Mill student accommodation after it opened in September 2013 due to concerns raised by many of its visual impact on the surrounding environment. An Environmental Impact Assessment is quite obviously environmental information falling with the definition of environmental information at regulation 2(1)(c) and (d) of the EIR.
11. During the Commissioner's investigation further information was also disclosed to the complainant. The university decided to disclose the requested information to the complainant with the personal data of a number of third parties redacted under regulation 13 of the EIR.
12. The complainant accepted the application of regulation 13 of the EIR or agreed a compromise with the university for some individuals except for the following:
 - The name of seven external third parties and the job titles of two of these individuals (to clarify, the complainant requested the name, job title and organisation of all external third parties, what now remains at the time of writing this notice is the name of seven external third parties and the job title of two of them).
 - The personal data of a member of an association who contacted the university in connection with the drafting of the statement.
13. The remainder of this notice will concentrate of this information only and whether regulation 13 of the EIR applies.
14. The complainant disputed the scope of her request during the Commissioner's investigation suggesting that further recorded information identified by the university fell within the scope of her request and therefore should be disclosed. The university was asked during the investigation to search its records again to ensure all recorded information was identified. These additional searches revealed further recorded information which is in scope but also led to the

university providing a detailed description of other recorded information it had identified but considered was outside of the scope of the request.

15. The Commissioner considers the complainant's original request was quite specific about the information that was being sought. The complainant referred to the Environmental Statement that had been commissioned to review the environmental impact of the Castle Mill student accommodation and asked for *full* details of the university's input into the report. In particular the university's input into the drafting of the conclusions contained in the non-technical summary and *all* revisions to the text suggested by the university. The Commissioner considers the request was specific to the report itself and the university's input into its draft.
16. The additional information located by the university is correspondence relating to other aspects of the report itself; not its draft. So, for example, the intended publishing of the report and its circulation and follow up actions relating to other issues being addressed at the same time relating to the accommodation. The Commissioner does not consider such information falls within a reasonable interpretation of the complainant's request and so it has been excluded from the Commissioner's investigation.

Reasons for decision

17. Regulation 13 of the EIR states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure would breach one of the data protection principles outlined in the Data Protection Act (DPA).
18. Personal data is defined as:

... "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,

And includes any expression of opinion about that individual and any indication of the intentions of the data controller or any other person in respect of the individual..."
19. The Commissioner considers the first data protection principle is most relevant in this case. 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 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."

20. The Commissioner must first consider whether the requested information is personal data. If he is satisfied that it is, he then needs to consider whether disclosure of this information would be unfair and/or unlawful. If he finds that disclosure would be unfair and/or unlawful the information should not be disclosed and the consideration of regulation 13 of the EIR ends here. However, if he decides that disclosure would be fair and lawful on the data subjects concerned, the Commissioner then needs to go on to consider whether any of the conditions listed in schedule 2 and 3 of the DPA are also met.

Is the requested information personal data?

21. Concerning the names of seven external third parties and the job title of two of these individuals, the Commissioner is satisfied that this information constitutes personal data. The name of an individual is often the most obvious example of personal data; it is information from which a living individual can be identified. In relation to the job title of two of these individuals, the university has explained that it believes it may be possible for the two individuals concerned to be identified from the job title they hold. The university advised that it believes there may be only one position of the description redacted within the organisation they work and so the individuals concerned could be identified. The Commissioner is satisfied that it is possible to identify an individual from their job title, especially if that individual is the only employee in that organisation with that particular job title or role. If there are several employees with the same job title it is less likely that an individual can be identified from it.
22. Regarding the personal data of a member of an association who contacted the university during the drafting of the statement, the Commissioner is satisfied that the withheld information constitutes personal data. The university has redacted the name of the author of these communications and any reference to the organisation they represent and to their gender. The Commissioner is satisfied that the data subject concerned could be identified from their name, their gender and the organisation they were representing.
23. As the Commissioner is satisfied that the remaining withheld information outlined in paragraph 12 above constitutes personal data, he now needs

to consider whether the disclosure of this information would be unfair and in breach the first data protection principle.

24. Before he does, it is important to highlight here what disclosure under the EIR effectively means. Disclosure under the EIR is to the world at large; it is essentially saying that the information can be made public and be released into the public domain for anyone to see. The relevant consideration here is not whether the requested information can be disclosed to the complainant but whether the requested information can be released into the public domain.

Would disclosure be unfair?

25. For all remaining withheld information, the university has stated that disclosure would be unfair because the data subjects concerned would hold no expectation that their personal data could be released under the EIR to the world at large. In relation to the seven external parties, the university stated that they either hold junior positions within the organisation they work for or have had no specific involvement in the Castle Mill student accommodation or the Environmental Statement and some have specifically objected to disclosure.
26. With regards to consent, the university explained that even when one of the seven external parties objected to disclosure it still considered whether this was reasonable in the circumstances given their position and role within the requested information.
27. The university confirmed that it has now disclosed the majority of personal data throughout the requested information to the complainant and, in particular, has disclosed the personal data of the three key individuals involved in the Environmental Statement. The complainant was also particularly interested in the name of the person who signed off the statement itself and the university provided this information. It considers the information now disclosed meets any legitimate public interest in disclosure and the disclosure of the remaining personal data would be unfair and unlawful.
28. With regards to the personal data of an individual who represented a particular association, similarly, the university explained that this data subject has made strong objections to public disclosure and has stressed that they expected the correspondence in question to remain private and confidential. As the individual clearly holds no expectation that their personal data could potentially be released into the public domain the university decided that disclosure would be unfair and unlawful. The university felt that disclosure would be an unwarranted intrusion into the data subject's private life and would cause them considerable distress and upset.

29. The Commissioner has considered the manner in which the university has applied regulation 13 of the EIR and in this case he is of the view that the approach taken is reasonable and appropriate in the circumstances.
30. The remaining seven external individuals either hold junior positions within the organisation they work or have had no specific involvement in the Castle Mill student accommodation environmental impact review. He also notes that some have also specifically objected to public disclosure when the university has contacted them about this request.
31. The Commissioner considers these data subjects either do not hold positions of sufficient seniority or have had no specific role in the statement itself and any subsequent decision making to warrant public accountability. Unlike those data subjects whose personal data has been disclosed; these have either played key roles within the development or the statement, hold senior positions or public facing roles.
32. The Commissioner is of the view that the remaining data subjects hold a reasonable expectation that their personal data will remain private and confidential and will not be disclosed to the world at large. Given their roles and expectations, the Commissioner considers public disclosure would cause unwarranted distress and upset and would amount to an intrusion into their private lives.
33. Similarly, in respect of the personal data of a private individual who contacted the university in connection with the Environmental Statement, representing a particular association, it is clear that this individual has clear objections to public disclosure and also clear concerns about the consequences of public disclosure.
34. This individual has stressed to the university that they corresponded with it on a private and confidential basis and expected their identity and connection to the particular association in question to remain so.
35. The Commissioner considers that as this individual clearly corresponded with the university on a private and confidential basis, the individual concerned holds no expectation that their personal data could be disclosed to the world at large under the EIR. Such public disclosure would be an unwarranted intrusion into their private life and would cause them upset and distress. The individual concerned has also stated that they are concerned about the consequences of public disclosure in terms of harassment and reprisals.
36. For the above reasons, the Commissioner has decided that the remaining information is exempt from disclosure under regulation 13 of

the EIR. Disclosure would be unfair and unlawful and in breach of the first data protection principle outlined in the DPA.

37. The Commissioner accepts that there is a legitimate public interest in the disclosure of information relating to this statement and why it has been necessary. He also considers that there is a legitimate interest in understanding more clearly how key decisions have been reached and by whom. However, the Commissioner considers the complainant has recently received a large amount of information from the university and has now received the personal data of key individuals and those individuals who hold senior roles or public facing positions and this recent disclosure meets any legitimate public interest there may be. He does not consider the disclosure of the remaining information is necessary to meet the legitimate interests of the public and would not aid public accountability and transparency.
38. The Commissioner has already decided that disclosure would be unfair on the remaining data subjects and he must weigh up the consequences of public disclosure on these individuals against any legitimate public interest. Disclosure in this case would cause the remaining individuals distress and upset and would amount to an unwarranted intrusion into their private lives and he has decided that such consequences clearly outweigh any remaining legitimate interest in the disclosure of the remaining information.

Right of appeal

39. 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

40. 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.
41. 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

Mrs Samantha Coward

Senior Case Officer

Information Commissioner's Office

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