

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

Decision notice

Date: 25 November 2015

Public Authority: Horsham District Council

Address: Parkside
Chart Way
Horsham
West Sussex
RH12 1RL

Decision (including any steps ordered)

1. The complainant requested the name and address of any individuals who made a complaint to the council planning compliance team about his property. The council applied Regulation 13 under the EIR and withheld the information. It also applied Regulation 12(5)(f) (voluntary supply)
2. The Commissioner's decision is that the council has correctly applied Regulation 13. As such he has not found it necessary to consider the application of Regulation 12(5)(f) further in this decision notice.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 22 May 2015, the complainant wrote to the council and requested information in the following terms:

"I would be grateful if you could action a freedom of information request concerning two planning enforcement complaints set out as below against our address at: [address redacted]"

[reference numbers redacted]

My wife and I would be grateful if you could advise the name and address of the person or persons who made the complaints such that we can ensure that as we progress with our projects we can engage as appropriate to ensure understanding and try to avoid any further unnecessary work for your planning enforcement officers."

5. The council responded on the same day. It stated that the information is environmental information and was therefore considered under the Environmental Information Regulations 2004. It applied the exception in Regulation 13 (personal data) and Regulation 12(5)(f) (voluntary supply) and withheld the information.
6. The complainant then wrote to the council on 24 May 2015 expressing dissatisfaction, with the response. The council confirmed to the complainant on 26 May 2015 that it would consider the letter as an internal review and write to him again. The complainant stated that he was simply trying to clarify the response rather than ask for a review, however the council wrote back confirming that as he had expressed dissatisfaction with the council's response it was treating his second letter as a request for review and would respond to him in due course.
7. The complainant argues that the council did not however send him the outcome of that review. In its response to the Commissioner however the council confirmed that it had carried out a review on 15 June 2015 and it provided a copy of an email to the complainant of that date which contained the review.
8. The Commissioner is therefore satisfied that the review response was sent to the complainant however it appears that he never received it.
9. The review upheld the council's initial decision to apply Regulation 13 and 12(5)(f) and so the Commissioner has therefore considered the case as below.

Scope of the case

10. The complainant contacted the Commissioner on 15 July 2015 to complain about the way his request for information had been handled. Initially his complaint was that the council had failed to carry out a review, and that it had failed to respond to his request further. On 26 July 2015 he subsequently confirmed that 40 days had passed without a response from the council.
11. The Commissioner considers that the complaint relates to both the councils failure to provide him with a review of its decision, together with dissatisfaction with the councils response to his request. The

complainant also questioned whether the council had considered the information under the correct legislation (the EIR).

12. Given the evidence that the council did carry out a review and that it did forward this to the complainant on 15 June 2015 the Commissioner has concentrated on the council's application of the exception to the requested information in this decision notice.

Reasons for decision

The appropriate legislation, FOIA or EIR?

13. One of the first issues raised by the complainant in his request for review was whether the council was correct to consider his request under the EIR rather than under FOIA.
14. The request was for names and addresses only.
15. Section 39 of the FOIA states that information is exempt information if the public authority holding it is obliged, by regulations under section 74 of the FOIA, to make the information available to the public in accordance with those regulations or would be so obliged but for any exemption under those regulations. The regulations under section 74 of the FOIA are the EIR. Information falls to be considered under the EIR if that information is environmental information.
16. Regulation 2(1) of the EIR defines 'environmental information' as having the same meaning as in Article 2(1) of Council Directive 2003/4/EC:

"namely 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;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c);and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)'.

17. In the Commissioner's view, the use of the word 'on' indicates a wide application and will extend to any information about, concerning, or relating to the various definitions of environmental information.
18. The Commissioner considers that the requested information is environmental within the meaning of the EIR by virtue of regulation 2(1)(c), as it is information on activities affecting or likely to affect the land and landscape which are elements of the environment referred to under regulation 2(1)(a). Whilst the requested information itself is only for a name and address, the information is associated with a planning compliance complaint which does fall within the scope of the definition above. The withheld information is therefore information 'on' issues defined within Regulation 2(1) as environmental information. The council was therefore correct to consider the information under the EIR.
19. For the absence of doubt however, the Commissioner does not consider that any consideration of the information under the FOIA would result in a different finding as regards the application of the exemption in section 40(2) to the third party personal data held by the council due to the similarity between the two exemptions.

Regulation 13(1) – Third party personal data

20. This exception 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 Data Protection Act 1998 ("the DPA").

Is the information personal data?

21. The complainant has requested the name and address of any individual(s) who have made a complaint to the council about his

property. By definition the name and address of an individual will be personal data relating to that person; it identifies the individual and informs the recipient of their address. In this case, it would also inform the recipient that the individual had made a complaint to the council about the complainant's property.

22. The Commissioner is therefore satisfied that the information is personal data as defined in The Data Protection Act 1998 (the DPA).

Would disclosure breach the Data Protection Principles?

23. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the 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 has taken into account the nature of the information, the reasonable expectations of the data subject, and the potential consequences of disclosure and balanced the rights and freedoms of the data subject with the legitimate public interest in disclosing the information.

Nature of the information and reasonable expectations

24. The council explained that planning enforcement allegations submitted to the council are done so in confidence. In this case the complainant has specifically requested the details of any individuals who have made a complaint to the council planning compliance department about him or his property.
25. The Commissioner is satisfied that, unlike in planning applications where there is a statutory duty to name objections to planning applications, there is no such expectation in the case of planning compliance complaints.
26. The Commissioner draws attention to the fact that disclosure under the legislation is akin to disclosure to the public at large rather than to the requester alone. The Commissioner is therefore satisfied that any individual making a complaint of this nature would not expect that their details might be disclosed to the whole world in response to an information request.

Consequences of disclosure

27. In order to assess the impact of the consequence of disclosure on whether disclosure would be fair, it is necessary to consider whether disclosure of the information would cause unwarranted damage or distress to the data subjects.

28. The council said that persons making allegations of breach of planning regulations expect anonymity so that they feel comfortable and protected in reporting matters to the council. It further highlighted that if that were not the case there would be a real possibility that individuals would refrain from providing information to public authorities which could lead to their identities being revealed as they might fear the consequences of making such a complaint. In effect therefore the individuals might be prevented from making complaints which were justified and which might affect their individual rights due to fear of any repercussions this might entail.
29. The Commissioner therefore considers that disclosure would amount to a loss of privacy which has the potential to cause damage and distress.

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

30. The Commissioner accepts that in considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for its own sake along with specific interests, which in this case is knowing the details of who made an allegation.
31. The complainant said that a disclosure of the information would be fair in order to allow him to *'ensure that as we progress with our projects we can engage as appropriate to ensure understanding and try to avoid any further unnecessary work for your planning enforcement officers'*.
32. It should be clarified that is not within the Commissioner's remit to consider the merits of any complaint against the complainant or activities on his property. The Commissioner has not sought, nor been provided with any of the details of any complaint which has been made.

Conclusion on analysis of fairness

33. Taking all of the above into account, the Commissioner concludes that it would be unfair to the individual(s) concerned to release their personal data. Disclosure would not have been within their reasonable expectations and the loss of privacy could cause unwarranted distress. He does not consider that any legitimate interests in disclosure outweigh the reasonable expectations of the individuals and the right to privacy.
34. As the Commissioner has decided that the disclosure of this information would be unfair, and therefore in breach of the first principle of the DPA, he has not gone on to consider whether there is a Schedule 2 condition for processing the information in question.
35. The Commissioner has therefore decided that the council was entitled to withhold the name and contact details of any individual making a

complaint about the complainant or his property under the exception at regulation 13(1).

Regulation 12(5)(f)

36. Given the findings of the Commissioner as regards the application of Regulation 13 the Commissioner has not found it necessary to consider the councils application of Regulation 12(5)(f) further.

Right of appeal

37. 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

38. 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.
39. 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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