

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 February 2015

Public Authority: Wandsworth Council
Address: Administration Department
Town Hall
Wandsworth High Street
London
SW18 2PU

Decision (including any steps ordered)

1. The complainant has requested from Wandsworth Council (the "Council") a copy of correspondence between a shop tenant and action taken by the Council relating to the ceiling investigation at a named property.
2. The Council disclosed some of the requested information in a redacted format and applied section 40(2) of the FOIA to the remaining parts of the request.
3. The Commissioner's decision is that the information in question is environmental for the purposes of the Environmental Information Regulations 2004 (EIR). However, he is satisfied that the information can be withheld under regulation 13 of the EIR.
4. The Commissioner does not require the Council to take any steps.

Request and response

5. On 9 July 2014, the complainant wrote to the Council and requested information in the following terms:

"There is an on-going investigation into the ceiling at [named address] and the effects they have had on the other properties. Can I have a copy of all emails, documents, list of phone calls all measurement taken and what action the Council has taken."

6. The Council acknowledged the complainant's request for information on 11 July 2014.
7. On 7 August 2014 the Council responded and stated that information regarding telephone calls is not held. It explained that telephone calls are not monitored so there is no list available.
8. The Council interpreted the complainant's request for "*all measurement taken*" to be measures and actions taken. It informed the complainant that it had asked the Area Housing Manager to write to him outlining the Council's intentions to this matter.
9. The Council withheld information to the remaining parts of the request and cited section 40(2) of the FOIA.
10. On the same day the complainant requested an internal review.
11. Following an internal review the Council wrote to the complainant on 11 September 2014. It upheld its original position.

Scope of the case

12. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
13. The Commissioner will consider whether the Council was correct to withhold the information in question.
14. The Commissioner will also consider whether the requested information is environmental.

Reasons for decision

Regulation 2(1)(b) – interpretation

15. Regulation 2(1) of the EIR defines what 'environmental information' consists of. The relevant part of the definition are found in 2(1)(b) which states that it is as any 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, costal 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...'

16. 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.
17. The Commissioner notes that the requested information relates to noise. 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 for the reasons given below.
18. In this case the subject matter of the withheld information relates to noise pollution and the vibrations caused by a ceiling fan.
19. The Commissioner therefore considers that the information falls within the category of information covered by regulation 2(1)(b) of the EIR. This is because the information can be considered to be a factor affecting or likely to affect the environment.

Regulation 13 – Personal data

20. 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.'

21. 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...”

22. The Council argued that the individual who occupies the property named in the request is a sole trader and that his correspondence constitutes personal data. Therefore disclosure of this information would breach the first principle of the Data Protection Act (DPA).
23. Personal data is defined in 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, or is likely to come into the possession of, the data controller. It includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.
24. The Commissioner has viewed the withheld information under regulation 13(1) of the EIR and he recognises that this identifies the named individual. The Commissioner considers that this is information which relates to a living individual and is therefore defined as personal data.
25. Having identified that the requested information is personal data, consideration has to be given to whether its release would be fair. In considering whether disclosure of the information would be unfair and would contravene the requirements of the first principle of the DPA, the Commissioner has taken the following factors into account:
 - the individual's reasonable expectations of what would happen to their information;
 - the consequences of disclosure, (if it would cause an unnecessary or unjustified damage or distress to the individual concerned); and
 - the balance between the rights and freedoms of the data subjects and the legitimate interests of the public.

Reasonable expectations of the individual

26. The Council withheld all correspondence containing the named individual and said that it would not be disclosed to the complainant. It argued that the individual would have an expectation of confidentiality regarding their dealings with the Council and that they would not expect the information contained in the correspondence to be deemed appropriate to go into the public domain.
27. The Commissioner notes that the withheld information consists of the details regarding the individual's communications with the Council. The

Commissioner is satisfied that it would be reasonable for the individual involved in the ceiling investigation to have an expectation of confidentiality. The Commissioner is also satisfied that the individual would not expect their personal information to be disclosed.

The consequences of disclosure

28. The Council argued that the redactions to the correspondence were made on the basis that the Council could not control what happens to that information following its disclosure.

The legitimate public interest

29. The Commissioner considers that the public's legitimate interests must be weighed against any prejudice to the rights of freedoms and legitimate interests of the individuals concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interest of the complainant) accessing the withheld information.
30. The complainant argued that his request for all communication with the shop owner (i.e. the named individual) relating to the ceiling investigation does not have an "*infringement*" on their personal data. The complainant stated that he only required correspondence related to the named individual's "*breach of lease which is a commercial arrangement.*"
31. The Council argued that in terms of assessing the named individual's rights of privacy against the public interest test, the Council is of the view that "*(without wishing to appear to trivialise [the complainant's] concerns), this is not a matter of such magnitude for there to be sufficient argument that there is a broader public interest which would warrant breaching [the named individual's] rights under the DPA.*"
32. The Council is of the view that the withheld information constitutes the named individual's personal data to the extent that redaction would render the documents meaningless. Therefore, the Council believed that there would be no purpose in providing what little information may technically be releasable.
33. The Council said that it would have been its opinion at the time that the complainant's information request would have been met by the outcome of the Council's investigations into the matter raised. However, "*such that his own interests would not be deemed to override [the named individual's] right to privacy in relation to the information in question.*" The Council added that its findings were subsequently communicated to the complainant at a later date.

34. The Commissioner considers that there is a public interest in the disclosure of environmental information, in particular in relation to information regarding emissions (such as noise pollution). However, he considers the complainant's interest in the information appears to be personal rather than being representative of any wider public interest. It seems that the complainant's reasons for his request are to take legal action against the named individual.
35. The complainant is of the view that the named individual is in breach of the lease regarding "*unauthorised changes to the shop*" which resulted in "*breaking the floor*" of his property. The complainant had raised concerns with the Council about alleged damage to the ceiling (which forms part of the complainant's property floor above the shop unit) caused by the shop tenant and noise being emanated from fans at the shop premise.
36. The view of the Commissioner is that there is not a legitimate public interest into the ceiling investigation and that it is a private interest of the complainant accessing the withheld information. He does not regard the public interest in favour of disclosure as outweighing the impact of disclosure upon the individual.

Conclusion

37. The Commissioner recognises that the correspondence in question is personal information and contains names and contact details of third parties. The Commissioner considers that the information is clearly the personal data of the individual that is involved in the ceiling investigation at the named property.
38. Having considered all the circumstances of this case, and the withheld information, the Commissioner has found that the disclosure of that personal data would be unfair and in breach of the first data protection principle. Therefore, the Commissioner finds that the information was correctly withheld under regulation 13(1) of the EIR.

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: 0116 249 4253

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

Rachael Cragg
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