

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

Date: 5 May 2015

Public Authority: Vale of Glamorgan Council
Address: Civic Offices
Holton Road
Barry
CF63 4RU

Decision (including any steps ordered)

1. The complainant requested, on behalf of his client, copies of internal correspondence between 1 February 2014 and 8 April 2014 in relation to a particular summons served by the Vale of Glamorgan Council ('the Council') on his client. The Council withheld the information requested under regulation 12(5)(b) of the EIR. During the course of the Commissioner's investigation the Council disclosed some information but maintained reliance on regulation 12(5)(b) in relation to other information held. The Commissioner has investigated and found that the remaining withheld information is the personal data of the complainant's client and therefore is exempt under regulation 5(3) of the EIR. The Commissioner has not ordered any steps, however, commentary on the implication of his findings in relation to the Council's obligations under the Data Protection Act 1998 is set out in the 'Other Matters' section at the end of this notice.

Request and response

2. The complainant in this case is the appointed Planning Advisor to a particular individual. On 30 July 2014 the complainant wrote to the Council and referred to a summons his client received in relation to alleged non-compliance with a Notice under Section 215 of the Town and Country Planning Act 1990. He stated that his client had authorised him to request information concerning the way in which the Council

conducted its case on his behalf and provided an email to the Council to confirm this. He requested information in the following terms:

"In the circumstances I should be grateful if you would send to me, as sanctioned by the Environmental Information Regulations (EIR), copies of internal correspondence between 1 February 2014 and 8 April 2014 which was specifically generated by the Summons served on [name redacted]".

3. The Council responded on 26 August 2014 and stated that the requested information was exempt under regulation 12(5)(b).
4. On 4 September 2014 the complainant wrote to the Council and asked for an internal review of its decision not to provide the information requested.
5. The Council provided the outcome of its internal review on 4 November 2014 and upheld its decision that the information requested was exempt under regulation 12(5)(b).

Scope of the case

6. The complainant contacted the Commissioner on 19 December 2014 to complain about the way his request for information had been handled and the Council's refusal to disclose the information he had requested.
7. During the course of the Commissioner's investigation the Council disclosed some information relevant to the request. On reviewing the remaining withheld information the Commissioner noted that it related to the complainant's client. He asked the Council to consider whether it constituted the personal data of the complainant's client, on behalf of whom the request had been made, and therefore should have been considered as a subject access request under the Data Protection Act 1998.
8. The Council responded and stated that "the requestor in this case was not the data subject but a third party. The requestor made it clear that he wished the request to be considered under the Environmental Information Regulations and the request was administered on that basis". The Council maintained that the withheld information was exempt under regulation 12(5)(b).
9. The scope of the Commissioner's investigation is to determine whether the Council should disclose the remaining withheld information.

Reasons for decision

Regulation 5(3) – the exemption for personal data - the complainant's own personal data

10. The duty to make environmental information available on request is imposed by regulation 5(1) of the EIR. Regulation 5(3) provides that regulation 5(1) does not apply to information that is the personal data of the requester.
11. The Commissioner notes that in this case the request was submitted by the complainant on behalf of his client and he provided the Council with an email from his client confirming this. As stated earlier in this notice, the remaining withheld information comprises legal advice relating to the Council's actions concerning alleged non-compliance with a Notice under Section 215 of the Town and Country Planning Act 1990 by the complainant's client.
12. In light of the above, the Commissioner has first considered whether any of the requested information is the personal data of the complainant's client, on behalf of whom the request was made. If it is, the EIR do not require the Council to disclose this information.
13. There is no right of access to personal data about oneself under the EIR, as regulation 5(3) provides that information is exempt if it constitutes the personal data of which the applicant is the data subject. Personal data is defined in section 1 of the Data Protection Act 1998 ('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.
14. Having viewed the withheld information, it is clear to the Commissioner that the withheld information relates to the complainant's client. It includes references to his name and/or references to the property he owns, which was the subject of the litigation. The complainant's client is clearly identifiable from the references within the withheld information to him and the information is significant and biographical to him. The Commissioner is satisfied that the information is the personal data of the complainant's client.
15. The Commissioner therefore finds that regulation 5(3) is engaged for the remaining withheld information and as this is an absolute exception there is no public interest test to apply.

Other matters

16. Although they do not form part of this decision notice the Commissioner wishes to highlight the following matters of concern:

Correct access regime

17. Section 7 of the DPA gives an individual the right to request copies of personal data held about them – this is referred to as the right of subject access. When the Commissioner viewed the withheld information, it was apparent that it contained personal data relating to the complainant's client (on behalf of whom the request was made).
18. Whilst he notes that the complainant quoted the EIR in his original request, in the Commissioner's opinion, responsibility for applying exemptions and determining whether a request should be considered under the FOIA, EIR or the DPA rests with the public authority and not the requestor. The Commissioner encourages public authorities to consider requests under the correct regime in the first instance. In this case the Council should have instigated its own procedures for handling subject access requests much earlier in its dealings with the complainant. Ideally, this should have been at the time it received the request.
19. The approach of the Commissioner where a request is made for information which is the requester's own personal data is that the public authority should deal with the request as a subject access request made under section 7 of the DPA. This action should be taken without it being necessary for the requester to make a further request specifying section 7 of the DPA.
20. The Commissioner therefore recommends and expects the Council to now consider whether the information requested, which is exempt from disclosure under section 5(3) of the EIR, could be disclosed to the applicant in accordance with its obligations under section 7 of the DPA.

Right of appeal

21. 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

22. 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.
23. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF