

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

Decision notice

Date: 16 February 2016

Public Authority: Isle of Anglesey County Council
Address: Council Offices
Llangefni
Anglesey
LL77 7TW

Decision (including any steps ordered)

1. The complainant requested information about queries and complaints received about a particular property. The Isle of Anglesey County Council ('the Council') disclosed some information but withheld other information. During the course of the Commissioner's investigation, the Council confirmed that it considered the EIR to apply to the request as opposed to the FOIA. The Council also disclosed some additional information but maintained that information about the individual who reported the matter to the Council was exempt under regulations 13 and 12(5)(f). The Commissioner's decision is that the remaining withheld information is exempt under regulation 13 of the EIR. He does not require any steps to be taken.

Request and response

2. In April 2015, the complainant wrote to the Council in relation to agricultural buildings he owns at a particular location and requested information in the following terms:

"Please can you provide me with all information, including queries and complaints that you have received via telephone, letter or email regarding the above address under the freedom of information act".
3. The Council responded on 16 June 2015 and provided some information relevant to the request but stated that it was "unable to release any

data of the complainant because doing so would constitute an actionable breach of the Data Protection Act 1998. In addition, the information provided by the complainant was provided with a reasonable expectation of privacy, its disclosure would constitute an actionable breach of confidence”.

4. On 18 June 2015 the complainant requested an internal review of the Council’s decision to withhold some information relevant to his request.
5. The Council provided the outcome of its internal review on 29 June 2015 and upheld its decision that the remaining information held relevant to the request was exempt as “it is likely that it would be unlawful for the Council to disclose the information by means of the Freedom of Information Act 2000”.

Scope of the case

6. The complainant contacted the Commissioner on 17 July 2015 to complain about the way his request for information had been handled. The complainant indicated that he was unhappy with the Council’s refusal to disclose the identity of the person who had complained about his property.
7. As the Council had not cited any specific exemptions in its responses to the request, the Commissioner asked the Council to confirm the basis on which the request had been refused. In addition, given that the request appeared to relate to planning enforcement matters, the Commissioner asked the Council to consider whether the correct access regime for the request was the EIR rather than the FOIA.
8. During the course of the Commissioner’s investigation, the Council confirmed that it agreed that the EIR to be the appropriate access regime. The Council also confirmed that the information which it had released to the complainant in its initial response was considered to be his own personal data, and therefore exempt under regulation 5(3) of the EIR. This is because the information in question was a summary of complaints the Council had received about a property owned by the complainant. However, during the course of the Commissioner’s investigation the Council disclosed some additional information, which it considered to be the complainant’s own personal data. The Council also confirmed that it considered the remaining withheld information to be exempt under regulations 13, and 12(5)(f) of the EIR.
9. In light of the above, the Commissioner’s investigation into this complaint is to determine whether the remaining information held relevant to the request should be disclosed. The remaining withheld

information comprises information about the individual who reported the planning enforcement matter to the Council.

Reasons for decision

Correct access regime

10. The Commissioner has first considered whether the information requested by the complainant is environmental information as defined by the EIR.
11. The Commissioner considers that the information requested falls within the definition of environmental information as provided by regulation 2(1)(c): “measures (including administrative measure), 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 these elements”.
12. The information requested comprises information about a potential planning breach to the Council, which led to a planning enforcement investigation being undertaken. The Commissioner is satisfied that the withheld information falls within regulation 2(1)(c) because it is information on, or relating to, a measure which is designed to protect the elements referred to in regulation 2(1)(a); namely land and landscape.

Regulation 13 – the exemption for third party personal data

13. Regulation 13 of the EIR provides an exception to disclosure of personal data where the applicant is not the data subject and where disclosure of the personal data would contravene any of the data protection principles.

Is the requested information personal data?

14. In order to engage regulation 13 the information sought by the applicant must constitute personal data as defined by section 1 of the DPA. It defines personal information 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.

15. In this case, the withheld information comprises the name and contact details of the individual who complained to the Council about the property in question. In addition, the Council has withheld other information which could lead to the identification of the individual for example, the reference number on letters sent to them. The Commissioner is satisfied that the withheld information relates to a living individual who may be identified from that data. The requested information therefore falls within the definition of personal data as set out in the DPA.

Would disclosure breach one of the data protection principles?

16. Having accepted that the information requested constitutes the personal data of a living individual other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles. He considers the first data protection principle to be most relevant in this case. The first data protection principle has two components:
- personal data shall be processed fairly and lawfully; and
 - personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

Would disclosure be fair?

17. In considering whether disclosure of the information requested would comply with the first data protection principle, the Commissioner has first considered whether disclosure would be fair. In assessing fairness, he has considered the reasonable expectations of the individual concerned, the nature of those expectations and the consequences of disclosure to the individual. He has then balanced against these the general principles of accountability and transparency as well as any legitimate interests which arise from the specific circumstances of the case.

The Council's position

18. The Council considers that disclosure would breach the first and second data protection principles. The Council explained to the Commissioner that individuals who make complaints to its Planning Enforcement Department are given assurances that their identity will not be disclosed to any persons that the Council would be required to contact in order to investigate any planning enforcement matter. As such the Council contends that individuals would have no expectation that their personal data would be disclosed into the public domain. The Council confirmed

that the individual in question had not been consulted in relation to disclosure of their personal data.

19. The Council's view is that disputes between individuals can be inflamed or be caused by disclosures of this nature. The Council stressed that it is difficult to identify exactly what the likely consequences of disclosure are in cases such as this. However, it is aware that disputes between individuals have resulted in damage to property and threats of violence made against persons who have reported matters such as this. The Council therefore considers that disclosure could potentially result in considerable distress, or given the possibility of dispute between individuals, damage to the person, property or reputation of the individual who reported the matter to the Council.
20. The Council pointed out that it is not suggesting that the complainant in this case or any other third party would resort to such behaviour in this particular instance. However, the Council pointed out that the enforcement complaint in this case dates back to 2010 but it is evident that the issue is still live in the complainant's mind, almost six years later.
21. The Council further said that the enforcement complaint it received was not spurious or a waste of resources as it resulted in an investigation being undertaken. The Council also stated that it would be unlikely to divert the scarce resources it has to investigate spurious or vexatious complaints. The Council recognises that the complainant in this case or any individual who is the subject of an enforcement complaint could feel victimized by a complaint against him and his property.
22. The Council considers that disclosure would inhibit the willingness of the public to engage with it on a voluntary basis and in a confidential manner in order to report issues of concerns, which the council is obligated to investigate. The Council is of the view that there is a public interest in ensuring that its ability to undertake its statutory functions is maintained.

The complainant's position

23. In his complaint to the Commissioner, the complainant stated that the Council's reasons for withholding the information requested, ie that it would be "unfair, unlawful and distressing" for the individual who made the complaint, failed to take into account how unfair and distressing it was for him to have such a complaint made against him. He stated that, being unaware of who had made the complaint left him "wondering whether the circumstances leading to it at [sic] that if malice or genuine concern. This to me is deemed unfair as I should be able to visit my own property comfortable without feeling threatened in any way".

The Commissioner's position

24. 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 enforcement complaints. The Commissioner believes that there are different considerations when considering these 'protected informants' who have complained that land has not been developed or used in accordance with planning permission. These individuals are informing the Council on behalf of the public. While it is for the Council to determine whether further action is taken in relation to such complaints, it is essential that the public is protected in order to ensure fair process and to allow planning issues to be investigated. The Commissioner is therefore satisfied that any individual making a complaint of this nature would not expect that their details might be disclosed into the public domain in response to an information request.
25. The Commissioner has considered the submissions made by the Council and the nature of the withheld information and he is satisfied that disclosure of the information to the public and the associated loss of privacy has the potential to cause unnecessary and unjustified harm to the individual in this case.
26. Notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if there is a more compelling public interest in disclosure. 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.
27. The complainant has said that not knowing the identity of the individual who reported the matter to the Council has left him wondering whether the complaint was made out of malice or genuine concern. In turn, this has left him feeling threatened when visiting his property. It is not within the Commissioner's remit to judge the motive of the person who reported the enforcement matter to the Council. However, the Commissioner notes that the matter was investigated by the Council and appropriate advice given to the owner (the complainant) about the actions required to avoid formal enforcement action being taken in the future.
28. In this case, the complainant clearly has a personal interest in knowing who has submitted a complaint about them to the Council. However, disclosure under the FOIA or the EIR is a disclosure to the world at large. As such, the relevant interests in this context are those of the

broader public and the Commissioner considers that the public interest in this regard is served by the planning and planning enforcement processes which provide opportunities for individuals to engage, challenge and hold planning authorities to account.

29. Taking all of the above into account, the Commissioner has concluded that it would be unfair to the individual who reported the matter to the Council 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 individual and their right to privacy.
30. 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. The Commissioner has therefore decided that the Council was entitled to withhold the name and contact details of the person making the allegation against the complainant under the exception at regulation 13(1).
31. As the Commissioner has determined that the information has been correctly withheld under regulation 13(1), he has not gone on to consider the Council's application of regulation 12(5)(f) to the withheld information.

Right of appeal

32. 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

33. 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.
34. 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
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