

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

Date: 29 June 2016

Public Authority: Leeds City Council
Address: Civic Hall
Calverley Street
Leeds
West Yorkshire
LS1 1UR

Decision (including any steps ordered)

1. The complainant has requested correspondence between the council and a charitable organisation, Aspiring Communities, and its agents regarding a planning application to build a community centre in Beeston, Leeds. The council disclosed the majority of the information however it withheld the names of some individuals named in the correspondence, and also the contact details for some individuals. During the course of the Commissioner's investigation the council disclosed further names to the complainant however it retained its reliance upon Regulation 12(3) for some individuals.
2. The Commissioner's decision is that the council has correctly applied Regulation 12(3) to some names, however the identity of other individuals should be disclosed.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To disclose the names of individuals on the steering group who have already been identified on the Aspiring Communities website.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court

pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 20th August 2015 the complainant wrote to council and requested information in the following terms:

"I would be grateful if, under the terms of the Freedom of Information Act, you could supply us with the following information

i) Who took the decision to defer the application and on what basis?

ii) The minutes of the meeting where the decision was taken, and the time, date and attendees at the meeting

iii) Copies of all communications between the developer (including any agent acting on behalf of the developer) and the planning department, including e mails, letters and recorded telephone calls between 22nd October 2014 and 6th August 2015."

6. The council responded on 30 September 2015. It provided the majority information from parts 1 and 2 of the request but redacted the names of some individuals from the correspondence in response to part 3 of the request under Regulation 12(3) (personal data).
7. Following an internal review the council wrote to the complainant on 25 November 2015. It provided further information which it said had been accidentally redacted by its redaction software, however it retained its reliance upon Regulation 12(3) for the remainder of the withheld information.

Scope of the case

8. The complainant contacted the Commissioner on 23 December 2015 to complain about the way his request for information had been handled. His complaint regarded the council's redaction of the information in part 3 of his request.
9. He said that the names of individuals who form part of Aspiring Communities steering group for the development are published on the website of Aspiring Communities and he considered that these should therefore be disclosed from the withheld information. He also questioned the redaction of the names which were not available from the Aspiring

Communities website. He said however that the website had indicated that two of these individuals may be serving police officers. He therefore asked the Commissioner to consider the redaction of these names.

10. He also questioned whether the redaction of the other names in the correspondence was correct, one of which was associated with Hunslet Hawkes Rugby Club.
11. Further to this the complainant asked the Commissioner to consider the redaction of the contact details of Aspiring Communities planning advisor.
12. During the course of the Commissioner's investigation the council reconsidered the redactions and decided that some names of individuals could be disclosed, primarily because of steps taken by them which had already placed their names into the public domain. This included the contact details of planning advisor to Aspiring Communities, and the names of one of the individuals who Aspiring Communities had stated it was currently in talks with. These names are not therefore considered further within this decision notice.
13. The Commissioner therefore considers that the remaining matters for him to consider are names from the steering group, and the name of the individual associated with Hunslet Hawkes Rugby Club. The council has applied Regulation 12(3) to these names.

Reasons for decision

14. Regulation 12(3) of EIR states:

"To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13."

15. Regulation 13(1) states that:

"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."

16. Regulation 13(2) provides 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; or..."

17. The Commissioner has considered the most relevant data protection principle of The Data Protection Act 1998, which in this case is the first data protection principle. The first data protection principle states that:

"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."

18. In his approach to the application of the first data protection principle the Commissioner concentrates in the first instance on whether the disclosure of the information would be 'fair'.

19. 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.

Relevant Background

20. The requested information relates to a planning application to build a community centre in Beeston, Leeds by a charity called Aspiring Communities. A large number of members of the local community have objected to the plans. The Commissioner understands that many objectors believe that the developers have not fully explained what they intend to use the centre for and believe they intend to use it for additional purposes to being a community centre, primarily as a mosque. They argue that this will have a much larger impact upon the community than is suggested and will impact on the numbers of people visiting the area at specific times of the week or year, and that this will place strain on the local infrastructure. They also argue that this intention does not meet the needs or wishes of the majority of the local community.

The nature of the information

21. The council redacted the names of individuals relating to the following:

- a) The names of individuals provided to the council by Aspiring Communities who form/formed a 'steering group' for Aspiring Communities in the area but who do not have any formal association with the planning application.
- b) The names of individuals provided to the council by Aspiring Communities who they claim to have been in communication with, but who do not have any formal association with the application. This is an individual who is associated with Hunslet Hawkes Rugby Club.

22. The complainant wishes the Commissioner to determine whether the redaction of the information in a) and b) was correct.

a). The members of the steering committee

23. The withheld information is a set of names of members of the steering group for Aspiring Communities (at the local level), who support the application for the centre to be built.

24. Some of the names of the individuals on the steering group have already been published on the Aspiring Communities website, identifying them as part of the local steering group. However further names have been provided in a letter to the council submitted as part of the planning correspondence.

The expectations of the individuals

25. The council argues that the individuals who form the steering group would not expect that information about them might be disclosed as part of an FOI request relating to this application. Personal data that does not constitute a 'material consideration' for the decision maker is not published on the council's planning portal and the council considers therefore that the individuals would have a reasonable expectation that their personal data (i.e. their names and their association with Aspiring Communities) would not be disclosed to the public unless this was required as part of the statutory planning process.

26. The council recognises that the public has a legitimate interest in this matter, and in the openness and transparency of the decision making of the council as the local planning authority. It argues however that there is very limited public interest in knowing the names of members of the steering group. The steering group members are not in charge of

Aspiring Communities and do not form part of its governing committee, they were not involved in the planning application and their existence and involvement with Aspiring Communities was not a 'material consideration' for the purpose of the planning decision. The group simply consists of local individuals who support the objectives of a local charity. All other information held by the council about the existence of the steering group that is relevant to the request has been disclosed under the EIR and it considers that the current level of disclosure meets the legitimate interests of the public in this case.

27. The Commissioner considers that consideration should, to an extent, be split into two separate groups:
 - i) those who are named on the Aspiring Communities website, and
 - ii) those members of the steering group who are not named on the website.
28. i) Some of the group are actively named as part of the steering group on the Aspiring Communities website. The council argues that it does not know that the individuals consented to the use of their names in the letter and has no means of contacting them to ask for their consent to a disclosure of their names. It also argues that the names may be removed from the Aspiring Communities website at any point and that this might then put the council into a situation where a disclosure under the EIR would breach the first data protection principle.
29. The Commissioner has considered this argument. He considers that it is unlikely that their names were associated as part of the steering group and published on the Aspiring Communities website without their consent. He also considers that the fact that their names have not been removed from the website strongly indicates their intention to be publically identified as being associated with supporting the development.
30. A disclosure of the information at the time of the request would be a disclosure of names which are already known at the time of the request. If Aspiring Communities were to subsequently remove their names from the website this would not put the council in a situation where a disclosure which had initially complied with the first data protection principle subsequently became a breach of that obligation.
31. The Commissioner considers that the individuals would expect that once that information was disclosed via the Aspiring Communities website it would become known by members of the community, (including any objectors to the development) and that this knowledge could not then

be 'forgotten'. Members of the local community would know the individuals and remember their past support.

32. The Commissioner therefore considers that these individuals would have an expectation that details of their association with Aspiring Communities would be public.
33. ii) Secondly there are some individuals whose names have not been published on the Aspiring Communities website. The council argues in this situation it does not know the expectations of the individuals, does not know if they are aware that their details have been disclosed to the council and that it does not have their contact details in order to be able to seek their consent to a disclosure.
34. It points out that their support is not a material consideration of the planning decision and they would not therefore expect that their names to be publicised as supporting the development.
35. It argues that they would have no expectation that details of the membership on the steering group would be made public by a disclosure of the information in response to this request.

The potential consequences of disclosure

36. i) The potential consequences of disclosure in this case relate to the individuals standing and reputation in the community. The individuals would be highlighted as positively backing a development which has caused significant controversy within the community. The council argues that this might be detrimental to their interests and their right to privacy.
37. These individuals can already be identified as associated with the development because their details are already on the website of Aspiring Communities. For these individuals a disclosure of the information would not disclose anything new into the public domain and therefore this weakens any arguments for withholding their identities.
38. The council has stated that the Aspiring Communities website is not under its control and that their identities and their association with the project could be removed. It has not explained however how that would make a disclosure of the names of these individuals by it any different. Their association with Aspiring Communities and support for the project has already been disclosed to the world. The Commissioner considers therefore that there could be no additional significant detriment to them even if the information were to be subsequently withdrawn for Aspiring Communities website. The information has already been disclosed by Aspiring Communities.

39. The Commissioner therefore considers that in terms of these individuals no additional detriment could occur as a result of the disclosure of this information by the council in response to this request.
40. ii) As regards the names of the individuals who have not been identified already, the Commissioner accepts that a disclosure would associate them as supporting a contentious development and that this might affect their standing in the community and the way in which some people within their community relate to them.
41. The Council also argues that Aspiring Communities have made it clear that the individual members are keen to distance their involvement in the steering group from their professional roles. The council considers that public disclosure of their names under the EIR could therefore have a negative impact on their professional lives which would be unwarranted given their lack of involvement in the planning process. In evidence of this, the complainant said to the Commissioner that he the Aspiring Community website had indicated that two of the redacted names may be serving police officers. He said that he had written to the Chief Constable of West Yorkshire seeking an explanation of this.
42. Clearly therefore a disclosure of the names of individuals may result in them or their employers being approached by the group to raise objections personally or ask further questions about the intentions of the steering group. This appears to be against their wish that their role with Aspiring Communities is distinct from their professional roles.

The legitimate interest of the public in receiving that information

43. The council argues that the support of the individuals is not part of the material considerations which can be taken into account in the planning decision. It therefore considers that there is no reason why that information should need to be disclosed in response to the request as it has no bearing upon the eventual decision on the site.
44. The public may wish to know who in the community supports and is steering the project in order to contact them and ask them further about their plans for the development however Aspiring Communities is already contactable to answer such questions (if they choose to do so). There is also the normal ability to place objections via the planning process.
45. i) The Commissioner has already outlined some of the arguments relating to this in para 24 above. The legitimate interests of the individuals in protecting their information are weakened by the disclosure of their membership of the steering group to the extent that the Commissioner considers that a disclosure of the information would

be fair. Aspiring Communities has made public their support for the development, presumably with their consent to do so. The Commissioner has not been persuaded by the arguments of the council that a subsequent withdrawal of those names from the website would mean that a disclosure of the names by the council at this time would be unfair.

46. As regards the legitimate interests of the public in receiving that information Aspiring Communities have put forward their names as supporting and steering the project. Although not a material consideration for the planning decision the public still has a legitimate interest in transparency over the background to the contentious project and there is therefore a legitimate interest in knowing the names actually submitted to the council as supporting the project. As the names of these individual's has already been disclosed (by Aspiring Communities) the Commissioner considers that a disclosure of their identities would not be an unwarranted intrusion into their private lives under the circumstances.
47. The Commissioner therefore considers that the council was not correct to apply section 12(3) to this information.
48. ii) As regards the individuals whose names do not appear on the website, the situation is more balanced towards protecting the identity of the individuals; that a disclosure would be an unwarranted intrusion into their personal lives.
49. Knowledge of the individuals support and aid in developing the project is not known by the public, and given the contentious nature of the project it may be detrimental to their interests for them to be directly associated with it. The information is not material to the planning decision and there is therefore no specific compelling reason why that information should be disclosed to the public. The Commissioner consider that there are arguments for disclosure as outlined in paragraph 46 above however he considers that in this case the balance rests with withholding the information.
50. The Commissioner therefore considers that the council was correct to apply Regulation 12(3) to this information.

b) The names of individuals who Aspiring Communities claim to have been in communication with, but who do not have any formal association with the application.

51. The council withheld the names of individuals provided to it by Aspiring Communities who have been in communication with Aspiring Communities supporting the development, but who do not have any

formal association with the application. During the Commissioner's investigation it reconsidered these names and agreed that one name could be disclosed. The Commissioner has not therefore considered this name further.

52. It continued to withhold the information for another individual, who is identified in the disclosed information as being associated with Hunslet Hawkes Rugby League Football Club.
53. The council explained that Aspiring Communities had provided the individual's name as someone who supported their cause (but was not part of the steering group). It provided further information to the Commissioner explaining why this individual would have no expectation that their information would be disclosed, which the Commissioner has considered and accepts.
54. The council further argued that this information is not a material consideration and would not be taken into account in any decision over the application in any event.
55. Having considered this the Commissioner is satisfied that the individual would have no expectation that their information would be disclosed by the council in association with the development.
56. As regards the potential consequences of the disclosure, the council argues that a disclosure of the information would be detrimental to the individual as the planning application has attracted much local interest and many comments of objection. It argues that to disclose the individual's personal data could result in unwarranted prejudice as a result of potential negative publicity or unwanted communication from members of the public. The council therefore, considers that disclosure of the information would be unfair and breach the first data principle.
57. The Commissioner accepts that under the circumstances outlined by the council a disclosure would be unfair for the purposes of the first data protection principle. Further to this he is also satisfied that a disclosure of the information would not be necessary for the legitimate purposes of the public in respect of the development.
58. The Commissioner considers that the council was therefore correct to withhold the information under Regulation 12(3).

Right of appeal

59. 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

60. 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.
61. 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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