

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 9 January 2017

Public Authority: Harrogate Borough Council
Address: PO Box 787
Harrogate
HG1 9RW

Decision (including any steps ordered)

1. The complainant has requested information relating to a planning application. Harrogate Borough Council disclosed some information and withheld other information under the exception for third party personal data (regulation 13 of the EIR).
2. The Commissioner's decision is that Harrogate Borough Council breached regulation 5(2) and regulation 11(4) of the EIR and that it correctly withheld information under regulation 13.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 1 February 2016, the complainant wrote to Harrogate Borough Council (the "council") and requested information in the following terms:

"(in relation to planning application: 14/04219/FUL)

Whilst we already have access to data published in you Planning web portal, we are aware that there is much other data that has not been published nor otherwise made available to interested parties.

Please be so kind as to prepare a disk containing all documents of any nature in the council's possession relevant to or relating to this case and post this disk to me at the above address."

5. The council responded on 10 February 2016 and disclosed some information.
6. Following an internal review the council wrote to the complainant on 21 September 2016. It disclosed further information to the complainant and advised that other information constituted the complainant's personal data and directed them to submit a subject access request. The council also confirmed that some information constituted the personal data of third parties and withheld this under regulation 13. It also withheld other information under the exceptions for internal communications (regulation 12(4)(e)) and the course of justice (regulation 12(5)(b)).

Scope of the case

7. On 4 October 2016, following the internal review, the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. During the course of the Commissioner's investigation the council revised its position and disclosed the information previously withheld under regulation 12(4)(e) and regulation 12(5)(b). In relation to its application of regulation 13, it confirmed that it maintained its position.
9. The Commissioner confirmed with the Commissioner that her investigation would consider the council's handling of the internal review and its application of regulation 13.

Reasons for decision

Regulation 5 – duty to provide environmental information

10. Under regulation 5(2) of the EIR, public authorities have a duty to provide requested environmental information within 20 working days of the date of receipt of the request.
11. In this case the council initially applied exceptions to withhold some of the requested information but subsequently disclosed the information during the Commissioner's investigation. In cases where previously withheld information is disclosed to a complainant the Commissioner does not investigate whether the exceptions in question were correctly applied. However, in such cases and, as the information was disclosed outside the statutory 20 working day time limit, the Commissioner records a breach of regulation 5(2).

Regulation 11 – internal review

12. Regulation 11(4) provides that, where a requester has expressed dissatisfaction with the handling of a request for environmental a public authority should conduct an internal review and communicate its findings within 40 working days.
13. In this case the complainant submitted their request for review on 12 February 2016 but the council did not provide their internal review response until 21 September 2016, after being prompted by the Commissioner.
14. The Commissioner has, therefore, concluded that the council breached regulation 11(4) of the EIR.

Regulation 13 – personal data

15. The withheld information constitutes a private individual's correspondence with the council.
16. Regulation 13 provides that personal data of someone other than the person making the request shall not be disclosed where either one of two conditions are satisfied. The first condition, which is relevant here, is that disclosure would contravene one of the data protection principles in the Data Protection Act 1998 (DPA) or would contravene section 10 of the DPA.

Is the withheld information personal data?

17. Personal data is defined in section 1(1) of the DPA as -

"...data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller; and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any person in respect of the individual".

18. In determining whether information is the personal data of individuals other than the requester, that is, third party personal data, the Commissioner has referred to her own guidance and considered the information in question. She has looked at whether the information relates to living individuals who can be identified from the requested information and whether that information is biographically significant about them.

19. In this case the withheld information consists of the name, address and opinions of an individual who has corresponded with the council.

20. Having seen the withheld information the Commissioner is satisfied that it constitutes personal data as defined by the DPA.

Would disclosure contravene any of the Data Protection Principles?

21. 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 in this case have focused on the issue of fairness.

22. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of disclosure against the legitimate public interest in disclosing information.

Reasonable expectations

23. The council has advised that it considers that it would not have been within the reasonable expectations of the third party in question that their personal data would have been passed to third parties.

24. The Commissioner notes the context within which the individual in question provided their personal data and is satisfied that it would not have been within their reasonable expectations for it to be disclosed more widely or processed for purposes other than that for which it was submitted.

Consequences of disclosure

25. The council has confirmed that the individual explicitly stated that the information was provided in confidence. In view of this and the wider context, the Commissioner accepts that there is a reasonable expectation that the information will not be disclosed, and there would be some level of distress from disclosure on the basis that privacy has been unexpectedly lost.
26. The Commissioner accepts, therefore, that the disclosure of this information into the public domain would have some negative impact on the individual's privacy, to the extent that it will result in the unexpected loss of privacy, which in itself could be distressing.

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

27. The complainant wishes to access the information in order to determine whether the planning application in question has been handled appropriately.
28. The council has argued that disclosure of the information would breach the first principle of the DPA and that it would be unfair to the individual concerned. The Commissioner notes that the public interest in this case has been served, to an extent, by the disclosure of other information falling within the scope of the request.
29. The Commissioner understands why the complainant wishes to have access to the information, however, their individual needs have to be set against the broader public interest in this matter. The Commissioner accepts that the planning process provides a mechanism for public engagement with decision making and this in itself provides an argument for maintaining the integrity of the process and the council's practice in relation to personal data.
30. The Commissioner also considers that the unexpected and unwarranted invasion of individuals' privacy which disclosure would cause would not be in the public interest in this case. She also considers that the public interest has been served by the council's disclosure of other relevant information and that the planning process provides adequate mechanisms for scrutiny and redress.
31. In view of the above, the Commissioner is satisfied that disclosure of the information would be likely to contravene the first data protection principle. She has therefore, concluded that the council has correctly withheld the information under regulation 13(1) of the EIR.

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

Andrew White
Group Manager
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