

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

Decision notice

Date: 21 June 2017

Public Authority: Carmarthenshire County Council
Address: County Hall
Carmarthen
SA31 1JP

Decision (including any steps ordered)

1. The complainant has requested correspondence between the owner of a piece of land and the council in relation to a complaint that was made about the conversion of the site to a commercial shooting site without the benefit of planning permission. The council refused to disclose the requested information citing regulation 13 of the EIR.
2. The Commissioner's decision is that the council has correctly applied regulation 13 of the EIR in this case. She therefore does not require any further action to be taken.

Request and response

3. On 23 August 2016, the complainant wrote to the council and requested information in the following terms:

"Will you please send a copy of the correspondence and replies you have had with the owners/operators of this site so we can check the dates etc."

The request relates to a complaint raised by the local community with the council in relation to a small agricultural holding, which the local community believes has been converted to a commercial shooting site without the benefit of planning permission. The request is for copies of correspondence with the owner of this site.

4. The council replied on 18 September 2016. It refused to disclose the requested information citing regulation 13 of the EIR.
5. The complainant requested an internal review on 25 September 2016. He stated that he was only interested in the content of the correspondence not any personal data and so a redacted version of the withheld information should be provided.
6. The council carried out an internal review and notified the complainant of its findings on 5 October 2016. It stated that it remained of the opinion that regulation 13 of the EIR applied in this case.

Scope of the case

7. The complainant contacted the Commissioner on 1 November 2016 to complain about the way his request for information had been handled. He stated that he felt it was vital for the local community to have access to this information due to the concerns that have been raised about the site in question, the unlawful use of an agricultural site for commercial shooting and the disturbance they have suffered. The complainant believes the site is owned by a limited company and so regulation 13 of the EIR cannot apply.
8. The Commissioner's investigation has focussed on the withheld information itself and the council's application of regulation 13 of the EIR. She has also considered the documentary evidence the complainant has kindly supplied in relation to the site in question and its ownership.

Reasons for decision

9. Regulation 13 of the EIR states that a public authority shall not disclose information if it constitutes the personal data of a third party and the disclosure of that information would breach any of the data protection principles outlined in the Data Protection Act 1998 (DPA).
10. Personal data is defined as:

... "data which relate to a living individual who can be identified-

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

And includes any expression of opinion about that individual and any indication of the intentions of the data controller or any other person in respect of the individual..."

11. The Commissioner considers the first data protection principle is most relevant in this case. The first data protection principle states -

"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."
12. The Commissioner must first consider whether the requested information is personal data. If she is satisfied that it is, she then needs to consider whether disclosure of this information would be unfair and unlawful. If she finds that disclosure would be unfair and unlawful the information should not be disclosed and the consideration of regulation 13 of the EIR ends here. However, if she decides that disclosure would be fair and lawful on the data subject(s) concerned, the Commissioner then needs to go on to consider whether any of the conditions listed in schedule 2 and 3, (sensitive personal data) if appropriate, of the DPA are also met.

Is the requested information personal data?

13. The council argued that the withheld information relates to identifiable individuals in the context of a planning enforcement case and so the withheld information constitutes personal data. It stated that it acknowledged the complainant would be happy for the name and address of any third party to be redacted. However, it confirmed that it did not feel redaction was possible and felt that even if the name and address was redacted it would still be possible for members of the public to identify the data subject(s) concerned.
14. With regards to the commercial ownership of the land and the operation upon the land, the council advised that it had noted the complainant's comments. However, it remained of the opinion that this does not detract from the fact that the recorded information held relates to identifiable individuals in the context of a planning enforcement matter and the fact that, in its view, the withheld information falls within the definition of personal data as outlined in the DPA.
15. Dealing with the ownership of the land in question, the complainant has supplied documents to suggest that the land in question may be owned by a limited company; the directors of the limited company being those

named in the withheld information. However, the Commissioner remains unconvinced that this is sufficient to demonstrate that regulation 13 of the EIR cannot apply on the basis that the withheld information does not constitute the personal data of an individual(s). Usually the Commissioner would agree that regulation 13 of the EIR cannot apply to a limited company; only individuals or sole traders. However, in this particular case the activities of the limited company are not being considered here. The activities of the limited company are wholly different to the activities complained about in the planning enforcement case. So, in effect the complaint is not about the limited company but about other more private activities being carried out by the directors of that limited company in a completely different context.

16. It appears more likely that the activities complained about relate to the private lives of the directors of the limited company rather than the activities of the limited company referred to in the documents provided. The Commissioner also notes that the documents refer to another company, possibly, the name of which correlates with the shooting activities on the land. This company is not a limited company but a small private company or sole trader and the activities complained about and therefore the withheld information itself is more fitting to this company rather than the limited company also quoted.
17. The Commissioner considers that she must take a relatively cautious approach to the application of regulation 13 of the EIR, as we are considering the disclosure of personal data to the world at large. For the reasons explained above, she is satisfied that it is more likely than not that the withheld information relates to the activities of a private individual(s) or a sole trader and that they can be identified from it. She is therefore satisfied that the requested information does fall within the definition of personal data as outlined in the DPA.

Would disclosure be unfair?

18. As the council pointed out in its correspondence to the complainant, it is important to highlight what disclosure under the EIR effectively means. Disclosure under the EIR is to the world at large. The relevant consideration is therefore not whether the applicant can have access to the requested information but whether the requested information can be released into the public domain for anyone to see.
19. The council has explained that generally speaking no information is disclosed to the public in relation to planning enforcement matters unless a breach is identified and, for example, a planning enforcement notice is issued. Prior to this and for cases that do not progress this far because no enforcement action is required, information is kept private and confidential. It explained that as a result of this process and if and

when information is released, individuals expect information relating to any planning enforcement complaints to remain private and confidential unless some form of enforcement action is taken.

20. In this case, the council confirmed that the complaint was investigated and the individuals concerned contacted but no enforcement action was deemed necessary. Therefore no planning enforcement action was taken and no information relating to the matter made public. It argued that the individuals concerned hold the reasonable expectation, therefore, that the withheld information will remain private and confidential. They would not hold any expectation that this correspondence could be released to the world at large in response to a request made under the EIR. And so, disclosure would be unfair and unlawful.
21. The Commissioner agrees with the council that the individuals concerned will hold no reasonable expectation that the correspondence in question could be disclosed into the public domain. They are aware that a complaint was made against them, that this was investigated by the council but no formal action taken. They would therefore expect the withheld information to remain private and confidential.
22. The Commissioner has accepted that the withheld information relates to the private lives of the individuals concerned for the reasons explained above. Therefore, she is satisfied that disclosure of this information to the world at large could cause them considerable distress and upset. Whether the complainant is satisfied with the outcome of the council's investigations or not, it remains the case that no formal action was deemed required. It would be unfair and an unwarranted intrusion into the private lives of the data subjects concerned to release the withheld information into the public domain when the council concluded that no enforcement action was required.
23. The Commissioner accepts that there is a legitimate interest in members of the public understanding more clearly how planning matters and planning enforcement matters are dealt with. However, these legitimate interests must be weighed up against the intrusion and distress disclosure of the information could cause to the data subjects concerned. As explained above, the Commissioner has accepted that disclosure would be unfair and unlawful and potentially cause the data subjects distress and upset. In this case, she does not accept that any legitimate interest in the disclosure of this information outweighs the potential impact upon the data subjects concerned. The complainant was informed of the outcome of the council's investigation (although he is not satisfied with it) and as no further action was required there was no requirement to make any information public. The Commissioner considers that there may be more appropriate mechanisms in place for pursuing this matter rather than seeking public disclosure; an appeal via

the council's own complaints procedure for example or a complaint to the Local Government Ombudsman.

24. For the above reasons, the Commissioner has concluded that regulation 13 of the EIR applies. She is satisfied that the withheld information constitutes the personal data of a third party, that disclosure of the withheld information would be unfair and unlawful and therefore in breach of the first data protection principle outlined in the DPA.

Right of appeal

25. 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

26. 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.
27. 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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF