

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

**Decision notice**

**Date:** 22 August 2017

**Public Authority:** Kirklees Metropolitan Council  
**Address:** PO Box B24  
Civic Centre 3  
Market Street  
Huddersfield  
HD1 1WG

**Decision (including any steps ordered)**

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1. The complainant has requested the name and status of the author(s) of a Minerals Technical Paper, the person(s) who verified the figures in that paper, and name and status of the person(s) in the Planning Policy Group who is/are dealing with Site ME1965a. The Commissioner's decision is that Kirklees Metropolitan Council has correctly applied the exception for personal data at Regulation 13 of the EIR. She does not require the public authority to take any steps to ensure compliance with the legislation.

**Request and response**

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2. On 6 January 2017, the complainant wrote to Kirklees Metropolitan Council ('the council') and requested information in the following terms:

"The name and status of the author(s) of the Minerals Technical Paper published in Nov 2016 and the name and status of the person(s) who verified the figures used.

The name and status of the person(s) in the Planning Policy Group who is/are dealing with Site ME1965a.

When asked previously about the basis of the mineral reserve 1 assessments etc I have been referred to a Minerals Technical Paper

that was published in November 2016. Please provide the information that was used for the basis of mineral reserve assessment/requirements etc that was used to inform the 2012 plan and the Draft plan that was published for public consultation in November 2015."

3. The council responded on 2 February 2017. It provided some of the requested information but refused to provide the names and details of 'more junior members of staff' under the exception for third party personal data at regulation 13(1).
4. On 15 February 2017, the council provided an internal review. It appeared to rely on the exemption for third party personal data at section 40(2) of the FOIA.

### **Scope of the case**

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5. The complainant contacted the Commissioner on 22 February 2017 to complain about the way his request for information had been handled.
6. The complainant confirmed to the Commissioner that the information he requires is limited to the name and status of the council employees involved with the mineral technical paper and site ME1965a. Therefore, the Commissioner has not considered the element of the request for 'the information that was used for the basis of mineral reserve assessment/requirements etc that was used to inform the 2012 plan and the Draft plan that was published for public consultation in November 2015'. The Commissioner understands that such information was provided in the council's initial response.
7. In its response to the Commissioner's enquiries in this case, the council said that when the internal review was completed it quoted both the EIR and the FOIA and ultimately considered the application of s40(2) of the FOIA but said that nevertheless the arguments remain the same. Therefore the Commissioner has first considered whether the information requested is environmental.
8. The council also informed the Commissioner that, in response to a separate request from the complainant (request number 13862), it confirmed who the Policy Group Leader for Site ME1965a was and who the responsible Assistant Director was. It clarified that this was in respect of the rejection of minerals allocation ME1965 and the inclusion of minerals allocations ME1965a and ME1965b in the publication version of the local plan that was authorised by full council at their meeting on the 12 October 2016. The Commissioner enquired whether anyone else was on the Planning Policy Group and was informed that the two

individuals involved in the Minerals Technical Paper were also in the group. Therefore, as the council has previously provided the identity of the Policy Group leader and the Assistant Director, consideration of the aspect of the request for 'The name and status of the person(s) in the Planning Policy Group who is/are dealing with Site ME1965a' is limited to the withheld names of the two individuals involved in the Minerals Technical Paper.

9. As the Commissioner has decided that the information is environmental, she has considered whether the exception for personal data at regulation 13(1) of the EIR applies to the following:
- the name and status of the author(s) of the Minerals Technical Paper published in Nov 2016,
  - the name and status of the person(s) who verified the figures used, and
  - the name and status of the person(s) in the Planning Policy Group who is/are dealing with Site ME1965a - limited to the names of the two individuals involved in the Minerals Technical Paper.

## Reasons for decision

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### The appropriate legislation – FOIA or EIR?

10. The first matter for the Commissioner to decide is whether the information is covered by the FOIA or the EIR. Section 39 of the FOIA states that information is exempt information if the public authority holding it is obliged, by regulations under section 74 of the FOIA, to make the information available to the public in accordance with those regulations or would be so obliged but for any exemption under those regulations. The regulations under section 74 of the FOIA are the EIR. Information falls to be considered under the EIR if that information is environmental information.
11. Regulation 2(1) of the EIR defines 'environmental information' as having the same meaning as in Article 2(1) of Council Directive 2003/4/EC:
- "namely any information in written, visual, aural, electronic or any other material form on –
- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the

interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), 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 those elements;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)'.

12. In the Commissioner's view, the use of the word 'on' indicates a wide application and will extend to any information about, concerning, or relating to the various definitions of environmental information.

13. The Commissioner considers that the requested information is environmental within the meaning of the EIR by virtue of regulations 2(1)(a) and 2(1)(c) as the relevant paper provides an overview of the minerals found within Kirklees and the process used to plan for their efficient use over the period of the Local Plan.

### **Regulation 13(1) – Third party personal data**

14. Regulation 13(1) of the EIR states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the legislation would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').

15. In order to rely on the exception at regulation 13(1), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

“personal data” means 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 the individual and any indication of the intentions of the data controller or any other person in respect of the individual.”

16. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA.

### **Is the withheld information personal data?**

- 17. As explained above, the first consideration is whether the withheld information is personal data.
- 18. As the information being considered in this case is the name and status of individuals, the Commissioner is satisfied that such information is clearly personal data as defined in the DPA.

### **Does the disclosure of the information contravene any of the data protection principles?**

- 19. The council considers that the disclosure of the information would contravene the first data protection principle.
- 20. 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.”
- 21. In deciding whether disclosure of this information would be unfair, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subjects, the consequences of disclosure on those data subjects and balanced the rights and freedoms of the data subjects with the legitimate interests in disclosure.

## **Nature of the information and reasonable expectations**

22. The council has explained that the requested information is the names and details of more junior members of council staff. It said that although it does not have a written policy regarding what personal information may be disclosed about its staff, the general approach, which is accepted across the organisation, is that personal information (including identities) of more junior members of staff will be withheld. It explained that there is a structure within the council and a scheme of delegation which allows for more junior officers to collate and prepare information for senior manager sign-off, and then for decisions to be taken by elected members or delegated to appropriate senior managers. The council said that it is happy to disclose the identities of those senior managers who are both responsible and accountable for the work of their teams and for approving and, where appropriate, making the delegated decision.
23. In light of the above, the council believes that it was reasonable for the individual officers in this case to expect that their identities would not be disclosed into the public domain and said that those officers did in fact expressly say that they did not consent to disclosure of their identities.
24. In the Commissioner's guidance on 'Requests for personal data about public authority employees'<sup>1</sup>, it is stated that information about an employee's actions or decisions in carrying out their job is still personal data about that employee, but given the need for accountability and transparency about public authorities, there must be some expectation of disclosure.
25. It also states that it is reasonable to expect that a public authority would disclose more information relating to senior employees than more junior ones. Senior employees should expect their posts to carry a greater level of accountability, since they are likely to be responsible for major policy decisions and the expenditure of public funds. The Commissioner also considers that it may also be fair to release more information about employees who are not senior managers but who have public facing roles and represent their authority to the outside world, as a spokesperson or at meetings with other bodies.

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1187/section\\_40\\_requests\\_for\\_personal\\_data\\_about\\_employees.pdf](https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf)

26. In this case, although the information relates solely to the individual's professional lives, given the level of the officers and the council's approach to the disclosure of employee details, the Commissioner considers that it would be reasonable for the junior officers to have an expectation of privacy and that their names would not be disclosed to the public at large.

### **Consequences of disclosure**

27. In order to assess the impact of the consequence of disclosure on whether disclosure would be fair, it is necessary to consider whether disclosure of the information would cause unwarranted damage or distress to the data subjects.
28. In its response to the Commissioner, the council said that there had been a large number of requests for information relating to the Local Development Plan; 28 from the same group which the complainant is a member of, two of which request names of specific officers and one of which appears to imply that officers attending a meeting with a commercial company involved with the site had inappropriately accepted hospitality which it said was not the case. It said that a further request (not from this complainant, but from the group he represents) asked the council to disclose the areas where the officers lived, which was refused. In the context of these numerous requests and suggestions the council saw fit to maintain the confidentiality of the individual officers, who it said were more reluctant to be identified because of the nature of the requests.
29. During a telephone call with the Commissioner, the council clarified that the concern is that the individuals would be targeted and their professional reputations would be questioned.
30. The Commissioner considers that disclosure would amount to an intrusion into the privacy of the officers which has the potential to cause damage and distress.

### **Balancing the rights and freedoms of the data subjects with the legitimate interests in disclosure**

31. 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 the legitimate interest in knowing which officers were involved in the Minerals Technical Paper.
32. The complainant believes that disclosure is necessary to ensure that the same person who wrote the report will not be involved in future decisions regarding the site ME1965a because that person had already

formed the opinion that planning permission on that site would be acceptable. He said that the author and verifier of the report should play no further part in any subsequent planning application and for the public to be assured of this it is in the public interest to disclose the names. He also said that the council has spoken about the local plan process being open and transparent and it has published names of members of the public who have made comments about the local plan allocations and to apply different criteria to different groups is a breach of the duty to treat people equally.

33. The council acknowledged that transparency and openness in decision making are paramount in the planning process. However, it said that it is important to explain the distinction between the process involved in identifying a site for the local plan and the consideration and recommendation on any future planning application for that site and provided the Commissioner with the following information:

“In identifying specific sites for future mineral extraction in the Local Plan, Officers are bound by the requirements of the National Planning Practice Guidance (NPPG) on Minerals, para 008 ID 27-008-20140306 (link <https://www.gov.uk/guidance/minerals#planning-for-minerals-extraction>). This states that specific sites should be considered ‘where viable resources are known to exist, landowners are supportive of minerals development and the proposal is likely to be acceptable in planning terms’. The assessment of a subsequent planning application is a more detailed process involving detailed consideration of all material planning considerations including the response to publicity, consultee responses and any supporting information submitted by the applicant.

It is possible that [one of the individuals involved in the Minerals Technical Paper] could be the Case Officer for any future application for minerals extraction on this site due to their technical expertise. However, whilst the Officer would be expected to make a recommendation they will not be the Decision Maker. In accordance with this Council’s Delegation Agreement p58 part A (1) para j (link <http://www.kirklees.gov.uk/beta/your-council/pdf/constitution-part-3.pdf>) Officers do not have the authority to be the Decision Maker in either the designation of a site in the Local Plan or the grant of planning permission for minerals applications. The approval of the Submission Draft Local Plan and the individual sites within it was taken by the Full Council. Under the Delegation Agreement a decision on any future application for minerals development on this site will be taken by the Strategic Planning Committee.

It is also worth adding that once the development plan (the Local Plan) has been adopted, it is a matter of law that development proposals



should be determined in accordance with it unless other considerations indicate otherwise. As a result the case officer who is actually dealing with the application (whoever it was) would be bound by the law as a starting point."

34. The council also explained, in its internal review response, that the author and verifier are required to assess the data objectively, and to assess it in accordance with their professional judgement, and that ultimately, the local plan is put before an inspector at public examination who will decide whether the plan is sound based on the evidence presented.
35. In relation to the publication of names of members of the public who have made comments on the local plan, the council explained that members comment in the full knowledge that they are participating in the democratic process and waive their right to anonymity, preferring to engage openly and transparently in the local plan consultation in the wider public interest. It provided a screen shot of its website which makes it clear that names and comments received will be displayed publicly.
36. The council concluded that whilst it is possible that one of the officers involved in the Minerals Technical Paper could be appointed as the Case Officer for any future applications due to their particular technical expertise, that officer would be expected to make a recommendation, which would be signed-off / approved by a senior manager, and the officer will not be the decision maker, therefore it does not believe that there is a compelling public interest in disclosing the identities of either of the individual officers in this case.

### **Conclusion on analysis of fairness**

37. Taking all of the above into account, the Commissioner concludes that it would be unfair to the individual officers to release the requested information. Disclosure would not have been within the officers' reasonable expectations and the loss of privacy could cause unwarranted damage or distress. She acknowledges that there is a legitimate interest in knowing which officers were involved in the Minerals Technical Paper, but does not consider that this outweighs the officers' rights to privacy, and considers that the council's explanation regarding decision makers in future applications goes some way to satisfying the legitimate interest in this case. She considers that the officers' rights and freedoms are not outweighed by the legitimate public interest in disclosure, and accepts that disclosure of the personal data in this case could cause damage and distress and would be unfair and unnecessary in the circumstances. The Commissioner has therefore

decided that the council was entitled to withhold the information under regulation 13(1).

38. 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, she has not gone on to consider whether there is a Schedule 2 condition for processing the information in question.

## Right of appeal

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39. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

40. 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.
41. 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** .....

**Deborah Clark**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**