

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

Decision notice

Date: 13 September 2017

Public Authority: High Peak Borough Council
Address: Buxton Town Hall
Market Place
Buxton
SK17 6EL

Decision (including any steps ordered)

1. The complainant has requested the name of an individual who raised a complaint on behalf of the Chapel-en-le-Frith Parish Council to the High Peak Borough Council's planning enforcement officer. The complaint was regarding a potential planning control breach in relation to an unauthorised development. The High Peak Borough Council sought to withhold the name of the data subject using the exception in regulation 13 of the EIR.
2. The Commissioner's decision is that the High Peak Borough Council incorrectly applied the exception at regulation 13(1) of the EIR to the withheld information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To disclose the withheld information to the complainant.
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 8 August 2016 the complainant wrote to the High Peak Borough Council ('the Council') and requested information in the following terms:

"The parish council made a complaint about my application to Borough of High Peak about planning ref 00178 on behalf of one of its members, I requested this person to be named to me under the Freedom of Information Act, it was a petty complaint taken personally by myself"

6. The Council responded on 22 August 2016 and refused to provide the information citing the following FOIA exemptions:
- Section 40(2) by virtue of section 40(3), the exemption for personal data;
 - Section 41, the exemption for information provided in confidence.
7. Following an internal review the Council wrote to the complainant on 2 September 2016 and refused the request on the basis of regulation 13 of the EIR having reconsidered that it related to environmental information.

Scope of the case

8. On 7 December 2016 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically complained about the Council's refusal to provide the name of the parish councillor who reported the potential planning control breach to the Council.
9. The Commissioner agrees that the information request relates to environmental matters, therefore she has considered whether the exception for personal data at regulation 13(1) of the EIR applies to the requested information.

Reasons for decision

EIR Regulation 13(1) – Third party personal data

10. 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').

Is the withheld information personal data?

11. Personal data is defined by the DPA as any information relating to a living and identifiable individual. As the information being considered in this case is the name of an individual, the Commissioner is satisfied that such information is clearly personal data as defined in the DPA.

Would disclosure breach the Data Protection Principles?

12. The Commissioner's guidance concerning regulation 13 entitled "*Requests for personal data about public authority employees*"¹ states that:

"When a public authority receives a request for information that constitutes personal data about its employees, it must decide whether disclosure would breach Principle 1 of the Data Protection Act (the DPA), ie whether it would be fair and lawful to disclose the information. Whether the disclosure is fair will depend on a number of factors including:

- the consequences of disclosure;*
- the reasonable expectations of the employees;*
- whether there is a legitimate interest in the public or requester having access to the information and the balance between this and the rights and freedoms of the data subjects.*

¹ https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

If the public authority decides that it would be fair, the disclosure must also satisfy one of the conditions in Schedule 2 of the DPA."

Reasonable expectations

13. In the Commissioner's guidance on *"Requests for personal data about public authority employees"*, it is stated that information about an employee's actions 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.
14. The guidance states that for public facing roles it may be fair to release more information about people who represent the authority to the outside world as a spokesperson or at meetings with other bodies.
15. The Council has explained that it consulted with the data subject during the internal review and also in response to the Commissioner's investigation. The data subject has maintained that they do not want their name to be released.
16. The Council has also explained that *"the complaint was reported to Chapel Parish Council and passed on by [the data subject] acting in their official capacity"*. The data subject has expressed concern that the applicant may misunderstand that the planning complaint originated from them.
17. The issue is not simply whether the data subject had an expectation that their personal data would not be disclosed but rather whether that expectation is reasonable to hold. The Commissioner considers that it is reasonable for an elected representative to expect that their name may be divulged to the public at large, particularly when they are undertaking actions on behalf of their constituents and on behalf of the council.
18. The Commissioner also notes that the *'Chapel-en-le-Frith Parish Council Code of Conduct'*², issued on its public facing website states that the seven Nolan principles apply to the conduct of people in public life, one of which is: *"accountability: you should be prepared*

² <http://chapelpc.org/your-parish-council/policies-and-procedures-2/code-of-conduct-2>

to submit to public scrutiny necessary to ensure accountability." She therefore believes, in this case, that it would be a reasonable expectation of the individual that their name might be disclosed in response to a request under the EIR.

Consequences of disclosure

19. The Council has advised that during a telephone conversation the complainant had stated that he already knew the identity of the data subject but he wanted the Council to disclose the name officially.
20. The Council raised the concern of reprisals to the data subject due to the relatively small size of the community, however no specific examples or evidence was provided. It also expressed concern that there could be a misunderstanding that the complaint originated from the data subject. Additionally it felt that the data subject could potentially be put under pressure to reveal names of the member(s) of the public raising the planning complaint.
21. The Council has advised that the data subject has stated that disclosure would inhibit their willingness to report other similar sensitive matters in the future.

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

22. The Commissioner notes that, notwithstanding a data subject's expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose personal data if there is a more compelling public interest in disclosure. In considering legitimate interests, the Commissioner's view is that such interests can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.
23. The Commissioner appreciates the issues raised with regard to the potential consequences of disclosure; however she also understands that the data subject was acting in an official capacity in order to pass on concerns raised by the public on behalf of the parish council. Furthermore, as established, in that official capacity it would be reasonable to expect that their name may be disclosed in response to an information request under the EIR.
24. In the Commissioner's view the fact that the data subject was not making a complaint on their own behalf, and was fulfilling their position as councillor in the actions taken, diminishes the likelihood of the envisioned consequences of disclosure occurring.

25. There is, therefore, a compelling and legitimate interest in disclosure in order to promote greater transparency and accountability of councillors when acting in their official capacity. In this case the Commissioner considers that disclosure would be fair.

Is one of the conditions in Schedule 2 of the DPA met?

26. Having determined that it would be fair to disclose the name of the data subject, the Commissioner must further consider whether one of the conditions in Schedule 2 of the DPA is satisfied. In relation to these conditions, she believes that the most appropriate condition for consideration is the sixth condition which states that:

“The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject”.

27. The Commissioner has identified why she believes that the disclosure of the withheld information would serve a legitimate public interest. As a result she is satisfied that a condition in Schedule 2 is met and therefore that disclosure would be lawful.

Right of appeal

28. 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

29. 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.
30. 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

Mr Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF