

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

Decision notice

Date: 12 February 2018

Public Authority: The Environment Agency
Address: Lateral
8 City Walk
Leeds
LS11 9AT

Decision (including any steps ordered)

1. The complainant made a request for information relating to a fire that occurred at a site in Staffordshire. The Environment Agency provided the complainant with some information but withheld some information under regulation 12(5)(b), 12(5)(e), 12(5)(f) and 13 EIR. The Complainant was dissatisfied with the application of exceptions to four particular pieces of withheld information.
2. The Commissioner's decision is that the Environment Agency has correctly applied regulation 13 EIR to the four documents being withheld.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 7 December 2016 the complainant made the following request for information under the EIR:

" Incident and Date: Fire at Global Hygiene/Global Heat Transfer at Drummond Road, Astonfields Industrial Estate, Stafford, ST16 3HJ on 2 March 2015

1. Please confirm the full name of the legal entity (or entities) that was responsible for, and had control of, Global Hygiene's Drummond Road

site and/or which should have obtained any relevant permit from the Environment Agency.

2. Please confirm the status of the Environment Agency's investigations into the Incident and:

(a) should the investigations have concluded, please:

(i) confirm the outcome including whether the Environment Agency will be pursuing enforcement proceedings; and

(ii) provide us with a copy of the final report and the documents which the Environment Agency took into consideration; or

(b) should the Environment Agency have yet to conclude its investigations, please advise us as to when the investigation is likely to be concluded and provide us with any documents which the Environment Agency holds in relation to the Incident and which the Environment Agency is able to provide.

3. Should it not already be covered in an investigation report which you are able to provide, please also address the following:

(a) Should Global Hygiene (or any other organisation) have obtained permits from the Environment Agency in relation to the site at any point before and including the date of the Incident? If so, what permits should they have obtained and did they obtain them? If they did obtain any of the necessary permits, please send us a copy of them.

(b) Please confirm whether or not Global Hygiene acted in compliance with any regulations concerning the storage of oil and aerosols and, if they did not, please explain why.

(c) Please advise us of the Environment Agency's understanding as to why the fire started and spread so quickly."

5. On 10 March 2017 the Environment Agency responded. It provided some information but withheld some information under regulation 13, 12(5)(b) and 12(5)(e) EIR.

6. The complainant requested an internal review on 5 April 2017. She also made a new request for information on this date. The Environment Agency responded to the new request made on 5 April 2017 on 6 June 2017.

7. The Environment Agency sent the outcome of its internal review of its response of 10 March 2017 on 27 June 2017. It reviewed its response in relation to the following withheld information:

"Unsigned statement"

"Sketch 1 of Global site layout"

"Sketch 2 of Global site layout"

"Statement"

"Exhibit AJ04"

"Letter to individual requesting PACE interview"

"Letter from Knights solicitors to EA"

It provided the complainant with *"Exhibit AJ04"* but continued to withhold the remaining information under regulation 12(5)(b), 12(5)(e) and 13 EIR. It additionally applied regulation 12(5)(f) EIR.

8. The complaint to the ICO referred to the following documents:

- (a) Unsigned statement
- (b) Sketch 1 of Global site layout
- (c) Sketch 2 of Global site layout
- (d) Statement

My investigation will therefore focus on the application of the exceptions to documents (a)-(d) above.

Scope of the case

- 9. The complainant contacted the Commissioner on 18 August 2017 to complain about the way her request for information had been handled.
- 10. The Commissioner's investigation has focused on the application of the exceptions to documents (a)-(d) outlined at paragraph 8 above.

Background Information

- 11. The EA explained that the withheld information relates to a fire on 2 March 2016 at the Drummond Road site where Global Oil Company (Europe) Limited and Global Hygiene LLP operated businesses. The business of Global Oil Company (Europe) Limited is to manufacture heat transfer oils to supply to various industries. Global Hygiene LLP is

a supplier of industrial cleaning products (workwear, brushes, window squeegees, cleaning liquids) and occupied a wholesale warehouse which was open to trade customers.

12. It went on that no environmental permit for either company was in force at the time of the fire. There is no requirement to apply for an Environmental Permit under the Environmental Permitting Regulations 2016 (EPR) when the materials handled are not waste or not hazardous in nature. The storage of oil products is not regulated by the Environment Agency.
13. It said that if waste is produced on site, no permit is required to store it. If waste is received from third parties, stored, bulked and transferred, a permit is required. If a site is used to store large amounts of material defined as "hazardous", the Control of Major Accident Hazard Regulations (COMAH) may apply. The Environment Agency was not aware that there was any need for a permit under the EPR or the COMAH regulations in respect of either Global Hygiene LLP or Global Oil Company (Europe) Ltd on or before 2 March 2016.
14. It confirmed that there is a requirement on the recipient of hazardous waste to keep copies of consignment notes, and to provide quarterly returns to the Environment Agency detailing the types of material transported and the post code of the consignee (not the name of the business disposing of the material). The Environment Agency holds copies of consignment notes provided by Midland Oil Refinery Limited, some of which (relating to consignments from Global Oil Company (Europe) Ltd) were provided to the complainant on 10 March 2017.
15. It explained that following the fire, the EA was unable to determine what materials had been involved, nor whether they had been correctly handled on the site. The fire was fierce leaving no evidence that waste materials had been involved.
16. It confirmed that the site has now been cleared and is no longer occupied by Global Hygiene LLP or Global Oil Company (Europe) Ltd.

Reasons for decision

17. The withheld information consists of an unsigned witness statement written by an employee of the potential defendant Global Hygiene LLP for the Health and Safety Executive (HSE), whose evidence (among other factors) led EA officers to believe that an offence may have been committed in relation to the storage of hazardous materials and waste oils, and in relation to the movement of wastes onto the site from other businesses. The witness also produced two drawings showing his understanding of the layout of the site and the positions of the drums.

The EA also holds a statement from an employee of Midland Oil Refinery Ltd.

18. Regulation 13 EIR had only been applied to the first witness statement, however after viewing the withheld information and the explanation above as to its contents, as dual regulator of FOIA/EIR and the Data Protection Act 1998, the Commissioner has decided to consider the application of regulation 13 EIR to all four withheld documents.

Regulation 13(1)

19. Regulation 13(1) EIR provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in regulation 13(2) or 13(3) EIR is satisfied.
20. One of the conditions, listed in regulation 13(2)(a)(i) EIR, is where the disclosure of the information to any member of the public would contravene any of the principles of the DPA.
21. The Commissioner has first considered whether the withheld information would constitute the personal data of third parties.

Is the withheld information personal data?

22. In order to rely on the exemption provided by section 13(1), the requested information must 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’.

23. The Commissioner has reviewed the withheld information in this case. Each of the statements contains information that could identify the witness either by name or by a description of their role and from the detail of their statements. The two hand drawn sketches attached to one of the statements shows the witness’ own understanding of the layout of the site and the positions of the drums. Linked to the statement and because it was their particular understanding of the layout, this would also be information which relates to that witness and from which they would be identifiable.

24. In view of this, the Commissioner considers the withheld information to be the personal data of the witnesses.

Sensitive personal data

25. The EA has argued that the withheld information would amount to sensitive personal data as it compromises records of witness evidence given at interview that were recorded as part of an investigation into a criminal offence.
26. Sensitive personal data means personal data consisting of information as to -
- (a) the racial or ethnic origin of the data subject,
 - (b) his political opinions,
 - (c) his religious beliefs or other beliefs of a similar nature,
 - (d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992),
 - (e) his physical or mental health or condition,
 - (f) his sexual life,
 - (g) the commission or alleged commission by him of any offence, or
 - (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.
27. As far as the Commissioner is aware the data subjects were not personally alleged to have committed an offence and therefore she does not consider that the withheld information in its entirety falls under the definition of sensitive personal data. However some of the withheld information does contain some information about the data subjects 'physical or mental health or condition' and to this extent parts of the withheld information would be classed as sensitive personal data.

Would disclosure breach the Data Protection Principles?

28. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle, which is the most relevant in this case, requires that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness.

29. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual, the potential consequences of the disclosure, and whether there is legitimate public interest in the disclosure of the information in question.

Reasonable expectations

30. In its submission to the Commissioner, the EA stated that it does not consider that the individuals concerned would have a reasonable expectation that their personal data would be disclosed into the public domain.
31. The EA has confirmed that it wrote out to the witnesses who provided statements to ask whether they consented to the disclosure of their statements, and consent was not given.
32. The EA said that the views and opinions expressed by the witnesses are personal to them. Although given in the context of their working life rather than their home, family or social life, they were given voluntarily for the purpose of the EA and/or HSE's investigations and not to be disclosed into the public domain. The EA considers that when giving such statements to regulators, there is a legitimate expectation that the information provided will only be used for the specific purpose of investigating the offence.
33. In this case, the individuals who provided the witness statements have not consented to the disclosure of their personal data. Considering the nature of the withheld information, the Commissioner is of the view that the disclosure would not be within the reasonable expectations of the individuals to whom that information relates.

Consequences of disclosure

34. Disclosure of the information is unlikely to be fair if it would have unjustified adverse effects on the individuals concerned. Although individuals may generally regard the disclosure of personal information about them as an intrusion into their privacy, this may often not be a persuasive factor on its own, particularly if the information relates to their public role rather than their private life.
35. The Commissioner is of the view that the information within the witness statements is their names and job roles as well as their personal accounts. The incident was likely to have been traumatic for the data subject who gave at least one of the witness statements so the disclosure of information, which directly links them to their experience of the incident, in the public domain, would be unnecessarily distressing.

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

36. The Commissioner has however gone on to consider whether any of the Schedule 2 conditions can be met, in particular whether there is a legitimate public interest in disclosure which would outweigh the rights of the data subject set out above.
37. Whilst the Commissioner understands that the complainant has a personal interest in the withheld information this is not a legitimate public interest. The Commissioner does consider however that there is a wider public interest in transparency surrounding such an investigation. The Commissioner is also aware that some information was disclosed in response to this request, in particular in this case consignment notes that were exhibited to the second witness statement. She considers that this would go some way to meeting any legitimate public interest.
38. After considering the nature of the withheld information, and the reasonable expectation of the data subjects, the Commissioner believes that disclosure under EIR would be unfair and in breach of the first principle of the DPA and that any legitimate public interest would not outweigh the rights of the data subject in this case.
39. Therefore the Commissioner believes that regulation 13 EIR is engaged, and provides an exception from disclosure.

Right of appeal

40. 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

41. 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.
42. 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

Gemma Garvey
Senior Case Officer

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