

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

Date: 8 February 2017

Public Authority: New Forest District Council
Address: Appletree Court
Beaulieu Road
Lyndhurst
SO43 7PA

Decision (including any steps ordered)

1. The complainant has requested information concerning visits made by the New Forest District Council's Environmental Health officers to his home and those to an adjacent property. The complainant seeks photographs, videos, reports and communications relating to the sewerage system which runs under his garden.
2. The Commissioner's decision is that New Forest District Council has contravened the Regulation 5(1) and Regulation 14 of the EIR for failing to refuse the complainant's request in reliance on Regulation 5(3).
3. However, the Commissioner requires the public authority to take no further action in this matter as the information held has now been provided.

Request and response

4. On 28 April 2017, the complainant submitted two requests for information to the New Forest District Council. The first request was made under the subject access provisions of the Data Protection Act 1998, and the second request was made under the Freedom of Information Act 2000. The terms of the complainant's second request are:

"I would like to know what dates NFDC Environmental Health Department and/or another NFDC officer visited my home address [at a given address] and the sewage system at rear of my home in the

neighbouring field regarding the septic tank flooding issues.

Would like to see all photos and videos regarding the sewer pipe system below and above ground for this site.

Would like to see reports and all communications regarding the sewer system that [a named company] manages the same system that runs under my garden and keeps overflowing and is under investigation by NFDC Environmental Health.

Also would like to see letters from 3rd parties to the Council regarding this sewage system."

5. The Council responded to both the complainant's subject access request and his freedom of information request on 26 May 2017. In respect of the complainant's freedom of information request, the Council issued a refusal notice which relied on the procedural exemption provided by section 14(1) of the FOIA.
6. On 12 June 2017, the complainant wrote to the Council and submitted an appeal against its refusal to disclose the information he seeks.
7. The Council wrote to the complainant on 7 July to inform him of its final decision. The Council's letter stated:

"Having considered this matter, I agree with [name redacted] decision of 26 May 2017 and the reasons given for considering your request to be vexatious."

Scope of the case

8. The complainant contacted the Commissioner on 17 July 2017 to complain about the way his request for information had been handled.
9. The complainant provided the Commissioner with a great deal of background information which concerns his dispute with the Council about the sewerage system which crosses his land and he explained the reasons for making his request for information to the Council.
10. The Commissioner noted the background information which the complainant provided in support of his complaint and she determined that her investigation should focus on whether the Council has handled his request in accordance with the FOIA or with the EIR, and specifically, on whether the Council is entitled to refuse the complainant's request in reliance on section 14(1) of the FOIA on the grounds that it is vexatious, or alternatively, whether the Council is entitled to rely on Regulation

12(4)(b) of the EIR, on the grounds that your request is manifestly unreasonable.

11. During the course of the Commissioner's enquiry the Council advised her that it had disclosed to the complainant all of the information it holds and that this disclosure was made under the subject access provisions of section 7 of the Data Protection Act. This action by the Council effectively resulted in the Council's withdrawal of any reliance on section 14(1) of the FOIA or Regulation 12(4)(b) of the EIR.

Reasons for decision

12. The Council confirmed that the complainant had submitted two requests for information on 28 April 2017: One under the FOIA and the other under the subject access provisions ("SAR") of the Data Protection Act 1998 ("the DPA"). The Council understood the two requests to be for the same information.
13. Initially, the Council did not progress the complainant's SAR until he had paid the correct fee and not until there had been some involvement with the Commissioner's office. The Council initially concluded that the complainant's request made under the FOIA was vexatious.
14. When the complainant paid the required subject access fee, which the Council acknowledged on 13 July 2017, the Council actioned the SAR on 26 July.
15. The Council advised the Commissioner that it sent the complainant all of the information it holds.
16. The Council's decision to make a full disclosure of information under the Data protection Act was made because the majority of the information it holds concerns the complainant and his property. The Council advised the Commissioner that, although the complainant submitted a second request under the FOIA, the information he asked for was the same as the information disclosed under the complainant's SAR.
17. The Council's assurance that it has disclosed all the information it holds relevant to both the complainant's SAR and his information request, effectively means that the Council withdrew its application of section 14 of the FOIA. In consequence of this the Commissioner has not gone on to consider whether the complainant's request was vexatious under section 14(1) of the FOIA or was manifestly unreasonable under Regulation 12(4)(b) of the EIR.

18. What remains is for the Commissioner to decide whether the Council's disclosure of information has satisfied the duty to disclose information under section 1 of the FOIA or regulation 5 of the EIR.

19. The Council has provided the Commissioner with copies of all of the information it disclosed to the complainant on 26 July 2017. Having considered the nature of that information, the Commissioner has concluded that the Council should have considered the complainant's request under the EIR rather than under the FOIA. This is because the information satisfies the definition of environmental information provided by Regulation 2(1)(a) of the EIR:

"environmental information" has the same meaning as in Article 2(1) of the Directive, 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) (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) (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;"

20. Regulation 5 of the EIR provides a duty for public authorities to make available environmental information on request and to do so no later than 20 working days after the date of receipt of the request.

21. In this case, the information which the complainant seeks concerns a dispute between the complainant and the Council about the sewerage system on the complainant's land, and particularly to an allegation that the sewerage system had been deliberately blocked. This allegation is contained in the Council's letter to the complainant of 9 February 2017. The letter states:

"...the nature of the blockage would indicate a deliberate attempt to obstruct the sewer with a view to causing problems. In the light of this, the Council will now consider reporting the matter to the police."

22. The complainant has taken the Council's letter to be an accusation that he blocked the sewer. The complainant strongly disputes the allegation and he seeks information which he believes the Council has used to support in making the allegation. Additionally, the complainant seeks information which he believes would show that the Council has failed to maintain the sewerage system to the General Binding Rules for septic tank systems.
23. Having examined the information which the Council sent to the complainant, the Commissioner has found it to consist of copies of correspondence which has passed between the Council and the complainant about the disputed sewerage system. The information includes photographs which the complainant has sent to the Council. Additionally the Council sent the complainant copies of correspondence to and from third party organisations which concerns the complainant's property.
24. All of the information disclosed to the complainant under section 7 of the DPA is of biographical significance to the complainant: It is information: which has been generated by the complainant himself; is the Council's correspondence with the complainant; is correspondence from or to the complainant or Council with third party organisations and which concerns the complainant's property; or it is internal Council file notes and emails about the sewerage system.
25. The information disclosed to the complainant can properly be characterised as the complainant's personal data on the grounds that it satisfies the definition of personal data provided by section 1 of the DPA:

"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"
26. Disclosure of the complainant's personal data falls squarely under the subject access provisions of section 7 of the DPA: It is absolutely exempt from disclosure under Regulation 5(3) of the EIR.
27. Ordinarily, the Commissioner investigates complaints concerning whether a public authority holds requested information by asking questions concerning the searches carried out to locate and retrieve that information and then the Commissioner would make a decision based on the 'balance of probabilities'.

28. In this case, the Council has given the Commissioner its assurance that it has disclosed 'everything' it holds to the complainant. Based on this assurance, the Commissioner has not made her normal enquiries. Rather, she has considered the Council's representations together with the copies of the disclosed information.
29. In view of the Council's representations, the Commissioner asked the complainant whether he had any evidence to confirm or suggest that the Council holds more information under the terms of his requests, which is not his personal data.
30. The complainant responded to this request by only referring the Commissioner to the fact that the Council had accused him of blocking the sewerage system and that it had failed to provide him with evidence that the sewer was blocked. The complainant stated that he needed to know what the Council found so that he could sue the Council.
31. Having considered the Council's and the complainant's representations and having examined the information disclosed to the complainant under his right of subject access, the Commissioner has decided that, in the absence of any evidence to the contrary, and on the balance of probability, the Council does not hold any further information relevant to the complainant's request, other than the information disclosed to him on 26 July 2017.
32. In the Commissioner's opinion the Council was correct to disclose the information it holds to the complainant under his SAR, rather than under the EIR. This is because the information disclosed to the complainant clearly satisfies the definition of personal data and, had the Council disclosed the requested information under the EIR or FOIA into the public domain, such a disclosure would likely have resulted in a breach of the complainant's rights under the DPA.
33. Notwithstanding that the fact that the requested information is the complainant's personal data, the Commissioner has decided that the Council has contravened the Regulation 5(1) and Regulation 14 of the EIR for failing to refuse the complainant's request in reliance on Regulation 5(3).

Right of appeal

34. 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

35. 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.
36. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF