

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 19 November 2019

Public Authority: London Borough of Croydon
Address: Bernard Weatherill House
8 Mint Walk
Croydon
CR0 1EA

Decision (including any steps ordered)

1. The complainant has requested information about a specific pre-planning application. Following the Commissioner's intervention the London Borough of Croydon provided most of the requested information. It withheld some information in reliance on the exception at regulation 13 of the EIR.
2. The Commissioner's decision is that the Council was entitled to rely on regulation 13 in respect of the withheld information. The Commissioner does not require any steps to be taken.

Request and response

3. On 7 January 2018, the complainant wrote to the London Borough and requested information relating to a particular planning application in the following terms:

"I note from the Application Form that pre-application advice [17/04670/PRE] was provided in October 2017, which suggested 'New proposal of the building'.

Please provide any information relating to [Redacted]'s advice, including but not restricted to copies of what was submitted by the applicant, the minutes of any meeting(s) and the officer's advice letter (or email)."

4. The London Borough responded on 5 February 2018. It provided some redacted information. It did not state any exception of the EIR which would allow it to withhold the remainder of the requested information.

5. The complainant first contacted the Commissioner on 4 June 2018 to complain about the way his request for information had been handled. Following the Commissioner's intervention the London Borough conducted an internal review. It wrote to the complainant on 10 June 2018 and provided some further information. The complainant remained dissatisfied and complained again to the Commissioner. At this point the London Borough claimed reliance on the exception at regulation 12(4)(b) of the EIR.
6. The Commissioner issued a decision notice on 20 February 2019 which found that the London Borough was not entitled to rely on regulation 12(4)(b) to refuse the request.
7. The London Borough issued a fresh response to the complainant on 26 March 2019, stating that it had disclosed, albeit with redactions, all the information it held that was relevant to the request. The London Borough claimed reliance on regulation 13 in respect of the withheld information.

Scope of the case

8. The complainant confirmed to the Commissioner on 28 June 2019 that he remained dissatisfied with the London Borough's fresh response to his request. The complainant disputed the fresh response on the basis that the documents disclosed on 5 February 2018 did not include any information provided to the London Borough by the applicant with the request for pre-application planning advice.
9. The Commissioner inspected the 52 pages of information disclosed on 5 February 2018, and agreed that the London Borough had not in fact disclosed any information provided by the applicant.
10. Consequently the Commissioner advised the London Borough that in her opinion it was likely to hold information provided by the applicant in their request for pre-application planning advice. The Commissioner asked the London Borough to confirm that it had conducted a search for the specific requested information.
11. The London Borough subsequently identified further information which was relevant to the request. It disclosed this to the complainant on 30 September 2019, redacting a small amount of personal data under the exception at regulation 13 of the EIR.

12. The complainant asked that the Commissioner issue a decision notice recording the outcome of his complaint.

Reasons for decision

Regulation 13: personal data of third parties

13. Regulation 13(1) says that information shall not be disclosed where it is the personal data of an individual other than the applicant, and where disclosure of the information to any member of the public would contravene any of the principles of the Data Protection Act 2018 (DPA).¹ The Council has maintained to the Commissioner that disclosure of the information would be unfair and would thus contravene the first data protection principle.
14. The Commissioner is satisfied that the information in question is personal data of individuals other than the complainant. This is because the individuals could be identified from their names and contact information, and this information clearly relates to the individuals themselves. The Commissioner has therefore gone on to consider whether disclosure of this information into the public domain would be unfair and thus contravene the first data protection principle.
15. When considering the fairness and the first data protection principle the Commissioner will generally take the following factors into account:
 - the individuals' reasonable expectations of what would happen to their information;
 - whether disclosure would cause any unnecessary or unjustified damage or distress to the individuals concerned (ie the consequences of disclosure);
 - whether disclosure of the information is necessary to meet a legitimate interest; and
 - whether the legitimate interest in disclosure is sufficient to justify any negative impact to the rights and freedoms of the individuals as data subjects.

¹ New data protection legislation came into force (the General Data Protection Regulation and the Data Protection Act 2018) on 25 May 2018.

16. The Commissioner has recently issued two decision notices involving requests for similar information made by the complainant to the London Borough.² In both cases the Commissioner found that the London Borough was entitled to withhold third party personal data on the basis that it would be unfair to the individuals concerned. The Commissioner accepted that the individuals in question expected that their personal data would not be disclosed into the public domain. She further accepted the Council's argument that such disclosure would be likely to cause unwarranted distress to the individuals concerned.
17. Furthermore, whilst the Commissioner recognised the legitimate interest in transparent decision making, she was not persuaded that the disclosure of the personal data was necessary to serve this interest. The Commissioner concluded that the information in question would add little or nothing to the legitimate interest in understanding how decisions are made by public authorities.
18. The Commissioner has inspected the withheld information in this case and considers that her reasoning in the previous decision notices referred to applies equally in this case. Accordingly, the Commissioner is satisfied that disclosure of the personal information relating to third parties would be unfair and in breach of the first data protection principle. Consequently, the Commissioner finds that the Council was entitled to rely on regulation 13 of the EIR as a basis for withholding this information.

Procedural requirements

Regulation 5(2) – time for compliance

19. Regulation 5(2) of the EIR states that, subject to exceptions, a public authority is required to make environmental information available no later than 20 working days after the date the request is received.
20. In this case the Council disclosed relevant information some 20 months after the request was originally submitted. This clearly exceeded 20 working days, therefore the Commissioner finds that the Council failed to comply with regulation 5(2).

² Decision notice references FER0754718 and FER0797250.

Right of appeal

21. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

22. 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.
23. 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

Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
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SK9 5AF