

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

Date: 10 October 2022

Public Authority: Warwickshire County Council
Address: Shire Hall
Warwick
CV34 4RL

Decision (including any steps ordered)

1. The complainant has requested information from Warwickshire County Council regarding parking enforcement decisions.
2. The Commissioner's decision is that Warwickshire County Council was correct to withhold some information on the basis of regulation 13 (personal information) of the EIR; and that, on the balance of probabilities, it does not hold any further information in scope of the request.
3. The Commissioner does not require any steps.

Request and response

4. On 8 October 2021 the complainant requested information from Warwickshire County Council ("the council") in the following terms:

"Can you please tell me why the car in the photos sent to you this week has not been booked even though your enforcement officers have looked at it. Yet in February it was booked for being in the same position IE straddling the pedestrian right of way on the footpath and blocking a tactile dropped curb. As you can see the red car in March was also booked but the black van has no ticket.

An explanation as to why cars in photos have been booked and have not been booked even though they are in the same position and one the same vehicle in the same position."

5. The council responded on 18 October 2021 and denied holding the requested information stating:

"I am writing to advise you that I have established that the information you requested is not held by Warwickshire County Council. The Act gives you the right to access recorded information held by public sector organisations. Your request appears to be seeking our opinion rather than recorded information held by the Council."

6. The complainant requested an internal review on 14 November 2021, stating:

"...you do hold information on the cars that have been booked and why they have been booked as they have been ticketed so I request this information. WCC does hold this recorded information, refer to photos sent..."

7. The council wrote to the complainant with the outcome of an internal review on 6 December 2021, in which it revised the position. The council stated that the request should have been considered in two parts, being:

[1] An explanation as to why vehicles in some photos had been booked.

[2] An explanation as to why other vehicles (in other photos) have not been booked.

The council advised that information in scope of [1] is withheld on the basis of regulation 13 (personal information). The council advised that information in scope of [2] is not held because it is not information which the council records.

Scope of the case

8. The complainant contacted the Commissioner on 9 January 2022 to complain about the way their request for information had been handled. Specifically that the council are incorrect to withhold information in regard to question [1] on the basis of regulation 13 of the EIR; and that the council holds information in scope of question [2].
9. The scope of this case is to determine whether the council is correct to withhold information on the basis of regulation 13, and whether, on the balance of probabilities, it holds any information in scope of question [2].
10. As the Commissioner is also the regulator of data protection legislation, he has decided that he has sufficient information to reach a decision in this case, based on the internal review arguments and his own expertise, without seeking further arguments from the PA.

Reasons for decision

Regulation 13 personal data

11. Regulation 13(1) of the EIR provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.
12. In this case the relevant condition is contained in regulation 13(2A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
13. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection

¹ As amended by Schedule 19 Paragraph 307(3) DPA 2018.

Act 2018 ('DPA'). If it is not personal data then regulation 13 of the EIR cannot apply.

14. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

15. Section 3(2) of the DPA defines personal data as:

“any information relating to an identified or identifiable living individual”.

16. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
17. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
18. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
19. The requested information is about instances when vehicles have been “booked” for parking violations. The complainant has submitted to the council identifying information for the vehicles, being the car registration plates, known as VRM’s (“Vehicle Registration Mark”). The council identified that a VRM can be linked with other information (for example by the DVLA) to indirectly identify the owner of the vehicle. The requested information would therefore relate to an identifiable individual and relate to the vehicle keepers private life, being parking violations.
20. The complainant states that it would be difficult for them to find out the owners details for the cars, as this information is not provided by the DVLA. However they also state that some of the owners are already known to them, being local residents. The Commissioner considers that this strengthens the case that the withheld information is biographical information that can be linked to an individual. The complainant is aware of the owner(s) of vehicles, and their addresses, therefore disclosing the

withheld information would provide details of when an individual had incurred a parking violation.

21. The Commissioner has also previously issued a number of decisions² finding that disclosure of VRM's without any other identifiers is a disclosure of personal data for the purposes of the DPA as information on the registered owner of the vehicle.
22. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to individuals incurring parking violations. He is satisfied that this information both relates to individuals and identifies biographical information of the individuals concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
23. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the EIR. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
24. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

25. Article 5(1)(a) of the GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

26. In the case of an EIR request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
27. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the UK GDPR

28. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that “processing shall be lawful only if and to the extent that at least one of the” lawful bases for processing listed in the Article applies.

² [Freedom of Information Act 2000 \(Section 50\) \(ico.org.uk\)](#), [fs50689632.pdf \(ico.org.uk\)](#)

29. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"³.

30. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under the EIR, it is necessary to consider the following three-part test:-

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

31. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

32. In considering any legitimate interest(s) in the disclosure of the requested information under the EIR, the Commissioner recognises that

³ Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, regulation 13(6) EIR (as amended by Schedule 19 Paragraph 307(7) DPA and Schedule 3, Part 2, paragraphs 53 to 54 of the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.

33. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
34. The complainant has expressed a legitimate interest in transparency regarding why decisions are made to take specific enforcement actions for parking violations.

Is disclosure necessary?

35. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the EIR must therefore be the least intrusive means of achieving the legitimate aim in question.
36. No alternative or less intrusive measures have been identified to meet the specified legitimate interest.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

37. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the EIR in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
38. In considering this balancing test, the Commissioner has taken into account the following factors:
 - the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
39. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an

individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.

40. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
41. The requested information is not in the public domain. Furthermore, the Commissioner considers it reasonable that individuals would not expect the council to disclose details of any parking enforcement actions taken against them. It is feasible that such a disclosure could cause some distress.
42. The Commissioner considers that the legitimate interest pursued by the complainant, is of significance to themselves and perhaps others in the local area.
43. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
44. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he does not need to go on to separately consider whether disclosure would be fair or transparent.

The Commissioner's view

45. The Commissioner has therefore decided that the council was entitled to withhold the information under regulation 13(1), by way of regulation 13(2A)(a).

Regulation 12(4)(a) – information held/not held

46. Regulation 5(1) of the EIR states that: "a public authority that holds environmental information shall make it available on request." This is subject to any exceptions that may apply.
47. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide the requested information if it does not hold it at the time of the request being received.
48. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.

49. The complainant has requested an explanation regarding why at specified times and locations, specified vehicles have not been subjected to an enforcement action for parking violations.
50. The council states correctly that the EIR do not require public authorities to provide information unless it is in recorded form. It interprets request [2] as being for reasons why some vehicles have not been "booked". The council states that it does not record this information.
51. The Commissioner finds the council's position reasonable. He can see no reason for recording information where a decision has not been made nor any action taken.
52. On the balance of probabilities the Commissioner is satisfied that the requested information is not held by the council because there is no reason to record decision's regarding why an enforcement action was not taken. Therefore there is no requirement for this information to be held.
53. The council has complied with its obligations under regulation 12(4)(a) in this case.

Right of appeal

54. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

55. 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.
56. 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

Janet Wyles
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF