

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

**Date:** 23 November 2022

**Public Authority:** North Northamptonshire Council  
**Address:** Sheerness House  
41 Meadow Road  
Kettering  
NN16 8TL

**Decision (including any steps ordered)**

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1. The complainant has requested information held by North Northamptonshire Council (the council) about a complaint they have made regarding alleged anti-social behaviour. The complainant also asked for the number of abatement notices issued by the council within the last five years that concerned dog related noise nuisance.
2. During the course of the Commissioner's investigation, the council provided the complainant with the information that they had requested about abatement notices. Given that this information was not provided within 20 working days, the Commissioner has found a breach of regulation 5(2) of the EIR.
3. With regard to the remaining part of the request, it is the Commissioner's decision that the council should have refused to confirm or deny whether it held such information under regulation 13(5)(a) of the EIR, and section 40(5B)(a)(i) of FOIA.
4. The Commissioner does not require the council to take any steps as a result of this decision notice.

## Request and response

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5. On 7 July 2021, the complainant wrote to the council and requested information in the following terms:

"Accordingly, in addition to the queries set out above about the professional judgments at issue, can this email be treated please as an information request seeking complete disclosure of all records held by the Council comprising internal and external communications sent or received by council officers (including with other public agencies, registered providers of social housing, and third parties), whether comprised in emails, letters, telephone notes, meeting notes, or any other form or media; all audio recordings; audio level traces; customer relationship management logs; diary and log-book entries; captured screen-shots; and case file entries as relate to, were caused by, or which refer to this matter or to my complaints of ASB [anti-social behaviour] emanating from [address redacted] as have been received, sent or created since 1 January 2020.

In the interests of avoiding unnecessary duplication of work, please omit from disclosure any information submitted by, or previously sent to, me; it can be assumed I have retained and will be aware of this.

For the avoidance of doubt, this request is one to which the provisions, as applicable, of the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 apply and, in the event redactions or refusals to disclose are invoked, it is expected that these will be justified and explained in accordance with the requirements of that legislation. The duty under both Acts is to comply promptly and, in any event, within the ultimate timeframes allowed.

Where possible (I realise it may not be for audio files in particular), I am content to receive this information by email or in paper form as is most convenient/cost effective.

Finally, can you please specifically confirm how many Section 80 abatement notices addressing dog-related noise nuisance have been issued by either the former East Northants Council, or by the North Northamptonshire Council for issues causing complaints in the East Northants area, over the five year period preceding the date of this email."

6. The council initially responded to advise that it was withholding the information under section 30, and section 40, of FOIA, and regulation 12(5)(b), and regulation 13, of the EIR. The council then upheld its decision at the internal review stage.

## Scope of the case

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7. It is the Commissioner's view that part of the complainant's request is for environmental information and falls under the scope of the EIR; the remaining parts of the request fall under the scope of FOIA.
8. The council has confirmed to the Commissioner that, due to an oversight, it failed to identify that part of the complainant's request where they had asked for the number of section 80 abatement notices relating to dog-related noise nuisance that had been issued over a five year period. The council has now disclosed this information to the complainant.
9. If, after consideration of a case, the Commissioner feels that a public authority is at risk of disclosing personal data without a lawful basis for doing so, he will consider whether it is appropriate for him to proactively apply regulation 13 of the EIR and/or section 40 of FOIA.
10. In this case, the Commissioner has exercised his discretion and proactively applied regulation 13(5)(a) of the EIR and section 40(5B)(a)(i) of FOIA to the request (with the exception of that part where the complainant had asked for the number of abatement notices issued). The reasons for the Commissioner's decision are explained below.

## Reasons for decision

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11. Regulation 13(5)(a) of the EIR, and section 40(5B)(a)(i) of FOIA, provides that the duty to confirm or deny whether information is held does not arise if it would contravene one of the principles relating to the processing of personal data (as set out in Article 5 of the General Data Protection Regulation - UK GDPR) to provide that confirmation or denial.
12. In order for the council to be entitled to rely on regulation 13(5) of the EIR, or section 40(5B) of FOIA, and to refuse to confirm or deny whether they hold information falling within the scope of the request, the following two criteria must be met:
  - Confirming or denying whether the requested information is held would constitute the disclosure of a third party's personal data; and,
  - Providing this confirmation or denial would contravene one of the data protection principles.

Would the confirmation or denial that the requested information is held constitute the disclosure of a third party's personal data?

13. Section 3(2) of the Data Protection Act 2018 (the DPA 2018) defines personal data as:

'any information relating to an identified or identifiable living individual'.

14. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

15. 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.

16. In this case, whilst the complainant has specified the address to which their request relates, they have not named any individual(s) who live at that address. However, the Commissioner considers that the occupants will be identifiable when the relevant address is combined with other publicly available information, such as Land Registry records or the electoral roll.

17. Furthermore, the Commissioner is satisfied that by confirming whether or not a complaint was received about a third party would reveal the personal data of that person; this is because it would confirm that a complaint was made about them and also any action that was, or was not, taken, as a result.

18. However, this does not automatically prevent the council from refusing to confirm whether or not they hold the requested information; the Commissioner must go on to consider whether the disclosure of this personal information would contravene any of the data protection principles. He regards principle (a) to be most relevant to the circumstances of this case.

Would confirming whether or not the requested information is held contravene one of the data protection principles?

19. Article 5(1)(a) UK General Data Protection Regulation (GDPR) states that:-

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

20. In the case of an EIR or FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed – or, as in this case, the council can only confirm whether or not it holds the requested information - if to do

so would be lawful (i.e. it would meet one of the conditions of lawful processing listed in Article 6(1) of the GDPR), be fair and be transparent.

21. Article 6(1) of the 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.
22. The Commissioner considers that the lawful basis most applicable is basis (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<sup>1</sup>".
23. The Commissioner accepts that there may be some legitimate interest in the council being open and transparent about the information that it holds regarding complaints about anti-social behaviour and how it handles such matters on a case by case basis; this will show whether it is acting properly and fairly in each instance. The Commissioner also regards disclosure to be necessary in order to meet the wider public interest in transparency in relation to how it handles anti-social behaviour disputes.
24. It is necessary to balance the legitimate interests in confirming whether or not the requested information is held against the data subject's interests, fundamental rights and freedoms. In doing so, the Commissioner must consider the impact of the confirmation or denial.
25. The Commissioner notes that there may be situations in which it could be argued that giving the confirmation or denial to a requester would not necessarily contravene data protection principles because the requester might already know, or suspect, that the public authority holds the information.

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<sup>1</sup> 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, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) 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"

26. However, it is important to note that a disclosure under the EIR or FOIA is a disclosure to the public at large, and therefore to any person (and not just to the requester).
27. In this case, the Commissioner is satisfied that the data subject would have no reasonable expectation that the council would confirm or deny to the world at large under the EIR or FOIA whether they were, or were not, involved in a dispute that concerned potential anti-social behaviour. He is also of the view that disclosure of the confirmation or denial may cause that individual damage and distress.
28. The Commissioner has determined that there is insufficient legitimate interest in this case to outweigh the data subject's fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing, and disclosure of personal information in this instance would not be lawful.
29. As a result, the Commissioner is satisfied that the Council is entitled to rely on regulation 13(5)(a) of the EIR, and section 40(5B)(a)(i) of FOIA. This means that it was not obliged to confirm or deny whether the information requested by the complainant was held.

### **Procedural matters**

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30. The council has only recently provided the complainant with the information requested about the number of abatement notices issued in the last five years that concerned dog related noise nuisance. As the council failed to provide this information within the statutory time period of 20 working days, the Commissioner has found a breach of regulation 5(2) of the EIR.

## Right of appeal

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31. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

32. 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.
33. 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 .....**

**Suzanne McKay**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**