

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 28 November 2022

Public Authority: Rutland County Council
Address: Catmose
Oakham
Rutland
LE15 6HP

Decision (including any steps ordered)

1. The complainant has requested information with regards to a Public Open Space (POS). Rutland County Council (the council) provided the complainant with some information but refused the remaining under regulation 12(4)(e) of the EIR – Internal Communications.
2. The Commissioner's decision is that regulation 5(3) of the EIR applies as the information is the complainant's own personal data. This means that the council was not obliged to comply with the request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 11 December 2021, the complainant requested the following information from the council:

"Would you please provide all documents and communications both internal and external relating to the resident's enquiry regarding the POS adjacent to [addresses redacted]".
5. The council responded on the 29 December 2021 providing correspondence between the council and the complainant. It then refused the remaining information under regulation 12(4)(e) of the EIR – Internal Communications.
6. The complainant requested an internal review of the council's application of regulation 12(4)(e). The council provided its internal review response on 21 February 2022 upholding its original decision.

Scope of the case

7. The complainant contacted the Commissioner on 13 March 2022 to complain about the council withholding the internal communications under regulation 12(4)(e) of the EIR.
8. Having viewed the withheld information, the Commissioner has exercised his discretion to consider whether it constitutes the complainant's own personal data.

Reasons for decision

Regulation 5(3) of the EIR

9. Regulation 5(3) of the EIR provides that any information to which a request for information relates, is exempt information if it constitutes personal data of which the requester is the data subject.
10. Section 3(2) of the Data Protection Act 2018 ("the DPA") defines personal data as: "any information relating to an identified or identifiable living individual".
11. The two main elements of personal data are therefore that the information must relate to a living person, and that the person must be identifiable.

12. 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 or an online identifier; or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
13. 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.
14. In this case, the Commissioner has viewed the withheld information, and whilst mindful not to reveal what the information is, it is clear to him that it relates to the complainant who would be identifiable in relation to that information.
15. When deciding whether information relates to an individual, it is important to consider the circumstances in which the relevant information is held. For example, it may be the case that certain information held by a public authority may not be personal data when held in isolation. However, if it is subsequently used for another purpose, for example, in order to make decisions that directly affect or have an impact on an individual, or individuals, it could then become personal data.
16. Having considered the complainant's request and the purposes for which the relevant information is held, the Commissioner is satisfied that it relates to the complainant. It is information that is connected to, and reveals something about them; its content concerns matters that directly affect the complainant, and it is being processed for purposes that will have an impact on them.
17. Therefore, the Commissioner concludes that as the information identifies and relates to the complainant, it is their personal data.
18. The Commissioner would add that some of the requested information may be the personal data of third parties. However, as this information would also be the personal data of the complainant, he does not regard it necessary to consider regulation 13 of the EIR (which relates to the personal data of third parties) within this decision notice.
19. As the Commissioner is satisfied that the request relates to the complainant's own personal data, he finds that the exception at regulation 5(3) of the EIR is engaged.
20. As the exception provided at regulation 5(3) is engaged the council was not obliged by the EIR to disclose the requested information.

Other matters

21. In this case, the council failed to recognise that the request was for the complainant's own personal data and did not consider the request under the General Data Protection Regulation (UK GDPR). Whilst the Commissioner cannot require a public authority to take action under the UK GDPR via a FOIA decision notice, in view of his decision above, he would recommend that the council now reconsider the request as a subject access request for the complainant's own personal data, and respond accordingly.

Right of appeal

22. 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:

23. 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

24. 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.

25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

26.

Signed

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