

Environmental Information Regulation 2010 (EIR)

Decision notice

Date: 10 November 2022

Public Authority: Barnsley Metropolitan Borough Council

Address: 1 Westgate
Barnsley
S70 2DR

Decision (including any steps ordered)

1. The complainant requested information with regards to access to his holdings. Barnsley Metropolitan Borough Council (the council) responded under the FOIA stating that the information was not held.
2. The Commissioner's decision is that the request falls under the EIR, but 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 14 February 2022 the complainant made the following request to the council:

"It relates to comments made in the legal pack that was submitted alongside the sale of Council land known as, the garage site [address redacted], in which it stated that 'I had been given permission by BMBC' to access my holdings via a track over the land to be sold!

When was this permission supposedly granted, to myself or previous owner/occupiers?

Copies of any correspondence which either asked, for or was granted said permission?"

5. The council responded under the Freedom of Information Act 2000 on 1 March 2022 stating it does not hold the requested information. Which it upheld in its internal review of 4 April 2022.

Scope of the case

6. The complainant contacted the Commissioner on 4 April 2022 dissatisfied with the council's response that the information is not held.
7. The Commissioner will firstly determine whether the information requested is information falling under the EIR or the FOIA.
8. Given that the request is for information relating to the complainant and permission to access land, the Commissioner has exercised his discretion to consider whether the request is for the complainant's own personal data.

Reasons for decision

Is the requested information environmental information?

9. The Commissioner has first considered whether the requested information would constitute environmental information as defined by regulation 2(1) of the EIR.
10. In this case, the request is in relation to the complainant's right to access his holdings via a track over land being sold.

11. The Commissioner is therefore satisfied that the request does fall under the EIR. Regulation 2(1)(c) with (b) is relevant to the request. Information about who is or is not allowed access over land would relate to measures affecting, or likely to effect the elements of the environment, namely the landscape.
12. The Commissioner will therefore go on to consider regulation 5(3) of the EIR.

Regulation 5(3) of the EIR

13. 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.
14. 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".
15. 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.
16. 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.
17. 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.
18. In this case, the request is for information relating to permission being given to the complainant to access his holdings.
19. The Commissioner's view is that any such information will relate to the complainant and he will be identifiable in relation to that information. Therefore, any information falling within the scope of the request would be the personal data of the complainant.
20. As the Commissioner is satisfied that request relates to the complainant's own personal data, he finds that the exemption at section 5(3) of the FOIA is engaged in relation to the request.
21. As the exemption provided by regulation 5(3) is engaged the council was not obliged by the FOIA to disclose the requested information.

Other matters

22. 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 GDPR. Whilst the Commissioner cannot require a public authority to take action under the GDPR via a FOIA decision notice, in view of his decision above the council should reconsider the request as a subject access request for the complainant's own personal data.

Right of appeal

23. 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

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.

Signed

Ben Tomes
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF