

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

Date: 3 November 2022

Public Authority: Selby District Council
Address: Civic Centre
Doncaster Road
Selby
North Yorkshire
YO8 9FT

Decision (including any steps ordered)

1. The complainant requested information relating to a planning application. Selby District Council (the Council) refused to provide the information, citing regulation 12(5)(f) (interests of the person who provided the information to the public authority) of the EIR.
2. The Commissioner's decision is that the Council is entitled to withhold information on the basis of regulation 13 (personal information) of the EIR.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 22 February 2022, the complainant wrote to the Council and requested information relating to a specific planning application in the following terms:

"Please provide the details held about me made by [name redacted] on the 14th [sic] of 2022.

Please provide details of any further communications regarding me made by [name redacted]"

Please provide details of all persons that have had access to the comments and names of all person that read them (your email of the 22nd Feb [employee name redacted]) .

'details' taken to mean uploaded files, minutes of meetings, phone calls, emails web access current or removed comments (but not limited to)".

5. The Council responded on 22 March 2022. It stated that the information was publicly available and provided the relevant link. It also advised that all comments that are received on planning applications are processed and uploaded by the Council's Planning Process Team.
6. Following an internal review the Council wrote to the complainant on 23 June 2022 confirming that the representations, from the named individual, on planning and other issues material to the application are included on the portal and available to view.
7. It also advised that some comments were not included on the portal as they were not relevant to the planning application. The Council withheld that information citing regulation 12(5)(f) (interests of the person who provided the information to the public authority) of the EIR.

Reasons for decision

8. The scope of this notice is to determine whether the withheld comments are exempt from disclosure.
9. The Commissioner does not consider that, in general, his role is to assume arguments on behalf of a public authority or to introduce exceptions that might be more relevant to the disputed information.
10. However, while acknowledging that the Council cited regulation 12(5)(f) in this case, the Commissioner considers it appropriate to determine whether regulation 13(1) (personal data) of the EIR applies.

Regulation 13 - personal data

11. Regulation 13(1) 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 request for information specifies the name of the third party who commented in relation to a planning application. The Commissioner considers that, in the context of this request, the information clearly relates to that individual and is therefore his personal information.
14. Disclosure under either FOIA or the EIR is effectively an unlimited disclosure to the world at large, without conditions.
15. The Commissioner acknowledges that the complainant considers that he has a legitimate interest in disclosure of the withheld personal information.
16. However, the Commissioner must balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms.
17. In this case, the Commissioner is satisfied that the individual concerned would have the reasonable expectation that their personal data would not be disclosed to the wider world in response to an EIR request. Disclosing their personal data would be likely to cause them harm or distress.
18. Nor has he seen any evidence of any wider public interest in disclosure of the withheld information.
19. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subject's fundamental rights and freedoms. The Commissioner therefore considers that disclosing the information in question would contravene a data protection principle as it would not be lawful. Therefore, he has decided that the data is exempt under regulation 13(1) by virtue of 13(2A)(a).
20. It follows that the Council is entitled to withhold this information

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

Other matters

21. The complainant disputes that the Council has addressed that part of his request for “details of all persons that have had access to the comments and names of all person that read them”.
22. With respect to that part of the request, the Commissioner recognises that the Council told the complainant:

“All comments that are received on planning applications are processed and uploaded by the Council’s Planning Process Team”.
23. If the complainant was to seek disclosure, either under FOIA or the EIR, of more detailed information, such as the names of individuals within the Council’s Planning Process Team, the Commissioner considers it likely that disclosing that information would contravene a data protection principle as it would not be lawful. The information would therefore be exempt under section 40(2) and section 40(3A) of FOIA or the equivalent under the EIR, that is regulation 13(1) by way of regulation 13(2A)(a).
24. Regarding details of persons who accessed the comments, the Council told the complainant:

“Once the comments are placed on the planning portal they are in the public domain. The Council does not hold any information on who accesses the portal”.
25. The Commissioner accepts that there is no good reason to expect that the Council would hold such information.

Right of appeal

26. 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

27. 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.
28. 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

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