

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 21 February 2023

Public Authority: Sheffield City Council
Address: PO Box 1283
Sheffield
S1 1UJ

Decision (including any steps ordered)

1. The complainant requested information relating to the Castlegate Conservation Area consultation.
2. Sheffield City Council ("the Council") provided information in scope of the request, but redacted some of the pages, and cited regulation 13(1) (personal information) of the EIR for the redactions.
3. The Commissioner finds that regulation 13(1) of the EIR is not engaged, and the Council breached regulation 5 of the EIR, in that it failed to provide its response within 20 working days of receipt of the request for information.
4. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation.
 - Disclose the specific information that is being withheld under regulation 13(1) of the EIR.
5. The public authority must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

6. On 15 February 2022, the complainant wrote to the Council and requested information in the following terms:

"Please provide any and all information held, associated with the Castlegate Conservation Area Consultation - particularly (but not limited to) the cancellation of the consultation in and around March 2019.

I would like to receive the information electronically. If you feel that a substantive response to this request is not possible within a reasonable time frame, or the request is too broad or too vague, I would be grateful if you could contact me and provide assistance as to how I could refine the request."

7. The Council responded on the 29 April 2022 and disclosed documents in scope of the request with redactions to some of the information, and an explanation for the redactions applied. They cited regulations 12(3), 13 and 12(4)(e) of the EIR for the redactions.

8. The complainant responded on 10 May 2022 requesting an internal review stating:

"I accept the reasons for redacting the names of less senior staff.

I want to challenge though the information redacted on the basis that the council requires a "safe space" to develop policy. This especially seems to apply to page 13 and page 21 of the PDF of the 2020 emails that you sent over.

The request relates to decisions to cancel consultations that are no longer live decisions. The (ICO) guidance clearly therefore states that in this case "a safe space for deliberation will no longer be required and the argument will carry little weight". This is especially true in this case as all the evidence is over two years old ("The weight of this interest will diminish over time as policy becomes more certain and a decision as to policy is made public)."

Part 51 of the guidance also makes it clear that the 'safe space' argument doesn't apply in this case. Please send across the unredacted versions of these documents - if you still think the 'safe space' argument applies, I'll be taking this up with the ICO."

9. On 11 July 2022, the Council responded stating they had carried out a thorough review of the decision made and that they would disclose the

relevant emails from 2019 in relation to their reliance on regulation 12(4)(e), however, they upheld the original response and reliance on regulations 12(3) and 13(1) of the EIR for the redactions of personal information within the 2020 emails, Pages 13 and 21.

Scope of the case

10. The complainant contacted the Commissioner on 1 August 2022, to complain about the way their request for information had been handled.
11. The Commissioner considers the scope of his investigation is to determine if the Council was entitled to rely on regulation 13(1) of the EIR for the redaction of the withheld information.

Reasons for decision

Regulation 13 - personal information

12. 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.
13. 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').
14. The request for information specifies two pages which contain redacted information with regards to communications between Councillors and Senior officials. The Commissioner considers that, in the context of this request, the information clearly relates to third party individuals and is therefore their personal information.
15. Disclosure under either FOIA or the EIR is effectively an unlimited disclosure to the world at large, without conditions.

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

16. The Commissioner acknowledges that the complainant considers that they have a legitimate interest in the disclosure of the withheld personal information.
17. However, the Commissioner must balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms.
18. 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.
19. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
20. The Commissioner's guidance² states that, although an employee may regard the disclosure of their personal data as an intrusion into their privacy, often this may not be a persuasive factor on its own, particularly if the information is about their public role rather than their private life. This implies that the employee has some responsibility for explaining the views, assessments, policies, or actions of the organisation.
21. The Commissioner has considered this personal data and his view is that the role of all these individuals is professional, they are representatives of their organisations holding senior positions and their names are already in the public domain. Given their seniority, he does not accept that the disclosure of their personal data would be beyond their reasonable expectations when dealing professionally for or with a public authority. The Commissioner is not persuaded that they would expect confidentiality. His view is that the named individuals are the public face of the parties concerned and that this means that the processing is necessary for the interests of the complainant regarding this information request and the concerns expressed, or those of any other individual making the same request.
22. Based on the above factors, the Commissioner has determined that there is sufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore

² [Requests for personal data about public authority employees \(ico.org.uk\)](https://ico.org.uk/requests-for-personal-data-about-public-authority-employees)

considers that there is an Article 6 basis for processing and so the disclosure of the information would be lawful.

23. Even though it has been demonstrated that disclosure of the requested information under the EIR would be lawful, it is still necessary to show that disclosure would be fair and transparent under the principle (a).
24. In relation to fairness, the Commissioner considers that if the disclosure passes the legitimate interest test for lawful processing, it is highly likely that disclosure will be fair for the same reasons.
25. The requirement for transparency is met because as a public authority, the Council is subject to the EIR.
26. In respect of the personal information set out in paragraph 21, the Commissioner has decided that the Council has failed to demonstrate that the exception at regulation 13(1) is engaged.
27. In this case, the Commissioner is not satisfied that the individuals concerned would have the reasonable expectation that their personal data would not be disclosed to the wider world in response to an EIR request. No cogent evidence has been presented to the contrary, and given the passage of time, disclosing their personal data would be unlikely to cause them harm or distress.
28. As well as the requesters own personal interest, the Commissioner believes the wider public interest for openness and transparency around the conservation or otherwise of local heritage weighs in favour of disclosure of the withheld information.
29. Based on the above factors, the Commissioner has determined that there is sufficient legitimate interest to outweigh the data subject's fundamental rights and freedoms. The Commissioner therefore considers that disclosing the information in question would not contravene a data protection principle as it would be lawful. Therefore, he has decided that the data is not exempt under regulation 13(1) of the EIR.
30. It therefore follows, that the Council is not entitled to withhold this information under regulation 13(1) of the EIR.

Right of appeal

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: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: 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

Joanna Marshall
Group Manager
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