

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

Decision notice

Date: 22 April 2014

Public Authority: Worcestershire County Council
Address: County Hall
Spetchley Road
Worcester
WR5 2NP

Decision (including any steps ordered)

1. The complainant has requested information from Worcestershire County Council (the Council) about compensation claims that had been made against it or its insurance company for asbestos-related diseases in the last five years. The Council confirmed the number of claims that had been received but refused to provide details as to how many of these claims had been settled, and if so, how much had been paid out in compensation on the basis of regulation 13(1) of the EIR (the personal data exception). The Commissioner is satisfied that the withheld information is exempt from disclosure on the basis of this exception.

Request and response

2. The complainant requested the following information from the Council on 17 September 2013:
 1. *How many buildings owned or rented by the Council are known to have, or have been assessed as having asbestos within them? These include offices, libraries, schools, leisure centres, children centres, nursing homes.*
 2. *How often does the Council make checks on the stability of the asbestos?*
 3. *In the last 5 years, how many compensation claims have been made against the Council or its insurer for asbestos-related*

- diseases? These include Mesothelioma, asbestosis, asbestos-related lung cancer and non-malignant pleural disease.*
4. *How many of these claims of have been settled?*
 5. *Has any assessment been made of the potential future liability of to the Council or its insurers in respect of future potential claims for asbestos-related diseases?*
 6. *How much money has been paid out by the Council or its insurers in respect of those claims? And how much has been spend in legal fees?*
3. The Council responded on 30 October 2013 and provided the information sought by requests 1, 2, 3 and 5. In relation to request 3, it explained that two such compensation claims had been made. However, the Council refused to provide the information sought by requests 4 and 6 and cited the exception contained at regulation 13(5) of the EIR to withhold this information.
 4. The complainant contacted the Council on 1 November 2013 to ask for an internal review in relation to the application of regulation 13(5).
 5. The Council informed him of the outcome of the review on 3 December 2013. The review upheld the application of regulation 13(5) as a basis to refuse to comply with requests 4 and 6.

Scope of the case

6. The complainant contacted the Commissioner 10 December 2013 to complain about the Council's decision to refuse to provide him with the information sought by requests 4 and 6.
7. During the course of the Commissioner's investigation the Council provided the complainant with the amount of money spent on legal fees (ie the second piece of information sought by request 6).
8. The Council also confirmed that it was not seeking to rely on regulation 13(5) of the EIR, which allows a public authority to neither confirm nor deny whether it holds requested information, but rather it was seeking to rely on regulation 13(1). That is to say, it was prepared to confirm that it held information falling within the scope of requests 4 and 6, but that it considered this information to be exempt from disclosure. (The Council explained that the reference to regulation 13(5) in the refusal notice and internal review had been an administrative error.)

Reasons for decision

Regulation 13(1) – personal data

9. Regulation 13(1) states that to the extent that information requested includes personal data of which the applicant is not the data subject and the disclosure of the information to a member of the public would contravene any of the data protection principles set out in the Data Protection Act (DPA), a public authority shall not disclose the personal data.
10. Clearly then for section information to be exempt from disclosure on the basis of regulation 13(1) the information being withheld has to constitute 'personal data' which is defined by the DPA as:

'...data which relate to a living individual who can be identified

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'

11. The complainant argued that the withheld information could be disclosed without any individual who brought the claims being identified. He also emphasised that he had submitted the same request to every local authority in the West Midlands and without exception every council had provided figures of settled claims and the total amount of money paid out in compensation.
12. The Commissioner asked the Council to clarify why it believed that disclosure of the withheld information would constitute the disclosure of personal data. In doing so, the Commissioner explained that in his opinion truly anonymised data are not personal data and thus can be disclosed without reference to the DPA. The Commissioner's test of whether the information is truly anonymised is whether a (or any) member of the public could, on the balance of probabilities, identify individuals by cross-referencing the 'anonymised' data with information or knowledge already available to the public.
13. Whether this 'cross-referencing' is possible is a question of fact based on the circumstances of the specific case. If identification is possible the information is still personal data and the data protection principles do need to be considered when deciding whether disclosure is appropriate. However, where the anonymised data cannot be linked to an individual using the additional available information then the information will, in

the Commissioner's opinion, have been truly anonymised and can be considered for disclosure without any reference to the DPA principles.

14. The Council provided the Commissioner with detailed submissions to support its view that disclosure of the withheld information would allow the individuals who had submitted the claims to be identified. The Commissioner cannot reproduce the full nature of these submissions here as to do so risks revealing the nature of the withheld information itself. However, the Commissioner can confirm that the Council emphasised two factors which it believed sufficiently increased the risk of individuals being identified if the withheld information was disclosed. Firstly, only two individuals have submitted claims, both of which are unusual in that they relate to an uncommon disease. Secondly, the identity of one of the claimants – albeit not confirmation as to whether this claim had been settled – had previously been released to the media making this claimant identifiable.
15. The Commissioner has considered the Council's submissions carefully and is satisfied that disclosure of either the number of claims which have been settled or the amount paid out in compensation would involve the disclosure of personal data. This is because using this information, along with other information already in the public domain, the individuals who submitted the claims could be identified and furthermore, on the balance of probabilities it could be established whether either claim had been settled and the amount a particular claimant may have received. For the reasons indicated above, the Commissioner cannot set out in detail his full rationale for reaching this decision. However, he wishes to emphasise that he has not reached this conclusion on the basis that **all** members of the public will necessarily be able to identify either of (indeed both) of the claimants and the information sought by requests 4 and 6, simply that **some** members of the public will be able to do so. Nevertheless this is sufficient to make the disclosure of the withheld information personal data.

The first data protection principle

16. The Council argued that disclosure of the withheld information would be unfair and thus breach the first data protection principle which states that:

'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- (a) at least one of the conditions in Schedule 2 is met, and*
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'*

17. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:

- The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
 - what the public authority may have told them about what would happen to their personal data;
 - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights (ECHR);
 - the nature or content of the information itself;
 - the circumstances in which the personal data was obtained;
 - particular circumstances of the case, e.g. established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.

- The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
 - whether information of the nature requested is already in the public domain;
 - if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?

18. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.

19. In considering 'legitimate interests' in order to establish if there is such a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach, i.e. it may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.

20. The Council argued that there was no expectation on behalf of these individuals that information relating to whether or not their private compensation claim had been settled, and if so, how much had been paid in respect of the claim for compensation concerning a serious physical illness would be released into the public domain. The Council emphasised that it was clear that individuals making claims such as these do so in confidence and would have the reasonable expectation that such sensitive information relating to their personal circumstances and private and family life would be treated with respect.
21. Furthermore, the Council argued that if the requested information was disclosed – and it was revealed whether or not their claims had been settled, and if so how much for - could cause distress to the claimants. The Council noted that although the identity of one of the claimants was already in the public domain, details as to whether that particular claim had been settled, and if so, the amount of compensation paid, had not been released.
22. The Commissioner is satisfied that the claimants would have a clear expectation that details of their claims would not be published by the Council given that such claims relate to a serious illness and the level of financial compensation that they may have received as a consequence of this. In the Commissioner's view, such information is clearly of a personal and private nature and this not only makes the claimants' expectation that such information would not be disclosed by the Council a very reasonable one but also means that any such disclosure would represent a significant infringement into the privacy of the claimants.
23. In reaching this view the Commissioner is conscious that one of the claimants would appear to have taken steps to disclose information to the media to allow them to be identified. However, the Commissioner would agree with the Council that there is a clear distinction between knowing whether an individual had submitted a claim for compensation and knowing if that claim had been met and if so what level of compensation had been paid out. Whilst the Commissioner accepts that there are clearly some legitimate reasons for the disclosure of the information, eg confirming the amount of compensation payments that the Council may incurred in relation to these claims, in his view such interests are significantly outweighed by the invasion into the privacy of the claimants that would result from the disclosure of the withheld information. The Commissioner has therefore concluded that disclosure of the information sought by request 4, and disclosure of the information sought by request 6 that continues to be withheld, would be unfair. Such information is therefore exempt from disclosure on the EIR on the basis of regulation 13(1).

24. In reaching this conclusion the Commissioner appreciates that a number of other local authorities have responded to these requests in full. However, the particular circumstance of each request have to be considered on their own merits and, for the reasons set out above, the Commissioner is satisfied that the Council is entitled to withhold the remaining information in this case.

Right of appeal

25. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. 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

Alexander Ganotis
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