

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

Date: 12 January 2017

Public Authority: Reigate and Banstead Borough Council
Address: Reigate Town Hall
Castlefield Road
Reigate
Surrey
RH2 0SH

Decision (including any steps ordered)

1. The complainants requested to know who had made a complaint to Reigate and Banstead Borough Council (the Council) about them. The Council refused to provide the requested information citing the exceptions at regulations 12(5)(b) (the course of justice), 12(5)(f) (voluntary supply) and 13 (personal information) of the EIR.
2. The Commissioner has considered the Council's application of regulation 13 and has concluded that the withheld information is exempt from disclosure under regulation 13 of the EIR. She requires no steps to be taken as a result of this decision.

Request and response

3. On 6 July 2016, the complainants wrote to the Council and requested information in the following terms:

"We had a visit from ... your Enforcement and Monitoring Officer today as apparently 'one of our neighbours' complained...."

Accordingly, we write to you under the Freedom of Information Act to provide us with information about us on your records – specifically in relation to this purported offence as we wish to know when it was reported and by whom".

4. The Council responded on 10 August 2016. Without specifying any specific parts of the legislation, it told the complainants that planning enforcement case details are confidential and exempt from FOI requests.
5. The Council advised them that if they were dissatisfied with its response, they had the right to ask for an internal review.
6. Accordingly, the complainants wrote to the Council on 11 August 2016 requesting an internal review. The Council responded on 17 August 2016. It explained that the request fell under the provisions of the EIR. The Council refused to provide the requested information, citing the following exceptions as its basis for doing so:
 - regulation 12(5)(b) (the course of justice and inquiries exception)
 - regulation 12(5)(f) (the interests of the person who provided the information)
 - regulation 13 (personal information).

Scope of the case

7. One of the complainants contacted the Commissioner on 20 August 2016 to complain about the way their request for information had been handled. He told the Commissioner:

"I would like to appeal against R&BB Council's decision to refuse to release to me the name and/or address of the person accusing me of running a business from home, even though it has been disproved...."
8. He told the Commissioner that his understanding of the legislation was that there was a presumption in favour of disclosure in accordance with Regulation 12(2) of the EIR.
9. The Commissioner accepts that regulation 12(2) EIR states that a public authority shall apply a presumption in favour of disclosure. However, regulation 12(3) states:

"To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13"
10. The analysis below considers the Council's application of regulation 13 of the EIR to the withheld information relating to who had made the complaint to the Council.

Reasons for decision

Regulation 2

11. Information falls to be considered under the EIR if that information is environmental information.
12. Environmental information is defined within regulation 2(1) of the EIR as follows:

"any information in written, visual, aural, electronic or any other material form on –

(a) the state of the environment, such as air and atmosphere, water, soil, land and landscape and natural sites including wetlands...

(b) factors, such as substances, energy, noise, radiation or waste, emissions...affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes...and activities affecting or likely to affect the elements and factors referred to in (a) and (b)...".

13. The Council explained to the Commissioner that the matter relates to a request for information in the context of planning enforcement – the built environment. It therefore considered it appropriate to deal with the request under the EIR.
14. In the Commissioner's view, the use of the word 'on' indicates a wide application and will extend to any information about, concerning, or relating to the various definitions of environmental information.
15. The Commissioner considers that the requested information is environmental within the meaning of the EIR by virtue of regulation 2(1)(c), as it is information on activities affecting or likely to affect the land and landscape which are elements of the environment referred to under regulation 2(1)(a). Whilst the requested information itself is only for details of the person making the complaint, the information is associated with an alleged breach of planning which falls within the scope of the definition above. The withheld information is therefore information 'on' issues defined within regulation 2(1) as environmental information. The council was therefore correct to consider the information under the EIR.

Regulation 13(1) – third party personal data

16. This exception provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 (the DPA).

Is the information personal data?

17. Section 1 of the DPA defines personal data 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."

18. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable.
19. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
20. The disputed information in this case comprises details of who reported the alleged offence to the Council.
21. Having viewed the withheld information, the Commissioner is satisfied that it comprises personal data. In other words, she is satisfied that it relates to a living individual who may be identified from that data and that it constitutes their personal data.
22. She has reached that conclusion on the basis that the information clearly identifies the individual. In this case, it would also inform the recipient that the individual had made a complaint to the Council about an alleged breach of planning control.
23. With respect to that information, the Commissioner must next consider whether disclosure would breach one of the data protection principles. The data protection principles are set out in Schedule 1 of the DPA.
24. The Commissioner notes that the Council considers that disclosure would breach the first data protection principle.
25. The Commissioner agrees that the first data protection principle is most relevant in this case.

Would disclosure breach the first data protection principle?

26. The first data protection principle states:

"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."

27. In the case of an EIR request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be fair, lawful and would meet one of the DPA Schedule 2 conditions (and one of the Schedule 3 conditions if relevant). If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

Would disclosure be fair?

28. Under the first principle, the disclosure of the information must be fair to the data subject, but assessing fairness involves balancing their rights and freedoms against the legitimate interest in disclosure to the public.

29. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:

- the data subject(s) reasonable expectations of what would happen to their information;
- the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual(s) concerned); and
- the balance between the rights and freedoms of the data subject(s) and the legitimate interests of the public.

Reasonable expectations

30. In the Commissioner's view, a key issue to consider in assessing fairness is whether the individual concerned has 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, the purpose for which they provided their personal data and any assurances they were given.

31. In this case the complainant has specifically requested the details of the person who complained to the Council about him and his property.

32. The Council told the complainant that any individual considering making a complaint about a breach of planning control would have a reasonable expectation that their identity as the person making the complaint would not be released without their consent.
33. In its submission to the Commissioner, the Council confirmed that it relies on members of the public reporting alleged breaches of planning in confidence in order to maintain the integrity of its planning enforcement function.
34. The Council also told the Commissioner:

"Members of the public report alleged breaches without fear of recrimination due to the confidentiality the council provides".
35. In support of its view, the Council provided the Commissioner with details of the statement on its website regarding confidentiality in relation to a complaint about an alleged breach¹:

"Remember, our enforcement files are confidential. However if formal action is taken it may not be possible to keep your complaint confidential".
36. The Council confirmed that no formal action was taken in this matter.
37. The Commissioner is satisfied that the individual concerned would have had a reasonable expectation that the withheld information, which constitutes their personal data, would not be disclosed.

Consequences of disclosure

38. As to the consequences of disclosure upon the data subject, the question – in respect of fairness - is whether disclosure would be likely to result in unwarranted damage or distress to that individual.
39. In the context of the request in this case – the complainant's belief that it was *'one of their neighbours'* who had complained to the Council about them - the Commissioner considers that disclosure in this case has the potential to cause damage and distress, particularly as she has found that disclosure of the information would not have been within the reasonable expectations of the data subject.

¹ http://www.reigate-banstead.gov.uk/info/20043/planning/99/planning_enforcement/3

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

The legitimate public interest

40. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to provide the information if there is an overriding legitimate interest in disclosure to the public.
41. As disclosure under the EIR is considered to be disclosure to the public at large, and not to the individual applicant, the interest in disclosure must be a public interest, not the private interest of the individual requester. The requester's interests are only relevant in so far as they reflect a wider public interest.
42. When assessing fairness, it is the legitimate interests of the public in disclosure that must be balanced against the interests of the data subject, including their right to privacy.
43. The Commissioner acknowledges that the information at issue is of particular interest to the complainant. However, she has not seen any evidence to indicate that there is a sufficient wider legitimate public interest in this case which would outweigh the rights and freedoms of the data subject and support further disclosure.

Conclusion

44. The Commissioner is satisfied that the individual who made the complaint would have no reasonable expectation that the information in question would be disclosed to the world at large and that the loss of privacy could cause unwarranted distress. She is also satisfied that there is no legitimate public interest in disclosure which would outweigh any detriment which might be caused to the data subject as a result of disclosure of the requested information.
45. Therefore, disclosure would be unfair and would breach the first data protection principle.
46. As the Commissioner is satisfied that disclosure of the requested information would be unfair, and therefore in breach of the first data protection principle of the DPA, she has not considered whether there is a Schedule 2 condition for processing the information in question.
47. The Commissioner has concluded that the Council was entitled to withhold the requested information under the exception at regulation 13(1).

Other exceptions

48. Given her findings regarding the application of regulation 13, the Commissioner has not found it necessary to consider the Council's application of regulations 12(5)(b) and 12(5)(f) to the same information.

Right of appeal

49. 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@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

50. 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.

51. 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

Jon Manners
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Wycliffe House
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