

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 22 December 2022

Public Authority: Wiltshire Council
Address: County Hall
Bythesea Road
Trowbridge BA14 8JN

Decision (including any steps ordered)

1. The complainant requested information relating to Town and Village Green applications. Wiltshire Council (the "council") disclosed some information and withheld personal data under regulation 5(3) and regulation 13(3).
2. The Commissioner's decision is that the council correctly applied regulation 5(3) and regulation 13(3) to withhold the personal data of the complainant and a third party and that, in relation to information identified as falling out of the scope of the request, it complied with regulation 5(1).
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 14 June 2022 the complainant requested the following information from Wiltshire Council (the "council"):

"I request copies of all photos, maps, forms, documents, emails, notes of conversations, etc. relating to the Town and Village Green applications of Stanton St. Quintin Parish Council, 2018/01 (30 April 2018) and 2019/01 (26 April 2019).

I am only interested in documents I do not have hence:

- 1) You may exclude documents already sent to me under my FOI request of 7 May 2020.
- 2) You may exclude any other documents already sent to me.
- 3) You may exclude all documents written by me (these would be from this email address if that helps).
- 4) You may exclude all documents published with the agenda for the NAPC meeting of 25 May 2022.

Please include documents received up to 13 June 2022 inclusive."

5. The council responded on 6 July 2022 and disclosed some information. On 30 July 2022 the council issued an internal review response which disclosed further information and withheld other information under the exception for interests of the information provider (regulation 12(5)(f)).
6. During the Commissioner's investigation the council revised its position and confirmed that it now considered the information previously withheld under regulation 12(5)(f) actually falls outside the scope of the information requested by the complainant. It also confirmed that it was withholding some information under the exception for personal data (regulation 13(1)) and confirmed that some of the information was the complainant's own personal data and that this information was excluded from its response under the EIR as provided by regulation 5(3).

Reasons for decision

Scope of the request

7. The focus of the request is "...information relating to the Town and Village Green applications of Stanton St. Quintin Parish Council, 2018/01 (30 April 2018) and 2019/01 (26 April 2019)".
8. During the Commissioner's investigation the council carried out a further review of its handling of the request.
9. An outcome of this review was that the council confirmed to the Commissioner that some of the information requested, specifically an email previously withheld under regulation 12(5)(f), does not actually fall within the scope of the request.
10. The Commissioner has viewed the information in question and is satisfied that this is correct. He has, therefore, concluded that the council was not obliged to provide this information in response to the request and that it complied with its obligations under regulation 5(1).

Regulation 5(3) – personal information

11. The duty to make environmental information available on request is imposed by regulation 5(1) of the EIR. Regulation 5(3) provides that regulation 5(1) does not apply to information that is the personal data of the requester.
12. The council redacted parts of the disclosed information because it considers that it constitutes the personal data of the complainant. The Commissioner has viewed the information in question and he is satisfied that this is correct.
13. The Commissioner has, therefore, concluded that the council is not obliged to disclose this information as set out under regulation 5(3)¹.

¹ Although a requester's own personal data cannot be disclosed under the EIR, Article 15 of the UK GDPR gives an individual the right to request copies of personal data held about them – this is referred to as the right of subject access.

Regulation 13 - personal data

14. 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.
15. In this case the relevant condition is contained in regulation 13(2A)(a)². 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').
16. In this case the withheld information constitutes the personal data of a third party, specifically, a private individual who is not an officer of the council.
17. Disclosure under either FOIA or the EIR is effectively an unlimited disclosure to the world at large, without conditions.
18. The Commissioner acknowledges that the complainant considers that they has a legitimate interest in disclosure of the withheld personal information.
19. However, the Commissioner must balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms.
20. 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. Nor has the Commissioner seen any evidence of any wider public interest in disclosure of the withheld information.
21. 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).
22. It follows that the council is entitled to withhold this information.

² As amended by Schedule 19 Paragraph 307(3) DPA 2018.

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: 0203 936 8963
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

Christopher Williams
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF