

## **Freedom of Information Act 2000 (Section 50) *Environmental Information Regulations 2004***

### **Decision Notice**

**Date: 18 January 2010**

**Public Authority:** Mid Suffolk District Council  
**Address:** Council Offices  
131, High Street,  
Needham Market  
Ipswich  
Suffolk IP6 8DL

### **Summary**

---

The complainant requested information held by the Mid Suffolk District Council (the "Council") under its Environmental Health powers relating to an investigation on the land and premises located at a particular address. The Council provided the information with some redactions. The Council withheld some information which it considered to be personal data. The Commissioner's decision is that the Council was correct to withhold the personal data, however the information should have been considered under the Environmental Information Regulations 2004 rather than the Act.

### **The Commissioner's Role**

---

1. The EIR were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Act are imported into the EIR.

### **The Request**

---

2. On 27 March 2009 the complainant requested the following information:

"..all documents held by your council including all copy correspondence, file attendance notes, email communications, minutes of meetings, telephone attendance notes and all other information held under Environmental Health Powers and relating to the land and premises located at [address redacted].

The specific files and general records to which access is required concern the terms of the investigation relating to the investigatory files held within the Environmental Health Office relating to the said premises which have been created during the period from 1 January 2009 up to and including 27 March 2009.

In particular, this request for information requires disclosure of all internal file notes relating to the said investigation together also with the relevant extracts from reports received by the Environmental Health Officers including any complaints.”

3. On 21 April 2009 the Council provided the majority of information. Some information was withheld as this was considered to be personal data.
4. On 15 May 2009 the complainant requested an internal review.
5. On 19 June 2009 the Council wrote to the complainant upholding its original decision.

## **The Investigation**

---

### **Scope of the case**

6. On 29 June 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the information redacted from the information provided.

### **Chronology**

7. When the complainant contacted the Commissioner on 29 June 2009 his complaint was acknowledged and further correspondence was requested as this was required to progress the case.
8. On 15 September 2009 the Commissioner obtained the required documentation from the Council and was able to progress the case.
9. On 16 November 2009 the Commissioner contacted the Council to request the withheld information to ascertain the exact content.
10. The Council provided the Commissioner with the content of the information redacted from the documentation provided to the complainant.
11. On 16 November 2009 the Commissioner informed the Council that the request should have been more appropriately considered under the EIR as the information requested is 'environmental information'. The Commissioner considers that the application of the exemption for personal data contained in the

Act has a direct equivalent in regulation 13 of the EIR and consequently has considered the case accordingly.

12. On 18 November 2009 the Commissioner wrote to the complainant with his view that there was no expectation for the redacted information to be provided.
13. On 25 November 2009 the complainant wrote to the ICO to challenge this view.

## Background

---

14. The complainant has commercial interest in the property which is the focus of his request. The Environmental Health Department of the Council inspected the property as a result of information received. The complainant considered its private interest to be “undermined and comprised by the malicious actions” of the person who provided the information. The complainant alleges that the information given to the Council “constituted a public nuisance in that a public official’s time was wasted for no purpose”. The complainant further states “the person who put forward the complaint should be brought to account for the alleged public nuisance and for the alleged economic torts caused by the pursuit of the malicious complaint”.
15. The Commissioner has seen the redacted information and considers that the information does not substantively add to the content of the information already provided by the Council.

## Analysis

---

16. The full text of the relevant regulation can be found in the Legal Annex.

## Exceptions

### Regulation 13(1)

17. Under regulation 5(1) a public authority that holds environmental information is required to make it available on request. However, that requirement is subject to regulation 13(1) which provides that, to the extent that the information requested includes personal data of which the applicant is not the data subject and the disclosure of the information to a member or the public would contravene any of the data protection principles set out in the Data Protection Act 1998, a public authority shall not disclose the personal data.
18. The first principle of the DPA requires that the processing of personal data is fair and lawful and that at least one of the conditions for processing in Schedule 2 is met. The Commissioner has firstly considered whether the disclosure of this information would be fair. In order to reach a view on this he has considered what would be the reasonable expectation of the individual who contacted the Council,

- i.e. would they have any expectation of their personal data being provided to a third party.
19. The Commissioner considers that public authorities must be able to carry out investigations as a result of information received. There must be an expectation that the interests of the parties involved in an investigation will be protected and all parties will be treated fairly. In order for the Council to operate effectively it must be able to receive information without necessarily identifying the source publically. It is unlikely that the individual contacting the Council would have had any expectation that their personal data would be released to a third party.
  20. The Commissioner gave consideration to the Tribunal's decision in an earlier case (EA/2008/0054) where the complainant asked for the name of the person who had made an arbitrary/malicious complaint about his septic tank. The Tribunal said at paragraph 45 that "*...there were no public interest considerations in this appeal which could override the confidentiality implicit in the original letter of complaint*" and went on at paragraph 47 to say that they were satisfied that "*no further disclosure of information could be made without contravening the first data protection principle*".
  21. In considering the above the Commissioner concluded that disclosure in this case would not be fair.
  22. Schedule 2 of the Data Protection Act (DPA) sets out the conditions under which personal data could be released. There are six conditions in Schedule 2 of the DPA but only condition 1 (consent) or condition 6 (legitimate interests) are relevant to disclosure under the Act. In this case, consent has not been given.
  23. Condition 6 establishes a three part test which is concerned with balancing the legitimate interests of the public in disclosure against the interests of the individual whose data it is. It is the judgement of the Commissioner that, in this case, there is no legitimate public interest in disclosing the information. Indeed, it is in the public interest that the anonymity of complainants be preserved, so that members of the public may submit their concerns to public authorities without fear of redress. Disclosure of the name or other personal data of the complainant in the Council's investigation does not add to the substance of the Council's paper records which have been provided. Even where the disclosure is necessary for a legitimate interest of the public, it nevertheless must not cause unwarranted interference (or prejudice) to the rights, freedoms and legitimate interests of the data subject. The Commissioner's view is that disclosure of the name would constitute an unwarranted interference in the individual's private life.
  24. The Commissioner considers therefore that the information was properly withheld under regulation 13(1) and (2) (a) (i).

### **Procedural Requirements**

25. As the Council failed to identify that the requested information was environmental information it dealt with the complainant's information request under the Act . As a result the Council issued a Refusal Notice citing an exemption under the Act for

its reason of non disclosure. Regulation 14 (3) of the EIR states that if a request for environmental information is refused by a public authority it should issue a Refusal Notice which specifies the exception(s) being relied on and the matters the public authority considered in reaching its decision. As the complainant's request was dealt with under the incorrect regime the Refusal Notice did not specify the exception being relied on under the EIR. The Commissioner has therefore concluded that the Council was in breach of regulation 14 (3) of the EIR.

## **The Decision**

---

26. The Commissioner's decision is that the public authority:
- correctly withheld some of the requested information:
  - is in breach of regulation 14(3) by incorrectly issuing a Refusal Notice without specifying an exception in the EIR and misapplying section 40 of the Act.

## **Steps Required**

---

27. The Commissioner requires no steps to be taken.

## Right of Appeal

---

28. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 18<sup>th</sup> day of January 2010**

**Signed .....**

**David Smith  
Deputy Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### Regulation 12 - Exceptions to the duty to disclose environmental information

**Regulation 12(3)** 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.

### Regulation 13 - Personal data

**Regulation 13(1)** To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.

**Regulation 13(2)** The first condition is –

- (a) in a case where the information falls within any paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene –
  - (i) any of the data protection principles; or
  - (ii) section 10 of the Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it; and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998(a) (which relates to manual data held by public authorities) were disregarded.

### Regulation 14 - Refusal to disclose information

**Regulation 14(1)** If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

**Regulation 14(2)** The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

**Regulation 14(3)** The refusal shall specify the reasons not to disclose the information requested, including –

- (a) any exception relied on under regulations 12(4), 12(5) or 13; and
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).