

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

Decision Notice

Date: 10 February 2011

Public Council: Somerset County Council
Address: County Hall
Taunton
Somerset
TA1 4DY

Summary

The complainant requested copies of forms received by the Council from members of the public regarding obstructions to a specific highway. The Council released most of the information contained within the forms but withheld, under section 40(2) of the Act, the name and address of each informant and the name and address of the landowner involved. The Commissioner's decision is that the information is environmental and that the Council should have responded to the request under the provisions of the EIR. The Commissioner has investigated and found that the withheld information is personal data and that disclosure would breach the first data protection principle. As such, the Commissioner considers the information to be exempt under regulation 13 of the EIR.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public Council has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.
2. The Environmental Information Regulations (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 Freedom of Information Act 2000 (the "Act") are imported into the EIR.

Background

3. The withheld information in question consists of a number of forms, known as "Form 1", received by the Council from members of the public in respect of an obstruction to a specific highway. The forms requested are associated with three forms, known as "Form 2" named and referenced by the complainant in his information request.
4. Form 1 relates to requests made to a local highway authority to remove an obstruction. It is completed by a member of the public and submitted to the Council to notify them of the obstruction. The form captures the name and address of the individual reporting the obstruction, details of the obstruction itself and the name and address of the individual thought to be responsible for the obstruction.
5. The Council is then required to serve Form 2 within 1 month of receiving the Form 1. Form 2 is served on the individual who has been named within Form 1 as being responsible for the obstruction and asks them to take action to remove the obstruction.

The Request

6. On 18 May 2010, the complainant wrote to Somerset County Council ("the Council") with the following request:

"Under the Freedom of Information Act please supply a hard copy of the Section 130 Form 1's issued by a member(s) of the public which correspond to the following Form 2's issued to the landowner:

1. *The public footpath Y24/10 – locked gates and stone pillars. (Form 2 being issued the landowner on 25th August 2005)*
 2. *The public footpath Y24/12 – fencing, gate pillars and lights in the surface. (Form 2 being issued the landowner on 25th August 2005)*
 3. *The public footpath Y24/9 – overhanging apple tree branches. (Form 2 being issued the landowner on 25th August 2005)*
7. The Council responded to the request on 14 June 2010 and confirmed that it held the requested information. The Council released most of the information contained within the forms but withheld the name and address of the informant contained within each form ("informant details") and the name and address of the landowner contained within

each form ("landowner details"). The Council stated that this information was exempt from disclosure by virtue of section 40(2) of the Act.

8. The complainant requested an internal review of the Council's decision on 6 August 2010. The Council provided the outcome of its internal review on 6 September 2010, upholding its decision to withhold the information by virtue of section 40(2) of the Act.

The Investigation

Scope of the case

9. On 11 September 2010 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 Council's refusal to release the identities and addresses of the individuals in question by virtue of section 40(2) of the Act.

Chronology

10. On 19 November 2010, the Commissioner wrote to the Council to request copies of the withheld information and to request further arguments to support its reliance on section 40(2) of the Act. The Commissioner also asked the Council if it had considered whether the withheld information was environmental and, if it agreed with the Commissioner's preliminary view that it was, to reconsider the request under the provisions of the EIR.
11. The Council responded to the Commissioner on 3 December 2010 and provided copies of the withheld information, which consisted of 24 Form 1's. The Council confirmed that, having agreed with the Commissioner's view that the information was environmental, it had reconsidered the request under the EIR. The Council's position was that the information in question remained exempt from disclosure, by virtue of regulation 13 of the EIR.
12. On 7 December 2010 and 16 December 2010, the Commissioner wrote to the complainant in an attempt to resolve his complaint informally. The Commissioner stated that his preliminary view was that the information was exempt from disclosure by virtue of regulation 13 of the EIR.
13. The complainant wrote to the Commissioner on 7 December 2010, 15 December 2010 and 20 December 2010 and stated that he did not accept the Commissioner's preliminary view that the information requested was exempt from disclosure. The Commissioner therefore

wrote to the complainant on 21 December 2010 and confirmed that he would draft a formal Decision Notice in respect of his complaint.

14. On 16 December 2010, the Commissioner identified that the withheld information supplied by the Council on 3 December 2010 and the information provided to the complainant by the Council on 14 June 2010 was not the same information that was requested by the complainant on 18 May 2010. Therefore the Commissioner asked the Council to provide the correct information.
15. The Council wrote to the Commissioner on 21 December 2010 and provided the correct withheld information, which consisted of three Form 1's.
16. The Council wrote to the complainant on 4 January 2011 and released most of the information contained within the three forms referred to in paragraph 15 above. It maintained that the names and addresses previously referred to remained exempt from disclosure.

Analysis

Substantive Procedural Matters

17. The Council initially considered the complainant's request for information under the Act and considered it to be exempt by virtue of section 40(2). However, the Commissioner's view is that the information requested constitutes environmental information and that the correct access regime is therefore the EIR.
18. The Commissioner has determined that the requested information would fall within the definition of environmental information set out at regulation 2(1)(c) of the EIR, for the reasons set out below. Regulation 2(1)(c) provides that:

“‘environmental information’ has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material on –

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements”.

19. The factors referred to in (a) include:

“the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms and the interaction among these elements”.

20. In coming to his view that the requested information is environmental, the Commissioner is mindful of the Council Directive 2003/4/EC which is implemented into UK law through the EIR. A principal intention of the Directive is to allow the participation of the public in environmental matters. The Commissioner therefore considers that the term “any information...on” in the definition of environmental information contained in regulation 2 should be interpreted widely. It will usually include information concerning, about or relating to measures, activities and factors likely to affect the state of the elements of the environment. In other words information that would inform the public about the element, measure etc under consideration and would therefore facilitate effective participation by the public in environmental decision making is likely to be environmental information.
21. The information requested in this case is contained within various forms issued by members of the public to the Council which correspond to Form 2's issued by the Council to a landowner. The forms relate to the identification and subsequent removal of obstructions on the highway, for example structures, hedges trees and shrubs.
22. The Commissioner considers that the information in question is environmental, as the removal of the obstruction in question is a measure, as defined in regulation 2(1)(c), it is an activity likely to affect the elements and factors referred to in 2(1)(a), i.e. the land and landscape, and the withheld information in question is “on” that measure.

Exceptions

Regulation 13(1)

23. The exception under regulation 13(1) applies to information that is the personal data of an individual other than the applicant (the complainant), where disclosure of that information would breach any of the data protection principles or section 10 of the Data Protection Act (“DPA”).

Is the information personal data?

24. In considering whether the Council has correctly applied regulation 13(1) of the EIR to the withheld information, the Commissioner has first

25. According to section 1(1) of the DPA, personal data can be defined as follows:

“‘personal data’ means data which relate to a living individual who can be identified –

- from those data*
- from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller or any other person in respect of the individual”*

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

26. In considering whether the information requested is ‘personal data’, the Commissioner has also taken into account his own guidance on the issue.
27. The two main elements of personal data are that the information must “relate to” a living person, and that person must be identifiable. 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, has them as its main focus or impacts on them in any way.
28. The withheld information in this case consists of the informant details and the landowner details; i.e. the names and addresses of various individuals. As such, in this case, the Commissioner is satisfied that living individuals can be identified by the withheld information, and he accepts that the withheld information in its entirety is personal data, as defined by the DPA.

Would disclosure contravene any of the principles of the DPA?

29. As the Commissioner is satisfied that the requested information constitutes the personal data of the individual in question, he has next considered whether disclosure would breach any of the data protection principles.
30. The Council has not specified which of the data protection principles disclosure would breach. The Commissioner considers the first data protection principle to be the most relevant in this case and he has therefore considered whether disclosure would breach that principle.

First data protection principle

31. The first data protection principle has two main components. They are as follows:
- i. The requirement to process all personal data fairly and lawfully; and
 - ii. The requirement to satisfy at least one DPA Schedule 2 condition for the processing of all personal data.
32. Both requirements must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing (including disclosure as a result of an information request) will not be in accordance with the first data protection principle. The Commissioner's general approach to cases involving personal data is to consider the fairness element first. Only if he believes that disclosure would be fair would he move on to consider the other elements of the first data protection principle.

Would disclosure of the information be fair?

33. In assessing fairness, the Commissioner has considered the reasonable expectations of the individuals concerned, the nature of those expectations and the consequences of disclosure to the individuals. He has then balanced these against the general principles of accountability, transparency and considered whether there was a legitimate public interest in disclosure. The Commissioner has considered the informant details and the landowner details in turn.

a) Expectations of the individuals concerned

Informant details

34. The Commissioner considers that the individuals in question provided their personal details to the Council with an expectation of confidence. The Council stated that it had made a commitment to its customers (via the notes included to assist individuals in completing the Form 1) not to disclose their personal information. The Commissioner considers that individuals making complaints or allegations to the Council would have an expectation that their details will remain confidential.
35. The Commissioner considers that there would have been an expectation on the part of the individuals that the information in question would not be disclosed to the world at large. The Commissioner's view is that complainants reporting issues to the Council would have a general expectation that information relating to their home life – such as home addresses – would not be made public when supplied on a voluntary basis to the Council under these circumstances.

Landowner details

36. The landowner details in each form have been provided to the Council by a third party. The Commissioner considers that since this individual's identity has been provided to the Council without the individual knowing it has been provided, then that individual can have no reasonable expectation that his name and address will be disclosed into the public domain.
37. The Commissioner's view is that individuals named in complaint forms submitted to a local authority by members of the public would have a general expectation that this information would not be made public when supplied to the Council under these circumstances.

b) Consequences of disclosure

Informant details

38. When considering the consequences of disclosure of the withheld information, the Commissioner has also considered how this data could be used by the public. Disclosure under the Act represents disclosure to the public at large. Revealing to the public the names and personal addresses of individuals who have made complaints about highway obstructions could lead to them being targeted by other members of the community, which could well cause the individuals distress. In this particular case, the Commissioner considers that the current local unrest (as evidenced by local and national media reports on the issue) in relation to this issue demonstrates the potential for significant harm being caused to the informants in this case.
39. The Commissioner has considered the nature of the withheld information and he is satisfied that disclosure of the information to the public and the associated loss of privacy have the potential to cause unnecessary and unjustified harm to the individuals in this case. The Commissioner considers that disclosure of the information could lead to the deterioration of relationships between the informants and their neighbours to the extent that disclosure could result in recriminations against informants.

Landowner details

40. The Commissioner notes that a large amount of information linking the landowner and his address to this issue is already in the public domain. The Commissioner does not consider that the landowner is likely to suffer any notable harm as a direct result of his name and address being disclosed in response to this request.

Legitimate public interest and the general principles of accountability and transparency

Informant details

41. The Council acknowledged the public interest in this case, including the media attention and dedicated website that directly relate to this issue. However, the Council considered that its duty to protect the identity of individuals outweighed any public interest in disclosure of the information in question.
42. The Council's view was that it would not be in the public interest to disclose the personal information of individuals who had complained about a breach in the Highways Act where the facts have already been established, the case proven in court, and successful on appeal.
43. The complainant argued that the public interest in disclosure is overwhelming. The complainant argued that the case has involved extensive legal costs, and that local residents and walking groups are in support of the landowner in question. The complainant was seeking access to the identities of the individuals in question in order to ascertain whether correct procedures had been followed by the Council, and whether accurate information had been used in court. Disclosure of the individuals' identities would be of significant public interest in respect of how the Council spends its money, and in respect of the trial and its outcome. The issue has a dedicated website and has attracted attention in national and local media.
44. The Commissioner recognises that there is clearly a strong public interest in this specific issue, due to the alleged local authority spending on the court case, and the outcome of that court case. However, he agrees with the Council's view that the duty to protect the identities of the individuals in question outweighs any public interest. The Commissioner considers that in this case there is a greater interest in protecting the safety of the individuals in question and in protecting the integrity of the process by which members of the public can make the Council aware of highway obstructions. Disclosure of informants' identities could damage the public trust in the Council's processes.
45. The Commissioner recognises that the legitimate interests of the public must be weighed against any unwarranted prejudice to the rights and freedoms or legitimate interests of the data subject. After considering these factors, the Commissioner has come to the conclusion that the disclosure of the withheld information would be unfair to the data subjects.
46. As the Commissioner has decided that disclosure would be unfair, there is no need for him to go on to consider the other elements of the first

data protection principle. The Commissioner therefore upholds the Council's application of regulation 13(1) in respect of the informant details because disclosure of this information would breach the first data protection principle.

Landowner details

47. The Commissioner received no specific arguments in respect of any legitimate interest in the name and address of the landowner in question from either the complainant or the public authority. The Commissioner notes that the identity of the landowner is in the public domain.
48. The Commissioner has therefore considered the general principles of accountability and transparency. He considers that there is a legitimate interest in the processes administered by local authorities, including an interest in issues surrounding obstructions to local highways. The public interest lies in a broader understanding of the Council's processes and an assurance to the public that these processes are being correctly administered by their local authority.
49. The Commissioner recognises that the legitimate interests of the public must be weighed against any unwarranted prejudice to the rights and freedoms or legitimate interests of the data subject. Since the Commissioner considers that no harm would be caused to the individual in question as a direct result of disclosure, and due to the legitimate interests that the Commissioner has identified, the Commissioner has come to the conclusion that the disclosure of the requested information would not be unfair.

Would it be unlawful to disclose the information?

50. In relation to the information which he believes would be fair to disclose (i.e. the landowner details), the Commissioner has gone on to consider whether the processing would be lawful. In this case, the Commissioner is not aware of any duty of confidence or statutory bar protecting the information and he is satisfied that the disclosure would not be unlawful.

Schedule 2 conditions

51. In relation to the information which he believes would be fair and lawful to disclose (i.e. the landowner details), the Commissioner has gone on to consider whether any of the conditions in schedule 2 of the DPA can be met.
52. The Commissioner considers that the most applicable condition in this case is condition 6 which gives a condition for processing personal data where:

The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

53. In order to consider whether this condition is met the Commissioner believes that disclosure must satisfy a three part test:
 - a. there must be legitimate interests in disclosing the information
 - b. the disclosure must be necessary for a legitimate interest of the public, and
 - c. even where the disclosure is necessary, it nevertheless must not cause unwarranted interference (or prejudice) to the rights, freedoms and legitimate interests of the data subject.
54. As stated in paragraph 48 above, the Commissioner considers there to be a legitimate interest in the processes carried out by the Council, in understanding how these processes are administered, and in being reassured that the processes are being administered correctly.
55. Having already established that processing is fair, the Commissioner is also satisfied that the release of the withheld information would not cause any unnecessary interference with the rights, freedoms and legitimate interests of the individuals in question.
56. The Commissioner has therefore gone on to consider whether disclosure of the withheld information is necessary for the purposes of legitimate interests pursued by the data controller or by third parties. As stated above the Commissioner accepts that there is a legitimate interest in disclosing the information, but this does not necessarily mean that such disclosure is actually necessary.
57. The Commissioner has identified a legitimate interest in the broadening of public understanding in local authority processes, a legitimate interest in the processes that are in place in relation to highway obstructions, and a legitimate interest in reassurances that the Council is administering these processes correctly.
58. In this case, the withheld information is contained within Form 1's, which are one element of an established local authority process to deal with highway obstructions. The reassurance that the Council is correctly administering the process comes from the fact that it has already disclosed most of the information contained within the forms. The Form 1 and Form 2 templates are in the public domain. The Commissioner

does not consider that disclosure of the identity of the individual alleged to be responsible for the obstruction in each case would add to the public understanding of the Council's processes, and considers that the legitimate interest has already been met by the disclosure of most of the information contained within the requested Form 1's.

59. Therefore, the Commissioner does not consider that disclosure is necessary for a legitimate interest of the public.
60. For the reasons set out above, the Commissioner is not satisfied that any of the conditions in Schedule 2 can be met. Therefore the Commissioner concludes that disclosure of the identity of the individual responsible for the obstruction would breach the first data protection principle. Consequently disclosure of this information is exempt from disclosure by virtue of regulation 13 of the EIR.

Procedural Requirements

Regulation 5

61. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that this information shall be made available as soon as possible and no later than 20 working days after the date of receipt of the request.
62. The complainant initially requested the information on 18 May 2010. The Council responded on 14 June 2010 and released most of the information contained within the requested forms. However, the Commissioner identified during his investigation that the information provided to the complainant on 14 June 2010 did not correspond with the information requested by the complainant on 18 May 2010. The Council corrected this error and provided the complainant with the correct information on 4 January 2011. Therefore the Commissioner considers that the Council breached regulation 5(2) in respect of the information disclosed on 4 January 2011 for failing to make it available within 20 working days following receipt of the request.

Regulation 14

63. Regulation 14 of the EIR requires a public authority to inform a complainant in writing as soon as possible and no later than 20 working days from the date of the request if it is refusing to supply the information requested. It is also obliged to specify the reasons for not disclosing the information, state the regulation that applies and the matters that it considered in reaching its decision with respect to the

public interest test. The authority must also tell the applicant that they can make representations (and appeal the decision) to the authority and that they ultimately have a right to complain to the Commissioner.

64. The Council failed to consider the request under the EIR. As such, the Commissioner concludes that the Council breached regulations 14(1), 14(2) and 14(3) of the EIR for failing to issue a refusal notice no later than 20 working days after receipt of the request stating the exception being relied on and the matters considered in reaching its decision with respect to the public interest under regulation 12(1)(b).

The Decision

65. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- The Council was entitled to rely on the exception at regulation 13(1) in withholding the information in question.

66. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- The Council breached regulation 5(2) in respect of the information disclosed on 4 January 2011
- The Council breached regulation 14(1), 14(2) and 14(3) for failing to issue a proper refusal notice under the EIR within 20 working days

Steps Required

67. The Commissioner requires no steps to be taken.

Right of Appeal

68. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

69. 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.
70. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 10th day of February 2011

Signed

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

Legal Annex

Regulation 5 - Duty to make available environmental information on request

Regulation 5(1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 5(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 5(3) To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.

Regulation 5(4) For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

Regulation 5(5) Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to the standardised procedure used.

Regulation 5(6) Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

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).

Regulation 14(4) If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.

Regulation 14(5) The refusal shall inform the applicant –

- (a) that he may make representations to the public authority under regulation 11; and
- (b) of the enforcement and appeal provisions of the Act applied by regulation 18.

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 Council 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 13(3) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1) of the Act and, in all circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.

Regulation 13(4) In determining whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.

Regulation 13(5) For the purposes of this regulation a public Council may respond to a request by neither confirming nor denying whether such information exists and is held by the public Council, whether or not it holds such information, to the extent that –

- (a) the giving to a member of the public of the confirmation or denial would contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of the Act were disregarded; or
- (b) by virtue of any provision of Part IV of the Data Protection Act 1998, the information is exempt from section 7(1)(a) of the Act.