

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

**Date:** 29 November 2012

**Public Authority:** Cornwall Council  
**Address:** County Hall  
Treyew Road  
Truro  
TR1 3AY

**Decision**

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1. The complainant has requested information relating to a specified planning enforcement case considered by Cornwall Council's planning committee. Some information was refused under the provisions of regulation 12(3) of the EIR, on the grounds that it was personal data, and disclosure would breach the data protection principles.
2. The Commissioner's decision is that Cornwall Council has correctly applied regulation 12(3) and 13 of EIR in withholding the requested information. He does not require the public authority to take any steps to ensure compliance with the legislation.

**Request and response**

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3. On 9 January 2012, the complainant wrote to Cornwall Council (the council) and requested information in the following terms:

*"1. I would like to receive copies of any and all reports submitted and documentation/items tabled to the Planning Committee (West) on [date] in respect of or relating to the enforcement case [reference provided].*

*2. I also wish to receive a formal decision notice in respect of the above, including any conditions laid down in the decision by members" (sic)*

4. The council responded on 9 February 2012. It stated that the committee report had been withheld under regulation 12(3) of the EIR because it considered the disclosure of personal data would be unfair and breach the first data protection principle.
5. Following an internal review the council wrote to the complainant on 20 April 2012. It stated that its review supported its previous decision (to refuse the request) and it was satisfied the information had been correctly withheld. It gave its view that the report was personal information as the specified case was about an individual property and the information within the report would identify third parties.

### **Scope of the case**

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6. The complainant contacted the Commissioner to complain about the way her request for information had been handled. She complained about the refusal to disclose information and argued that the public should have access to the requested report(s) and that the council's refusal was not in the interests of open government.
7. She argued that the report could be disclosed with personal details redacted as necessary. She also argued that, as the names of the parties were already known (ie, via the planning matter to which the enforcement case was associated) there would be no reason to withhold the details. Finally, she commented that the refusal of the request had removed her right to challenge the decision.
8. The Commissioner considers the scope of the case to be that the information was refused on the grounds that it is personal data, under the relevant provisions of the EIR. The complainant disputes that it will be contrary to the Data Protection Act 1998 (DPA) to publish any personal data in this matter, on the grounds that this material is routinely published. The Information Commissioner will therefore examine the council's reasons for the council's refusal on the grounds or regulation 12(3) and 13 of the EIR.

## Reasons for decision

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### 9. **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.

### 10. **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

11. In this case, the information is about a planning matter and is therefore considered to be ‘environmental information’. The provision of environmental information is controlled by the EIR and the Commissioner agrees that the EIR is the correct disclosure regime to apply in the circumstances of this request.

12. The Commissioner is also satisfied that that the requested information is personal data. This is because a living individual can be identified from it, and it ‘relates to’ them because it *“includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual”*.

13. it is clear that the report about a planning enforcement matter is linked to a specific property and, by association, the owners or occupiers of that property, or the people who are alleged to have committed the planning breach (in this case, these are understood to be the same).

The report will describe the intentions of the council to those individuals in respect of the planning matter. Even if the names and address details of parties were specifically redacted, the context would still serve to identify the individuals, for example to anybody with a little local knowledge, and the remaining information still relates to those individuals in the terms described at paragraph 12, above.

14. There is a further consideration in the specific circumstances of this case, which is that the information request itself specifies the planning matter which applies. Therefore, the very fact of disclosure of any information means that that information must relate to the planning enforcement case, which itself relates to the individuals. So, the simple act of disclosure of any information at all in response to the request means that it can be inferred that that information relates to the individuals associated with the planning enforcement case.
15. For this reason, the Commissioner considers that it is not possible to redact the personal data from the report and disclose the remainder. Any information disclosed would still, by its association with the enforcement case, be inextricably linked to the individuals who were the subject of the planning enforcement case. The Commissioner has conducted searches of the council's website for the planning matters cited by the complainant, and has located entries relating to the property, but no individuals are identified. It would be possible to conduct searches of the Land Registry under the property details, the property changed hands comparatively recently and so the current owners would be identified. It is therefore clear that the requested information may be linked to identifiable individuals. There is information already in the public domain to enable the report cited in the request to be linked to identifiable individuals.
16. The complainant has argued that the location of the property in question is unremarkable and quite typical of many in the local area. Therefore, if redacted, the subjects of the report would not be identifiable even to people with local knowledge. The Commissioner, however, cannot discount the possibility that friends and neighbours of the individuals, or indeed friends and neighbours of the complainant, would have sufficient knowledge to confirm the subject of the report from the context, if disclosed. For this reason, and for the other reasons cited above, he is satisfied that the report would continue to be personal data, even if names and other overtly identifying information were redacted.
17. As personal data, disclosure (under regulations 12(3), 13(1) and 13(2) of EIR) can only be made if that disclosure will not contravene the DPA, and specifically, the first data protection principle, which 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"*

## **Fairness**

18. If personal data is to be disclosed, the disclosure must be 'fair' and lawful' if that disclosure is to comply with the first data protection principle. In considering the issue of fairness, the question is whether it would be fair to the individual to disclose their personal data. This requires an assessment of both the reasonable expectations of the individual in respect of what the council will do with their personal data, and also of what the possible consequences (ie harm) of disclosure to the wider world might be.
19. The planning process is a public one, and the complainant has argued that the identities of the property owners are already known due to the planning matter which was made public prior to the associated enforcement case. However planning enforcement is not automatically an entirely public process. This is, at least in part, because of the possibility of unlawful behaviour, and possible prejudice to any legal or judicial processes which may arise. It is also because it should not be assumed that the enforcement process will find against the individual, and disclosure of the enforcement process might lead others to infer wrongdoing where none has been found. That would clearly be unfair.
20. The Commissioner starts therefore, by recognising that the openness of the planning process does not extend automatically to the planning enforcement process. Disclosure cannot therefore be assumed to be inherently fair, through an expectation of openness about the process.
21. The council makes the point that some of the information contained in a planning enforcement case (or associated reports) has been obtained from the owner (or occupier) of the land under a Planning Control Notice (PCN). A PCN compels the owner to provide certain specified information and has legal force. There is therefore a persuasive argument about fairness in respect of such information, ie that it would not be fair to disclose, publicly, information which an individual cannot decline to provide, but which they would not expect to provide under any other circumstances. There is a strong argument to say that any person who is compelled to provide information would have a reasonable expectation that that information would be treated in confidence.
22. The DPA recognises that a person's reasonable expectations when they provide personal data to an organisation, about what that organisation will do with their personal data, will influence the question of fairness in respect of any further processing of that personal data. In this case, it is clear that the data would have been provided with a reasonable expectation that it would be treated in confidence.

23. The council makes other points in respect of fairness, relating to the harm which might be caused to the data subject by disclosure of the information, ie the possibility that other parties might use the information to the disadvantage of the data subject, either by prolonging a complaint which has been resolved, or using the information as the basis for other complaints or disputes. The council explains that there is a history of dispute between the complainant and the owners of the property linked to the enforcement case, so it is obliged to consider whether disclosure would have the effect of prolonging any such dispute. It concludes that this is a possibility and that this would cause harm to the data subject.
24. The complainant has made reference to her inability to challenge the council's decision on the planning enforcement complaint she made. It is apparent that she would hope to use the information, if disclosed, to attempt to reopen the matter. It is therefore clear that the council has reasonable grounds for its concern in respect of harm due to the prolonging of a dispute which it considers to have been resolved.
25. It is clear that the data subject (the owners of the property which was the subject of a planning enforcement case) would have had a reasonable expectation that information they were compelled to provide, and which informs the withheld report, would have been treated in confidence by the council. Indeed, even if such information was provided voluntarily, the Commissioner recognises that it would be a reasonable expectation that any personal information would go no further than necessary. Secondly, it is also clear that disclosure of this information would be likely to have an adverse effect, in that it would facilitate the prolonging of a dispute, to the disadvantage of the data subjects.
26. The Commissioner concludes that disclosure of personal data in this case would be unfair, and would therefore breach the first data protection principle. The information has therefore been correctly withheld under the provisions of regulation 12(3) and 13 of the EIR.
27. The complainant has proposed arguments which indicate her view that disclosure would nevertheless be in the public interest. This would be a relevant consideration for exceptions claimed under regulations 12(4) and 12(5) of EIR, all of which require the public interest in withholding the information to outweigh the public interest in disclosure if information is to be withheld. However, regulation 12(3) and regulation 13 are not subject to such public interest considerations and the complainant's arguments are not applicable.

## Right of appeal

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28. 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: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

29. 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.
30. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**