

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

Date: 22 July 2013

Public Authority: Cambridgeshire County Council
Address: Shire Hall
Castle Hill
Cambridge
CB3 0AP

Decision (including any steps ordered)

1. The complainant requested copies of all correspondence between a Named Person and the public authority in relation to an ongoing dispute with the public authority.
2. The Commissioner's decision is that the public authority was entitled to withhold the information requested (the withheld information) on the basis of the exception at regulation 13 of the EIR.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 29 February 2012, the complainant wrote to the public authority and requested the following information:

Copies of correspondence between [Named Person] and Cambridgeshire County Council in relation to the Highway land in front of Millside Cottage, 9 Mill Street and Love Lane Highway, Houghton.
5. The request was made in the context of what appears to be an ongoing dispute between the complainant against the public authority in relation to car parking facilities on an area of land. The ownership of the land in question is also the subject of a dispute between the public authority

and [Named Person]. The public authority decided to treat the request as a request for information under the EIR and responded accordingly on 26 July 2012. It claimed that the information requested was exempt from disclosure on the basis of the exceptions at regulations 12(5)(f) and 13 of the EIR.

6. Following an internal review the public authority wrote to the complainant on 4 September 2012. It upheld the application of regulations 12(5)(f) and 13.

Scope of the case

7. On 5 November 2012 the complainant contacted the Commissioner to complain about the way her request for information had been handled. However, it was not accepted for investigation until 14 March 2013 after the complainant had submitted the documents required to proceed with the investigation.
8. The scope of the investigation was to determine whether the public authority was entitled to withhold the information requested on 29 February 2012 (as outlined above)¹ on the basis of the exceptions at regulations 12(5)(f) and 13.

Reasons for decision

Applicable Access Regime

9. The Commissioner however first considered whether the withheld information is *environmental information* within the meaning in the EIR. As mentioned, the withheld information relates to a dispute regarding the ownership of an area of land. Consequently, the withheld information discusses ownership of and existence of public highway rights to a piece of land within the context of existing policies and legal framework.
10. The Commissioner's general approach will be to interpret '*any information... on...*' (in regulation 2(1) of the EIR) fairly widely. The relevant Oxford English Dictionary definition of '*on*' is '*In reference to, with respect to, as to, concerning, about*'. The Commissioner's view, in

¹ The withheld information

line with the purpose expressed in the first recital of the Directive, is that *any information on* will usually include information concerning, about or relating to the measure, activity, factor etc in question. In other words information that would inform the public about the matter under consideration and would therefore facilitate effective participation by the public in environmental decision making is likely to be environmental information.

11. Therefore, the Commissioner is satisfied that the withheld information is *on* measures, specifically policies and legislation affecting or likely to affect land, one of the elements mentioned in regulation 2(1)(a). He therefore finds that the request for information was correctly handled under the provisions of the EIR.

Application of the Exceptions

12. The Commissioner next considered whether any of the exceptions relied on by the public authority to deny the complainant the withheld information was engaged. He first considered the absolute exception at regulation 13.

Regulation 13

13. Information is exempt from disclosure on the basis of regulation 13(1) if it constitutes third party personal data (i.e. the personal data of anyone other than the individual making the request) and either the first or second condition in regulation 13(2) is satisfied.

14. Personal data is defined in section 1 of the Data Protection Act 1998 (DPA) as

'.....data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into possession of, the data controller; and includes any expression of opinion about the individual and indication of the intentions of the data controller or any person in respect of the individual.'

Is the withheld information [Named Person]'s Personal Data?

15. As mentioned, the withheld information – i.e. correspondence between [Named Person] and the public authority – relates to a dispute between [Named Person] and the public authority concerning the ownership of an area of land. Therefore, it is information which relates to [Named Person] and from which they can be identified. The information

generally relates to rights and land ownership around [Named Person]'s property and is therefore also biographically significant.

16. In view of the above, the Commissioner finds that the withheld information is the personal data of [Named Person] within the meaning in section 1 of the DPA.

Would the disclosure of the withheld information contravene any of the data protection principles?

17. As mentioned, for regulation 13 to apply, either the first or second condition in regulation 13(2) must be satisfied. The first condition in regulation 13(2) states that disclosure of personal data would contravene any of the data protection principles or section 10 of the DPA.

18. The first data protection principle states:

'Personal data shall be processed fairly and lawfully and, in particular shall not be processed unless-

At least one of the conditions in schedule 2 [DPA] is met...'

19. The Commissioner first considered whether disclosure (i.e. processing) of the withheld information would be fair as required by the first data protection principle. In considering the fairness element, the Commissioner takes into account factors such as the reasonable expectations of the data subject, in this case [Named Person], circumstances in which the personal data was obtained and the consequences of disclosing the personal data.
20. The public authority explained that since the withheld information relates to a dispute between [Named Person] and the public authority, they would have a reasonable expectation that it would be treated in confidence and not disclosed into the public domain. [Named Person] had in fact had expressly withheld their consent to the disclosure of the information. [Named Person] has, according to the public authority, experienced considerable distress in relation to the ongoing dispute and releasing the withheld information into the public domain is likely to exacerbate the distress. Furthermore, disclosure could be detrimental to any future legal action by [Named Person] in relation to the dispute.
21. In the circumstances in which the withheld information was generated – i.e. in the context of an ongoing dispute – the Commissioner accepts that [Named Person] would have quite a reasonable expectation that the withheld information would not be disclosed to the public. It is very clearly a private matter which most individuals would expect to be handled in confidence. The Commissioner also accepts that releasing the

information into the public domain is likely to be distressing and possibly damaging to any future legal action.

22. In view of the above, the Commissioner finds that disclosure would be unfair and therefore in contravention of the first data protection principle. In reaching this conclusion, the Commissioner is also satisfied that no conditions in schedule 2 of the DPA are met. He consequently finds that the exception at regulation 13(1) was correctly engaged.
23. For clarity, the Commissioner would like to mention that information disclosed under the terms of the EIR is effectively disclosed to the public and not just to the individual applicant. Furthermore, although the complainant is aware of the identity of [Named Person], the Commissioner has deliberately chosen not to reveal their identity in this notice because to do so in the circumstances of this case would be in breach of the DPA.
24. In view of the above decision, the Commissioner did not need to consider the applicability of the exception at regulation 12(5)(f).

Procedural Breaches

25. A public authority is required by virtue of regulation 14(2) of the EIR to issue a refusal notice within 20 working days. The request for information was made on 29 February 2012. The refusal notice was issued on 26 July 2012.
26. The Commissioner therefore finds the public authority in breach of regulation 14(2).

Right of appeal

27. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

28. 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.
29. 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

Alexander Ganotis
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