

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

**Decision notice**

**Date:** 18 November 2013

**Public Authority:** Coventry City Council  
**Address:** Council House  
Earl Street  
Coventry  
CV1 5RR

**Decision (including any steps ordered)**

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1. The complainant has requested any recorded information held in relation to trees felled in Broad Lane. Coventry City Council ('the council') initially applied the exceptions at regulations 12(4)(d), 12(4)(e), 12(5)(f) and 13(1) to the requested information. During the Commissioner's investigation, the council retracted its reliance on all exceptions except regulation 13(1). The Commissioner's decision is that the council has correctly withheld information under the exception for personal data at regulation 13. He does not require any steps to be taken.

**Request and response**

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2. On 26 October 2012 the complainant quoted the following request made by another individual;

"I was going to write and ask you the location of the trees that were to be felled in Broad Lane as you gave us no detail. I had cause to drive out there this week and was sad to see that some very big trees are now just stumps. You mentioned subsidence, but the trees seemed to be quite some distance from the houses. Can you please tell us which properties had subsidence problems, whether they had surveys done and how long monitoring took place before you took the drastic decision to remove these trees?"

asking for it to consider the email as a statutory request under the Environmental Information Regulations for any recorded information (emails, reports, notes, maps, photographs etc) relating to the questions asked.

3. The council responded on 21 December 2012 and provided some narrative information but refused to provide the recorded information citing the exceptions at Regulations 12(4)(d), 12(4)(e), 12(5)(f) and 13(1).
4. The complainant requested an internal review on 8 January 2013 providing detailed reasons as to why he thought the exceptions do not apply.
5. The council provided its internal review response on 5 March 2013 in which it maintained its original position.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 23 May 2013 to complain about the way his request for information had been handled.
7. In response to the Commissioner's initial enquiries, the council amended its position and retracted its reliance on the exceptions at regulations 12(4)(d), 12(4)(e) and 12(5)(f) in respect of its internal correspondence, correspondence with residents and their agents and some works related information. It confirmed that it wished to maintain reliance on regulation 13 to names, addresses, phone numbers and other personal identifiers within the requested information and on the exception at 12(5)(f) to three reports relating to one of the properties. The council also stated it wished to apply the exception at 12(5)(b) to those reports.
8. Towards the end of the Commissioner's investigation, the council decided to retract its reliance on the exceptions at 12(5)(b) and 12(5)(f) and therefore disclosed all requested information to the complainant except for the personal data which it maintained was exempt under regulation 13(1).
9. As such information was disclosed to the complainant during the investigation, the Commissioner has not considered the application of the exceptions at regulation 12(4)(d), 12(4)(e), 12(5)(f) and 12(5)(b).
10. The Commissioner has therefore only considered the application of regulation 13 to the withheld information that was not disclosed during his investigation.

## **Reasons for decision**

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### **Regulation 13(1) – Third party personal data**

11. This exception provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 (“the DPA”).

#### **Is the withheld information personal data?**

12. Personal data is defined by the DPA as any information relating to a living and identifiable individual. 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. The withheld information is names, addresses, phone numbers and other personal identifiers (reference numbers, identifiable house features and specific location maps) within the requested information. The Commissioner is satisfied that such information is personal data as defined in the DPA.

#### **Would disclosure breach the Data Protection Principles?**

13. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner’s considerations below have focused on the issue of fairness. In considering fairness, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subject, the potential consequences of disclosure and balanced the rights and freedoms of the data subject with the legitimate public interest in disclosing the information.

#### **Nature of the information and reasonable expectations**

14. The council said that the fact that individuals have provided information to the council in furtherance of insurance matters related to tree damage caused by council maintained trees on a public street does mean that there is a certain openness, in that trees are obviously removed and this is clearly visible. However, correspondence between the council and those individuals and their representatives regarding the claim process and other aspects was not undertaken with any assumption that disclosure would be made to the wider world and the council has received representations from those involved which supported that assumption.

15. In the circumstances of this case, the Commissioner does not consider that the individuals would have had any reasonable expectation that the correspondence in this matter would enter the public domain.

### **Consequences of disclosure**

16. The council said that of particular concern in this case is that a group (which it said the complainant is associated with) had adopted a direct approach in previous cases where residents had reported tree damage. This approach included the 'door stepping' of elderly people and inveigling and gaining access to their properties in order to prepare their own reports refuting alleged tree related damage. It said that disclosure of personal data in this case would result in harassment and distress from unwanted contacts.
17. The complainant has said that he is not aware of any adverse consequences to members of the public who have made claims for tree damage and that any concerns are purely hypothetical.
18. Having viewed the withheld information, the Commissioner considers that disclosure would amount to a loss of privacy which has the potential to cause damage and distress. He has not found it necessary to make a judgement as to whether or not individuals have been harassed in previous cases of tree related damage.

### **Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure**

19. In considering 'legitimate interests in disclosure', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
20. The complainant has stated that;

"We do believe it is in the legitimate interest of the public to understand how important parts of the public realm, mature street trees are being removed and that we should see how and when the matter has been dealt with. To do so, we would need to know which houses are involved, and this almost necessarily will give away the identities of the persons involved. Looking at the balance of interests, we believe that any damage to the rights and freedoms of the residents will be small whilst it is essential to the public to know which houses are involved to be able to evaluate the likelihood of the claims for damage and the decision to fell the mature trees. In view of the circumstances, we do not believe that exemptions 13 (1) (2) and (3) are justified."

21. Whilst the Commissioner believes that there is a legitimate public interest in tree felling by the council, he considers that this is somewhat met by the disclosure of the information which has been disclosed in this case and does not consider it necessary to release personal data that could cause distress.

### **Conclusion on analysis of fairness**

22. Taking all of the above into account, the Commissioner concludes that it would be unfair to the individuals concerned to release their personal data. Disclosure would not have been within the reasonable expectations of the individuals and the loss of privacy could cause unwarranted distress. He acknowledges that there is a legitimate interest in tree felling matters but this interest is somewhat met by the disclosure of information in this case. Therefore he does not consider that any legitimate interests in disclosure outweigh the individuals' reasonable expectations and right to privacy.
23. As the Commissioner has decided that the disclosure of this information would be unfair, and therefore in breach of the first principle of the DPA, he has not gone on to consider whether there is a Schedule 2 condition for processing the information in question. The Commissioner has therefore decided that the council was entitled to withhold the information under the exception at regulation 13(1).

### **Other matters**

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24. The Commissioner notes that the council has applied various exceptions to the requested information since initially responding to the request and during the investigation. The council then retracted reliance on all but the personal data exception. This could be an indication that the council did not apply a presumption of disclosure when considering the request and did not give the request proper or full consideration until the end of the Commissioner's investigation.

## Right of appeal

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25. 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)

26. 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.
27. 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**  
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**SK9 5AF**