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Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 21 April 2015

Public Authority: Gloucester City Council
Address: Herbert Warehouse
Gloucester Docks
GL1 2EQ

Decision (including any steps ordered)

1. The complainant has requested copies of emails and correspondence between the planning department and a councillor with regards to the councillor's planning application. Gloucester City Council (the council) refused the information under regulation 13 of the EIR as it considered the information was the personal data of the councillor. In its internal review, the council also considered that regulation 12(5)(e) of the EIR was engaged to the requested information.
2. The Commissioner's decision is that the council was correct to withhold the requested information under regulation 13 and so did not go on to consider regulation 12(5)(e) of the EIR.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 7 September 2014, the complainant wrote to the council and requested information in the following terms:

"Please forward copies of all emails and correspondence between the planning department and Councillor [name redacted] concerning planning permissions for [address redacted]. This to include logs of meetings held with Councillor [name redacted]. This especially include details of contacts between Councillor [name redacted] and Mr [name redacted], Mr [name redacted] and Ms [name redacted], but not to exclude any other contacts. This also to include details of

DRAFT - OFFICIAL

DRAFT - OFFICIAL

any discussions of flagpoles, meteorological masts, masts of any description, lights and also of advice sought or given to Councillor [name redacted]."

5. The council responded on the 1 October 2014 refusing to provide the information as it considered it to be exempt from disclosure under regulation 13 of the EIR – personal data of a third party.
6. The council also identified that some of the information it held to be the complainant's own personal data which it said it would provide to him if he wished to receive it.
7. The complainant requested an internal review on the 1 October 2014 questioning the council's decision to respond under the EIR rather than the Freedom of Information Act 2000 (FOIA) and it withholding the information it has under regulation 13 of the EIR. He did not request to have a copy of his own personal data.
8. The council provided its internal review response on 17 November 2014 and it maintained that regulation 13 of the EIR is engaged. The council also considered in its review that regulation 12(5) of the EIR would also be engaged to the information being withheld. The council did not specify which subsection of regulation 12(5) it considered to be engaged, but it appeared to be relying on regulation 12(5)(e) – *"the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest."*

Scope of the case

9. The complainant contacted the Commissioner on 7 November 2014 as he was not satisfied with the council refusing his request under regulation 13 and 12(5) of the EIR.
10. During the Commissioner's investigations the council confirmed that it was relying on regulation 12(5)(e) to the requested information as well as regulation 13.
11. The Commissioner considers the scope of the case is to firstly establish if the requested information is environmental. Then he will go on to consider if the council was correct to rely on regulation 13 of the EIR to withhold the requested information.
12. The Commissioner will only go on to consider regulation 12(5)(e) if he finds that any or all of the information is not covered by regulation 13.

DRAFT - OFFICIAL

13. Also, some of the withheld information sent to the Commissioner from the council is information/ correspondence generated after the information request date. The Commissioner will not be considering information generated after the complainants information request date as he can only consider information that was held by the council prior and up to the date of the request. That being the 7 September 2014.

Reasons for decision

Is the information Environmental Information

14. Regulation 2(1) of the EIR defines environmental information as, among others, information on:

- a) *"The state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, costal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;"* and
- b) *"Measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements and factors preferred to in (a) and (b) as well as measures or activities designed to protect those elements;"*

15. This requested information, which is in relation to a planning application, in the Commissioner's view falls within the definition of regulation 2(1)(c) as 'measures or activities' likely to affect the elements of the land and landscape defined in regulation 2(1)(a) of the EIR.

Regulation 13

16. Regulation 13(1) of the EIR states:

"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."

17. Regulation 13(1) of the FOIA 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 DPA.

DRAFT - OFFICIAL

Is the withheld information personal data?

18. Personal data is defined by the DPA as any information which relates to a living individual who can be identified from that data or from that data along with any other information in the possession or is likely to come into the possession of the data controller.
19. The council has explained that the withheld information is pre planning advice, assistance and visits in the form of emails and correspondence between the planning department and the named councillor. The Commissioner is satisfied that this information falls within the definitions of personal data set out in the DPA because the information 'relates to' an identifiable living individual.

Would disclosure contravene any of the Data Protection Principles?

20. 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 finds it useful to balance the reasonable expectations of the individual and the potential consequences of disclosure against the legitimate public interest in disclosing information.

Reasonable expectations

21. The council has explained to the Commissioner that although the individual is a councillor, the planning application was in relation to a planning application for his own property and so this is in relation to his personal life not his public life. The council therefore consider that he would have the same expectations as the general public as to how his personal information is handled.
22. The council considers that the individual's reasonable expectations would be that the requested information which relates to his home/ personal life would not be released to the public, other than the information that has already been placed in the public domain for ensuring that the planning application can be processed in accordance with the law governing the processing of planning applications. This is available in the planning register¹ and the planning application was

¹ <http://www.gloucester.gov.uk/resident/planning-and-building-control>

DRAFT - OFFICIAL

considered at two public meetings held by the council's Planning Committee.

23. The Commissioner is of the view that, a person making a planning application can reasonable expect that some information would enter the public domain – such as information that is required to be made public through the planning process. The complainant would also have a reasonable expectation that any other information would remain undisclosed such as communications he is having with the council about pre planning application and advice for his planning application.
24. Also he considers that a councillor, applying for planning permission in a personal capacity, would have the same reasonable expectations as any other member of the public in most cases.

Consequences of disclosure

25. The council has told the Commissioner that releasing the information would disclose details of the data subjects' private hobbies and this would be unfair and intrusive to the individual's personal life.
26. The council also considers that the release of the information could have an impact of the value of the property and its marketability.
27. The council has also explained to the Commissioner that it appears from the paperwork that the individual has been exposed to a sometimes hostile stream of communications that has caused some discomfort and stress. To release the information may further fuel those communications as he has already been the target of a campaign primarily through written communications and some containing incorrect and misleading information.
28. The council sees that releasing this information could generate further written communications within the public areas causing stress and aggravation to the data subject.
29. The Commissioner, on reviewing these explanations by the council considers that it is very reasonable that disclosure of the information is likely to cause distress to the data subject when considering the described past events and also because there would be an expectation that some information, other than that required by the planning process, would not be placed in to the public domain.

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

DRAFT - OFFICIAL

30. The Commissioner must consider the weight of legitimate public interest against any prejudice to the rights of freedoms of the individual that the withheld information relates.
31. The complainant has advised the Commissioner that he is seeking to confirm the advice, dates of contacts with officers and whether the data subject was advised to make modifications as he considers the erected mast to be unlawful.
32. The Commissioner has not been provided with any evidence from the complainant to support this claim and also there are legitimate appeal processes, with regards to planning applications, available to the public for these sorts of claims to be considered.
33. The Commissioner sees that there is always going to be a public interest in planning matters and that releasing the information would provide transparency and accountability to the council for decisions made and would go towards better informing the public on planning decisions which in turn could increase their engagement in the process as a whole.
34. The Commissioner also, with regards to planning matters considers that the planning application process is in place with the specific aim of entrusting the council with applying the process appropriately. This in turn, in the Commissioner's view, creates greater interest in protecting the integrity of this process and that disclosure could damage the public trust in the established planning process.
35. He notes that the planning matter in this case is in regards to the property of a councillor. However, this is concerning his private life not his public life.
36. The Commissioner is of the opinion that matters relating to an individual's private life generally carry a greater weight in the withholding of personal information.
37. He has also taken into consideration the fact that the public do have access to information that is necessary to be in the public domain in the public planning register and also that the planning committee has held two public meetings about this application. So this does go some way, in the Commissioner's opinion, to satisfy any legitimate interests in disclosure.
38. On consideration of the above the Commissioner finds that any legitimate public interest in disclosure, in this case, does not sufficiently outweigh the rights and freedoms of the data subject's rights to privacy.

DRAFT - OFFICIAL

39. Therefore the Commissioner's decision is that disclosure would be unfair to the individual that the information relates and so the council was correct to withhold the information under regulation 13 of the EIR.
40. As the Commissioner has found that all of the withheld information falls under regulation 13, he has not gone on to consider regulation 12(5)(e) of the EIR.

Right of appeal

41. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

42. 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.

43. 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
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Wycliffe House
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SK9 5AF