

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 28 October 2015

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

#### **Decision (including any steps ordered)**

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1. The complainants requested copies of any evidence held relating to the use of land opposite their land. This was initially refused by Cornwall Council (the council) under section 14(1) of the FOIA as a vexatious request. Following a decision notice by the Commissioner, it was found section 14(1) was not engaged and the council was ordered to issue a new response without relying on section 14(1) of the FOIA. The council issued this new response refusing the request relying on Regulation 12(3) of the EIR as it considered it to be the personal data of a third party.
2. The Commissioner's decision is that the council was correct to refuse the request as third party personal data.
3. The Commissioner does not require the council to take any steps.

#### **Request and response**

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4. On 24 June 2015, the Commissioner issued a decision notice, under reference FS50562261, which ordered the council to issue a new response to a request of 11 August 2014, which was made by the complainant's solicitor, without relying on regulation 12(4)(b) of the EIR – manifestly unreasonable. That request being:

*"On 9 September 2014 (actual request made on 10 July 2014) we made a FOIA request on behalf of our clients [complainant's*

*names] the owners of [name of holiday park]. You responded on 6 August 2014. To our request:*

*1.*

*2. Tell us whether there is any other evidence in the possession of Cornwall Council of user of the land as a builders transfer station for a continuous period in excess of ten years.*

*3.*

*You replied:*

*2. Yes.*

*Please take this letter as a further FOIA request as follows: please provide copies of the evidence referred to above and to the extent that any part of it is no longer in the possession of the Council please state its whereabouts and the name, address and reference of the person to whom a request for copies should be directed”.*

5. The council issued this new response, following the 24 June 2015 decision notice (which details the background to the overall issue), on the 16 July 2015 confirming that it holds the information but is withholding it under regulation 12(3) of the EIR as it considers it to be third party personal data. It also considered whether it could provide a redacted version of the information, but determined that it would be so heavily redacted that it would make the information nonsensical.
6. The complainants contacted the Commissioner on the 17 July 2015 about the council’s refusal, who advised that a request for an internal review must be sought by the complainant from the council firstly.
7. The complainants requested an internal review on the 25 July 2015 and the council provided its internal review response on the 5 August 2015. It confirmed that the withheld information is a file note that is approximately 9 sentences long and upheld its decision to withhold it.

## **Scope of the case**

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8. The complainants contacted the Commissioner again to determine whether the council was correct to withhold the requested information.
9. The Commissioner considers the scope of the case is to determine whether the council was correct to withhold the information, relying on

regulation 12(3) of the EIR in accordance with regulation 13(1) of the EIR.

## **Background**

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1. A short summary of the background to this case is that the complainants own a holiday park and they have raised a variety of issues about the use of a neighbouring site and in particular associated noise and health and safety issues. They have complained that they have incurred financial loss as a result of these problems driving customers away from their holiday park and they have not been satisfied with the council's investigation of these issues or their informal attempts to resolve them.
2. Further background information can be read in decision notice FS50562261, which this case follows on from.

## **Reasons for decision**

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

3. Regulation 12(3) states:

*"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."*

4. 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."*

5. 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 Data Protection Act 1998 (the DPA).

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

6. 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.

7. The council has explained that the withheld information is the file note of a telephone conversation of a named member of the public and the information contained in it would identify this person even if their name was redacted. The Commissioner, on viewing this withheld information, is satisfied that the 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?**

8. 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 the information.

### **Reasonable expectations**

9. The council has told the Commissioner that the individual's original reasons for speaking to the council was regards another issue/ site however, an opportunity was presented to the council officer to ask information about the issue that this case relates. Therefore the council considers that the individual would have provided the information with a reasonable expectation that it would be treated in confidence and would go no further than necessary.
10. The council has also told the Commissioner that, unlike the planning process, planning enforcement is not automatically an entirely public process, this is, because in part, of the possibility of unlawful behaviour, and possible prejudice to any legal or judicial processes. In addition, planning enforcement is reliant, to a large extent, on individuals reporting suspected breaches of planning control to the council. And individuals do this with the expectation that the information they provide will be treated in confidence.

### **Consequences of disclosure**

11. The council has explained to the Commissioner that in a general consideration, if details about the individuals who provide its enforcement team with information were revealed, this would discourage individuals from sharing information with the council, which in turn would undermine the process as a whole.
12. In this particular case, the council has told the Commissioner that it is of the view that disclosure of this information would be likely to have an

adverse effect on the individual. It referred to the Commissioner's decision notice FS50562261, that dealt with the council's application of regulation 12(4)(b) - manifestly unreasonable - to this request, which spoke about the complainant's inappropriate tone in his correspondence and unfairly characterising the actions of the council and individual officers.

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

13. 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.
14. The council has argued that, should individuals be identified for reporting suspected breaches of planning control then it would discourage individuals from sharing information with the council on such matters undermining its enforcement processes.
15. It also points out that the Local Government Ombudsman (the LGO) has independently investigated the council's decision on the issue, which found no fault in the way in which the council decision was arrived at.
16. The Commissioner considers that there is always going to be public interest in knowing that a public authority is considering issues, in this particular case, use of land issues, accordingly.
17. The fact that the LGO has independently reviewed the council's actions in this issue demonstrates that there are independent bodies that complainants can go to should they consider the council has not acted as it should. This goes some way to satisfy the public interest in knowing public authorities are acting accordingly.
18. On consideration of the above, the Commissioner's decision is that disclosure would be unfair to the individual that the information relates and so the council was correct to refuse the information it has.

## Right of appeal

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19. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

20. 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.
21. 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**