

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 27 January 2016

Public Authority: Bristol City Council

Address: City Hall
College Green
Bristol
BS1 5TR

Decision (including any steps ordered)

1. The complainants have requested copies of two enforcement files which concern planning permissions granted by Bristol City Council. The Council determined that the enforcement the files are primarily the personal data of the owner of the property to which they relate and also that they contain the personal data of third party individuals who have lodged complaints and objections about contraventions of the granted planning permissions.
2. The Commissioner's decision is that Bristol City Council has Properly applied Regulation 13(1) to the two enforcement files and by virtue of this, the Council is entitled to withhold them.

Request and response

3. In March 2015, the complainants wrote to Bristol City Council asking to be given access to formal planning records and officer file notes in respect of planning applications 08/03140/F, 11/02780/F, 13/00340/F, 13/30676/NAP and 13//05241/F; and Design Officer comments in respect of application 08/03140/F.
4. The Council responded to the complainants' request on 26 March, advising them that the information is already publicly available and that a member of the Development Management Team would contact them to arrange an appointment to view the information.
5. On 7 April the Council wrote to the complainants to arrange for them to view the planning files specified in their request. The Council's email

pointed out that file 13/30676/NAP is 'not available as it does not come within FOI [the Freedom of Information Act]'.

6. On 13 April the complainants wrote to the Council to accept its offer to view the case files. The complainant's email contained an additional request to view the case file for application 15/30010/BCN. The complainants asked the Council for clarification with regards the unavailability of planning file 13/30676/NAP.
7. The Council wrote to the complainants on 22 April to advise them that file 13/30676/NAP was subject to the application of Regulation 12(3) of the EIR.
8. The complainants immediately responded to the Council refusal notice on 22 April, to dispute the Council's application of Regulation 12(3). In the complainants' email was a request that the Council to review its decision to withhold the case 'files'.
9. The Council conducted an internal review of its handling of the complainants' request and wrote to them on 12 June 2015. The Council's final decision was 'not to disclose the enforcement file', on the grounds that it is not possible to redact personal data from the file and disclose the remainder. The Council informed the complainants that any 'information disclosed would by association with the enforcement case be linked to individuals who were the subject of the enforcement case', and therefore would be in breach of the Data Protection Act.

The complainants responded to the Council's internal review on 14 June 2015. They informed the Council that, 'we are requesting evidential steps in the enforcement process taken by the Council on the cases 13/30676/NAP and 15/30010/BCN'. The complainants disputed the Council's position in respect of the Data Protection Act on the grounds that the applicant is already known to the public, being the subject of officer reports.

Scope of the case

10. The complainants contacted the Commissioner 19 August 2015 to complain about the way his request for information had been handled. The complainants stated that, "we are only interested in the procedures followed by the Council in these enforcement cases as recorded in the case records within the files. In particular, we would like to see enforcement officer's assessment record of the planning breach under 13/30676/NAP. Under 15/30010/BCN we would like to see details of the registration process and initial complaint raising the matter as an

enforcement issue, as well as responses/assessments by the enforcement team.

11. The Commissioner has investigated whether the Council is entitled to withhold the contents of the two enforcement files in reliance on Regulation 13(1) of the EIR. This notice sets out the Commissioner's decision.

Reasons for decision

Regulation 13 – Personal Data

12. The Council has confirmed its reliance on Regulation 13(1) of the EIR in respect of its enforcement files. It has provided the Commissioner with clarification in respect of its use of reference numbers 13/30676/NAP and 15/30010/BCN.
13. Both of the reference numbers relate to enforcement matters which concern planning permissions for works at the same property: 13/30676/NAP concerns a breach of planning permission, where the development is not in accordance with planning permission 11/04444/F; and 15/30010/BCN concerns a breach of planning condition (sustainability statement) of planning permission 13/05241/F.
14. The Council explained that it had considered both of the complainants' requests for the two enforcement files (13/30676/NAP and 15/30010/BCN) under the same reference when the Council conducted its internal review.
15. In this decision notice the Commissioner has decided to adopt the same approach as that taken by the Council: He has determined that the complainants' requests for the two enforcement files should be considered together. His reasons for this are that the Council reviewed both requests together at its internal review and that its response to the Commissioner's enquiry relate to both of the two enforcement files.
16. In addition to its reliance on Regulation 13(1), the Council has advised the Commissioner that it now also seeks to rely on the exception to disclosure provided by Regulation 12(4)(b) – where the request for information is manifestly unreasonable.
17. Regulation 13 of the EIR provides an exception to disclosure of personal data where the applicant is not the data subject and where disclosure of the personal data would contravene any of the data protection principles.

18. In order to engage regulation 13, the information sought by the applicant must satisfy the definition of personal data provided by section 1(1) of the Data Protection Act 1990 ("the DPA").
19. Section 1(1) of the DPA defines personal data as:

"data which relate to a living individual who can be identified (a) from those data, or (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller."
20. Here, the Council has determined that all of the contents of the enforcement files comprise the personal data of the owner of the property to which the file relates.
21. The Council has confirmed that the enforcement files concern a private residential property and the contents of the files are therefore of biographical significance to the owner.
22. Additionally, the files also contain the personal data of a number of objectors, including that of the complainants.
23. The Council has also confirmed that the enforcement files do not contain any information which constitutes sensitive personal data.
24. In order to determine whether a public authority may disclose personal data under the regulation 13 of EIR, the public authority must determine whether such disclosure would contravene the first data protection principle.
25. The first data protection principle 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, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."
 26. To satisfy the first data protection principle the public authority must conclude that the processing is fair to the data subjects – the owner of the property and the objectors, and that the processing would also satisfy at least one condition from Schedule 2 of the DPA.

The Council's position

27. In this case, the Council asserts that the two enforcement files relate to a private individual and to a private family home.

28. The Council acknowledges that the planning system is an open and transparent system. Nevertheless, it asserts out that enforcement files have never been part of that system by virtue of their contents containing personal data.
29. In the Council's opinion, disclosing the enforcement file would be unfair to the principal data subject – the owner of the property, and likewise to the objectors. The Council considers that all of the data subjects would have an expectation of privacy in respect of an enforcement matter. It believes that disclosure of the enforcement files to the world, by virtue of this request, would be contrary to that expectation.
30. The Council considers that disclosure would not satisfy any of the conditions in Schedule 2 of the DPA, and specifically condition 6.
31. Condition 6 of Schedule 2 of the DPA states:

“The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.”
32. The Council believes that disclosure of the enforcement files would serve no legitimate interest pursued by the complainants or by the wider public. It points out that the enforcement files have been the focus of a complaint made to the Local Government Ombudsman, and by virtue of that complaint, the Council's processes and procedures have been properly scrutinised.
33. The Council points out that the complainants have had the opportunity to seek a judicial review of the original planning applications, though it concedes that it may have been difficult for them to prove sufficient standing in terms of establishing how their interests would have been sufficiently harmed.
34. Rather than seeking a judicial review, the complainants chose to complain to the Local Government Ombudsman after they had exhausted the Council's complaints procedure. The Ombudsman found no maladministration on the Council's part.

The Commissioner's decision

35. The Commissioner has reviewed the contents of the enforcement files and he has considered the Council's representations. He considers that the two files should be considered in their entirety and he accepts that their contents satisfy the definition of personal data provided by section 1 of the Data Protection Act.

36. In consequence of the above, the Commissioner finds that the enforcement files contain the personal data of the owner of the residential property to which the files relate and they also contain the personal data of complainants and objectors.
37. The Commissioner notes that the Council's own correspondence to the property owner or his representatives contained within the enforcement files clearly indicate that the enforcement issues were being dealt with in confidence. The Council's emails carry a statement making clear that the contents of its emails are confidential to the individuals to whom they are addressed.
38. The enforcement files also contain complaints made by third parties.
39. Normally when a person responds to a planning application during the planning process, there is a clear expectation that those responses are made public, usually by way of being published on the Council's planning portal. In the case of correspondence relates to enforcement matters; that correspondence is not published on the Council's planning portal. Here, the complaints and objections were made after the planning decision had been made and they do not form part of the planning decision process. It therefore cannot be said that the complainants and objectors in this case would have had the same expectation that their correspondence would be made public. On the contrary, when people make complaints outside of the planning decision process, there is usually an expectation that their correspondence is treated with an appropriate degree of confidentiality.
40. The matter of the confidential nature of correspondence and the fact that the requested information concerns an enforcement matter, and not the initial planning permission, leads the Commissioner to agree with the Council that it would be unfair to all of the data subjects to disclose the two enforcement files which the complainants seek.
41. Notwithstanding this, the Commissioner has also considered whether condition 6 of Schedule 2 of the DPA.
42. The Commissioner has read the decision of the Local Government Ombudsman and he has noted that the Ombudsman found no administrative fault with the Council in considering the planning applications. He particularly noted the Ombudsman's conclusion that, "the Council's decision was proportionate and in keeping with government guidance on enforcement matters".
43. Likewise, the Commissioner has read the withheld information. He has found this to clearly indicate that the Council was properly aware of the

enforcement concerns and that it took what it considered were appropriate actions.

44. Having had their complaints properly considered by the Council and then by the Local Government Ombudsman, the Commissioner considers that there has been appropriate scrutiny of the Council to ensure that the legitimate interests of the complainants and the public have been met. This is particularly so, where the complainants' reason for wanting access to the enforcement files is to ensure that the Council has followed due process.
45. It is clear to the Commissioner that the complainants' concerns have been addressed by the Council in its consideration of all the complaints it received in connection with the particular address. Those concerns may not have been resolved to the complainants' satisfaction but this does not, in the Commissioner's opinion, warrant the disclosure of the two enforcement files. The Commissioner has seen no evidence to suggest that there are any legitimate interests in the disclosure of the two files which are by their nature 'necessary'.
46. The Commissioner's decision is that the Council is entitled to rely on Regulation 13(1) of the EIR. In view of this decision the Commissioner has not gone on to consider the Council's alternative position in respect of its application of Regulation 12(4)(b) – where the request is considered to be manifestly unreasonable.

Right of appeal

47. 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

48. 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.
49. 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
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