

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 1 August 2017

Public Authority: Sheffield City Council
Address: Town Hall
Sheffield
South Yorkshire
S1 2HH

Decision (including any steps ordered)

1. The complainant has requested information relating to Sheffield City Council's (the Council) interactions with a named developer, and a quote for works, regarding an ongoing issue with a narrowed road.
2. The Council provided redacted information citing regulation 12(3) 'personal data' of the EIR as the basis for doing so.
3. The Commissioner's decision is that the Council correctly applied regulation 12(3) to the redacted information. The Commissioner does not therefore require the Council to take any steps.
4. The Commissioner notes however that the Council provided its internal review outside of the 40 working day timeframe and is therefore in breach of regulation 11(4).

Request and response

5. On 7 June 2015, the complainant wrote to the Council's Chief Executive and requested information in the following terms:

"...we are writing to make a formal request under the Freedom of Information Act for the following documents in relation to the above subject matter [the narrowing of a road]:

1 A copy of all correspondence between any member of Council staff (including yourself) and either [named individual] or their company, [named business]. This should include but not be limited to the exchange of correspondence that you referred to at our last meeting on 29th September 2014.

2 A copy of the quote from Amey or other contractor confirming the likely cost of the works to widen the lane.

3 A copy of any minutes of any meeting that any member of the Council staff (including yourself) has had with [named individual]. If no minutes have been taken please provide documents evidencing that meetings have taken place e.g. diary records/extracts; and

4 A copy of all internal emails and other documents held by any member of Council staff"

6. The Council withheld the information under regulation 12(4)(b). Following a complaint to the Commissioner, a decision notice was issued requiring the Council to issue another response that did not rely on regulation 12(4)(b)¹
7. The Council wrote to the complainant on 17 October 2016 and provided redacted information citing regulation 12(3) of the EIR as the Council considered some of the information to be third party personal data.
8. The complainant requested an internal review of the response on 20 October 2016. The Council provided the outcome of its internal review on 13 February 2017.

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1625010/fer_0602762.pdf

Scope of the case

9. The complainant contacted the Commissioner on 17 March 2017 to complain about the way his request for information had been handled and disputed that regulation 12(3) was engaged in this case.
10. The Council confirmed to the Commissioner that it had provided the complainant with information falling outside of the request in order to provide a "comprehensive" response. This included correspondence after the date of the original request.
11. Some of the redacted information includes emails sent after the date of the request; the Commissioner has not included this information in her considerations as it does not fall within the scope of the request.
12. The Commissioner considers the scope of the investigation is to determine whether the Council has correctly applied regulation 12(3) to the redacted information falling within the scope of the request.

Background of the case

13. The complainant and the Council have been in correspondence regarding the narrowing of a lane following the erection of an extension by one of the lane's resident businesses.

Reasons for decision

Appropriate legislation

14. Regulation 2 of the EIR provides the definition of environmental information for the purposes of the Regulations².
15. As the request is for recorded information relating to the proposed widening of the named street, as stated in the request (*"we are writing to make a formal request under the Freedom of Information Act for the following documents in relation to the above subject matter"*), the

² <http://www.legislation.gov.uk/ukxi/2004/3391/regulation/2/made>

Commissioner considers that this request falls squarely within the EIR and specifically the definition set out at regulation 2(1)(c).

Regulation 12(3) and 13: Third party personal data

16. Regulation 12(3) of EIR states that:

“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”

17. Regulation 13 of the EIR states:

(1) 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.

(2) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene—

(i) any of the data protection principles; or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it; and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998(1) (which relate to manual data held by public authorities) were disregarded.

(3) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1) of that Act and, in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.

18. The definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA):

‘personal data’ means data which relate to a living individual who can be identified:

- (a) *from those data, or*
- (b) *from those data and any other information which is in the possession of, or is likely to come into the possession of, the data controller*
19. The Council cited regulation 12(3) in relation to the redacted information as it considered the information constituted the personal information of two individuals.
20. Having inspected this information, the Commissioner is satisfied that it is the personal data of two separate individuals.
21. The first condition in regulation 13(2) states that public authorities shall not disclose personal data if it would contravene any of the data protection principles or section 10 of the DPA.
22. The Council explained that it considered disclosure of the redacted information would breach the first data protection principle which states that:
- 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.*
23. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:
- The reasonable expectations of the individual in terms of what would happen to their personal data.
 - The consequences of disclosing the information; and
 - The balance between the rights and freedom of the individuals and the legitimate interest in having the requested information disclosed into the public domain.
24. In considering 'legitimate interests' in order to establish if there is such a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach, i.e. it may still be possible to meet the

legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.

25. The complainant explained to the Commissioner that he considered the exception did not apply as the identities of all of the relevant parties are known to him. He further explained that the identity of the parties was established at a meeting with the council's chief executive who *"openly disclosed"* to the complainant that he had written to the individual named in the request. The complainant also set out that there were several witnesses present during this disclosure.
26. The complainant also explained that he considered the names of the individuals were already in the public domain as the directors of the named business.
27. The complainant explained that he had *"irrefutable evidence of numerous irregularities at [sic] associated with the Council and [named business]"* and he considered that this was the reason for the Council's application of regulation 12(3).
28. The complainant also explained that he considered that any third party who *"persistently breaches planning rules and commits a criminal offence of encroachment onto a public highway that causes a public and environmental nuisance should have a high level of expectation that it will be subject to Public Scrutiny for its actions"*.
29. The Council informed the Commissioner that it considered it unlikely that the individuals would consent to the disclosure of the redacted information and it had, therefore, not approached them for consent.
30. The Council confirmed that neither individual is a public figure nor are they engaged in a role under a public function. It also explained that it considers neither individual would have an expectation of their personal information and correspondence with the Council being placed into the public domain.
31. The Council confirmed that it considered disclosure would be in breach of the first data protection principle.

The Commissioner's considerations

32. The Commissioner is mindful that the EIR are applicant blind. Despite the fact that the complainant has prior knowledge about the correspondence he is requesting, disclosure under the EIR is to the public at large and not just to the applicant. She also considers that although the names of the individuals the complainant believes to be the subjects of the redactions are in the public domain, the information that has been redacted is not.

33. The Commissioner also notes that the complainant's considerations are based on the assumption that he already knows who the redacted information is the personal data of. Having reviewed the redacted information, it is clear to the Commissioner that this is not the case and one of the data subjects is not an individual named by the complainant.
34. The Commissioner's published guidance³ explains that in assessing fairness, authorities should consider the likely consequences of disclosure in each particular case. Personal information should not be used in ways that have unjustified adverse effects on the individuals concerned. It is often the case that the detrimental consequences results from a disclosure would be obvious. It will also be important to consider the level of distress that disclosure would be likely to have and this will depend on the nature of the information.
35. The Commissioner considers that members of the public would have a reasonable expectation of privacy and confidence when corresponding with a public authority. The Commissioner considers that if correspondence with a public authority were to be disclosed to the world at large, it would be likely to cause damage and/or distress to those individuals. The Commissioner is also mindful that the allegations made by the complainant have not been independently scrutinised which adds weight to the argument that it would be unfair to disclose information into the public domain.
36. The complainant in this case has argued that the information ought to be disclosed because he is concerned about possible wrongdoing by the Council and the named individual/company. As set out above, the complaint has not been independently scrutinised and the Commissioner's remit does not extend to assessing the internal procedures and decisions of a public authority.
37. The Commissioner understands that the complainant is clearly dissatisfied with the Council's actions and the manner in which it has attempted to resolve the issue. However, the Commissioner considers that the requirement for transparency and accountability is that of the Council and disclosure of the personal data of members of the public is not essential to aid this.

³ <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf>

38. The Commissioner has seen no evidence to suggest that there is an overriding public interest which demands that the information be disclosed into the public domain.
39. The Commissioner has also considered whether the requested information is necessary for the complainant to pursue a legitimate private interest.
40. The Commissioner understands that where a complainant is dissatisfied with the authority's response or handling of their complaint, the appropriate route is to contact the relevant regulatory body, in this case the Local Government Ombudsman.
41. The Commissioner does not consider it necessary for a complainant to receive all information held regarding an issue before proceeding down this route. The Commissioner does not therefore consider disclosure to be necessary in this context.
42. The Commissioner accepts that disclosing this information into the public domain would undoubtedly interfere with the individuals' data protection rights and she is satisfied that it would be unfair to disclose the relevant information. She considers it would constitute a breach of the first data protection principle. The individuals concerned have a reasonable expectation that their personal information would be withheld, the disclosure itself would interfere with their privacy rights, and there is no overriding public interest to justify this intrusion.
43. The Commissioner, therefore, considers the Council was correct to apply regulation 12(3) to the redacted information.

Regulation 11: Internal review

44. Regulation 11(1) provides that an applicant can make representations to a public authority if they believe the public authority has failed to handle a request in accordance with the Regulations.
45. Under regulation 11(2) a public authority is required to consider any representations made by the applicant and under regulation 11(4) is required to notify the applicant of the outcome of that review within 40 working days.
46. In this case the complainant wrote to the Council on 20 October 2016 and requested a review of its response. The Council provided its response on 13 February 2017, 77 working days following receipt of the request for review.
47. In light of the above the Commissioner finds that the Council has breached regulation 11.

Right of appeal

48. 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

49. 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.
50. 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

Alun Johnson
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