

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 23 July 2018

Public Authority: Ards & North Down Borough Council

Address: aaron.jamison@ardsandnorthdown.gov.uk

Decision (including any steps ordered)

1. The complainant has requested information from Ards & North Down Borough Council ("the Council") in relation to a specified planning application. The Council disclosed some information, however it withheld the remainder, citing regulation 13(2)(a)(i) of the EIR as a basis for non-disclosure.
2. The Commissioner's decision is that the Council has correctly applied regulation 13(2)(a)(i) of the EIR to the withheld information.
3. Therefore the Commissioner requires no steps to be taken.

Request and response

4. On 22 March 2017, the complainant wrote to the Council and requested information in the following terms, relating to a specified planning application:

"Can you please forward to me copies of all files which you hold that relate in any way to the above planning application, including all correspondence with consultees, and any correspondence with PSNI."
5. The Council responded on 24 April 2017, providing documentation in relation to the complainant's request. It redacted third party personal information from some of the documentation, citing regulation

13(2)(a)(i) of the EIR as a basis for that redaction. The complainant then wrote to the Council on 30 April 2017, stating that its response was incomplete, and requested the following:

- 1) Copies of all comments received from third parties on the planning application; contrary to the Council's own guidelines these do not appear to be displayed on your website. Also I am requesting that you supply copies of any correspondence entered into by the Council with third party objectors.
 - 2) Copies of all meeting notes, emails and any other correspondence relating to [name redacted] meeting with the PSNI in April 2016, and any other meetings held between Council representatives and the PSNI relating to this application. In this respect I will be writing separately to your office seeking any information that should be supplied to me under the Data Protection Act 1998.
6. The Council responded on 19 May 2017, stating that it had provided everything it held within the scope of his request, other than the information requested in part 2 of the complainant's follow-up request, as it refused to disclose that information under regulation 13(2)(a)(i) of the EIR. On 22 May 2017, the complainant sought an internal review of the Council's decision.
 7. Following that internal review the Council wrote to the complainant on 8 June 2017. It stated that the reviewers were upholding the original decision on the basis that the information requested in part 2 of the complainant's follow-up request constituted personal data of third parties.
 8. On 30 August 2017, as part of a response to a Subject Access Request (SAR) the Council disclosed some further information in relation to part 2 of the complainant's follow-up request. The Council has made the Commissioner aware of what further information the complainant has now received in response to his SAR.

Scope of the case

9. The complainant contacted the Commissioner on 8 June 2017 to complain about the way his requests for information had been handled.
10. The Commissioner has considered the Council's application of regulations 13(2)(a)(i) of the EIR to the complainant's requests. The complainant's correspondence did not appear to indicate that he had any objection to applicants', agents' and planning officers names and

signatures being redacted from the documentation provided to him by the Council, therefore the Commissioner has focused her investigation on whether or not the Council was correct to apply the exception set out in regulation 13(2)(a)(i) of the EIR to the information requested in part 2) of the complainant's follow-up request referenced in paragraph 6 of this notice.

Reasons for decision

11. The Council has confirmed its reliance on Regulation 13(2)(a)(i) of the EIR in respect of the withheld information, which it states constitutes the personal information of third parties.

12. 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.

13. 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").

14. 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."

15. The Council argues in this case that the first data protection principle would be breached if it disclosed the information which the complainant seeks. 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."

16. The Commissioner must first consider whether the withheld information is personal data. If she is satisfied that it is, she then needs to consider whether disclosure of this information would be unfair and unlawful. If she finds that disclosure would be unfair and

unlawful the information should not be disclosed and the consideration of regulation 13 of the EIR ends here. However, if she decides that disclosure would be fair and lawful on the data subject concerned, the Commissioner then needs to go on to consider whether any of the conditions listed in schedule 2 and 3, (sensitive personal data) if appropriate, of the DPA are also met.

Is the withheld information personal data?

17. The Commissioner is satisfied that the information withheld by the Council under Regulation 13 of the EIR consists of the personal data of third parties, from which they can be identified - namely the personal details, opinions and allegations of a particular individual who objected to the planning application. These were subject at the time of the request to an ongoing investigation by the Police Service of Northern Ireland ("PSNI"). As some of the personal details relate to the alleged commission of a criminal offence, i.e. fraud, these constitute sensitive personal data under the DPA.

Would disclosure be unfair?

18. In considering fairness, it is necessary to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

What would be the reasonable expectations of the data subjects in the circumstances?

19. The information provided to the Council by the objector to the planning application consists of personal information of various parties, some of which is of a sensitive nature. The objector submitted that information to the Council in order to have the Council investigate the matter, therefore the Council considers that this individual would have had a reasonable expectation that it was being submitted in confidence and that the investigative process would remain private and confidential throughout. For this reason, the Commissioner accepts that the individual would not expect information submitted in confidence to be disclosed to the wider public in response to an information request.

Consequences of disclosure

20. The Council considers that disclosure of the withheld information may cause damage and distress to the individuals concerned. The

Commissioner accepts that, as the information contains personal opinions and allegations of a sensitive nature, for onward investigation, disclosure into the public domain would be highly likely to cause damage and distress to both the individual voicing the opinions and making the allegations, and those against whom the allegations are being made.

Is there a legitimate public interest in disclosure?

21. Any legitimate public interest in personal data being disclosed must be weighed against any prejudice disclosure would cause to the rights, freedoms or legitimate interests of the individual(s) concerned. The Council has considered whether there is a legitimate interest in the public (as opposed to the private interests of the requester) accessing the withheld information. The Council and the Commissioner acknowledge that the requester has an interest in the withheld information. However, the Commissioner has considered the legitimate public interest in disclosure of the withheld personal and sensitive personal information rather than the interests of the requester.
22. Whilst there is a general public interest in transparency and openness within public authorities, and in the public understanding their decision-making processes, there is also a public interest in them keeping their investigative processes private and confidential. At the time of the request, to the best of the Council's knowledge the investigation by the PSNI, to which it had passed the withheld information, was still ongoing and disclosure would be very likely to have prejudiced that investigation as well as caused damage and distress to all of the individuals involved. The Commissioner has concluded therefore that there is no legitimate public interest in disclosure which would outweigh the prejudice which would be caused to the rights, freedoms or legitimate interests of the individuals concerned.
23. For the above reasons, the Commissioner is satisfied that disclosure would be unfair and in breach of the first data protection principle and therefore regulation 13 of the EIR applies.

Right of appeal

24. 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

25. 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.
26. 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

Deirdre Collins
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