

**Freedom of Information Act 2000 (FOIA)**  
**Environmental Information Regulations 2004 (EIR)**  
**Decision notice**

**Date:** 20 April 2020

**Public Authority:** Sheffield City Council  
**Address:** Town Hall  
Pinstone Street  
Sheffield  
S1 2HH

**Decision (including any steps ordered)**

---

1. The complainant requested information relating to a noise abatement notice served by Sheffield City Council (the Council) on one of its residents.
2. The Council refused to provide the requested information, citing Regulation 13(1) (personal information) of the EIR.
3. The Commissioner's decision is that Regulation 13(1) was applied correctly.
4. The Commissioner requires no steps to be taken as a result of this decision.

**Background**

---

5. The request in this case relates to an abatement notice.

*"Councils must serve an abatement notice on people responsible for statutory nuisances, or on a premises owner or occupier if this is not possible. This may require whoever's responsible to stop the*

*activity or limit it to certain times to avoid causing a nuisance and can include specific actions to reduce the problem”<sup>1</sup>.*

## **Request and response**

---

6. On 27 August 2019, the complainant wrote to the Council and requested information in the following terms:

*"The information requested is summarised below; it relates to the Council's decision to serve a noise abatement notice on [name redacted] under section 80(1) of the Environmental Protection Act 1990 ('the Notice'). The information requested relates to all information from any source, including complaints, received by the Council between 1st January 2019 and 12th July 2019.*

...

*The information requested is:*

*(i) All communications, complaints and records of communications / complaints from the Complainants to the Council in relation to the Notice and / or the Property;*

*(ii) All communications and records of communications from the Council to the Complainants in relation to the Notice and / or the Property;*

*(iii) All communications, records and records of communications between elected members, officers and/or employees (current or former) of the Council in relation to the Notice and / or the Property; and*

*(iv) All acoustic recordings, and / or records of acoustic recordings, and communications regarding recordings, held by the Council in relation to the Notice and / or the Property.*

*(v) All records held by the Council in relation to the Notice and / or the Property, including copies of all Environmental Health Officers' original field notes”.*

---

<sup>1</sup> <https://www.gov.uk/guidance/statutory-nuisances-how-councils-deal-with-complaints>

7. The Council responded on 3 September 2019. It refused to provide the requested information, citing regulation 12(3) (personal information) of the EIR.
8. Following an internal review, the Council wrote to the complainant on 4 October 2019. It maintained its original position that the information was exempt from disclosure, clarifying that the information is exempt under Regulation 13 (personal information) of the EIR.

### **Scope of the case**

---

9. Following earlier correspondence, the complainant provided the Commissioner with the relevant documentation, on 29 November 2019, to complain about the way her request for information had been handled.
10. She disputed the Council's refusal to provide the requested information. She told the Commissioner:

*"Sheffield Council refused to provide any of the requested information claiming that it is all personal data. Officer field notes and acoustic recordings are factual information, councillor involvement in council activities is not personal data, and complaints themselves are not personal data".*

11. During the course of her investigation, the Council confirmed its application of Regulation 13(1) of the EIR. The Council also explained:

*"We have referred to the recent ICO decisions on similar situations, all of which have agreed that information and personal data regarding noise abatement notices should be exempt from disclosure under EIR".*

12. While acknowledging the existence of other similar cases having been, or in the process of being, investigated, the Commissioner's duty is to decide, on a case-by-case basis, whether a request for information has been dealt with in accordance with the legislation. Accordingly, she has focussed on the arguments put forward by the Council in this case.
13. The analysis below considers the Council's application of Regulation 13(1) of the EIR to the requested information.

### **Reasons for decision**

---

*Is the information environmental information?*

14. The requested information relates to a noise abatement notice.
15. Regulation 2(1)(c) of the EIR states that 'environmental information' constitutes any information on measures such as policies, plans and activities which are likely to affect environmental elements and factors.
16. The Commissioner considers that the noise abatement notice is a measure under regulation 2(1)(c). As the notice is related to noise which is a factor under 2(1)(b), she considers that the request falls within the remit of the EIR.

*Regulation 13 personal data*

17. Regulation 13(1) of the EIR provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) of the Data Protection Act 2018 (DPA) is satisfied.
18. In this case the relevant condition is contained in regulation 13(2A)(a) of the DPA. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
19. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the DPA. If it is not personal data then regulation 13 of the EIR cannot apply.
20. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

*Is the information personal data?*

21. Section 3(2) of the DPA defines personal data as:

*"any information relating to an identified or identifiable living individual".*

22. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
23. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

24. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
25. In this case, the Commissioner is mindful that the request relates to the Council's decision to serve a noise abatement notice on a named individual. She also recognises that each part of the multi-part request relates to information "*in relation to the Notice and / or the Property*".
26. In its correspondence with the complainant, the Council told her:

*"The documentation you have requested relates to an identifiable individual at a specific address. A noise abatement order is made against an individual, not a property as a standalone building. Officers' field notes, recordings, complaints and logs of action are created as part of the case built to serve the order. Complaints made by third parties could also identify individuals e.g. neighbours".*

27. Similarly, the Council told the Commissioner:

*"In her first correspondence with Sheffield City Council when she made the request, [the complainant] specifically named [name redacted] and made it very clear that her request was regarding information we held about him.... the fact that the request is specifically about [name redacted], means that any data we disclosed would be connected to him due to the subject of the request, and therefore must be his personal data."*

28. The Commissioner acknowledges that the complainant disputes that information such as "*Officers' field notes, acoustic recordings, documented results of acoustic recordings, complaints and logs of action taken*" are personal data.
29. The Commissioner is also mindful that the complainant suggested to the Council that any personal data not already in the public domain could be redacted. In that respect, she notes that the Council told the complainant:

*"It would not be possible to separate the information requested through redaction as the documentation would still render individuals identifiable. As a fictional example, if a redacted line within the officer notes said "[redacted] had repeated loud arguments and [redacted] submitted a complaint", this would still be identifiable when tied to a specific property. This includes self-identification made by the complainant and the subject of the complaint".*

30. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information requested as a whole relates to the individual named in the request. She is satisfied that this information both relates to and identifies the individual concerned - he is named in the request and, as such, is plainly the main focus of all the withheld information. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
31. The Commissioner is also satisfied that the personal information of the individual named in the request is inextricably linked to that of other data subjects.
32. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the EIR. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
33. The most relevant DP principle in this case is principle (a).

*Would disclosure contravene principle (a)?*

34. Article 5(1)(a) of the GDPR states that:

*"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".*

35. In the case of an EIR request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
36. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

*Lawful processing: Article 6(1)(f) of the GDPR*

37. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that "*processing shall be lawful only if and to the extent that at least one of the*" lawful bases for processing listed in the Article applies.
38. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

*"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and*

*freedoms of the data subject which require protection of personal data, in particular where the data subject is a child*<sup>2</sup>.

39. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the EIR, it is necessary to consider the following three-part test:-

(i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;

(ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;

(iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

40. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

#### *Legitimate interests*

41. In considering any legitimate interest(s) in the disclosure of the requested information under the EIR, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.

42. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

---

<sup>2</sup> Article 6(1) goes on to state that:-

*"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".*

However, regulation 13(6) EIR (as amended by Schedule 19 Paragraph 307(7) DPA) provides that:-

*"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".*

43. In its submission, the Council told the Commissioner:

*"There is no legitimate interest of the public which would be served by the disclosure of this information..."*

44. The Commissioner has addressed the legitimate interest test in a case<sup>3</sup> similar to the one under consideration in this decision notice. In that case, the Commissioner determined that the legitimate interest is in the transparency of the Council's decision to serve the noise abatement notice.

45. As in that case, the requested information in this case *"relates to the Council's decision to serve a noise abatement notice"*.

46. Therefore, the Commissioner has also determined that the legitimate interest in this case is in the transparency of the Council's decision to serve the noise abatement notice.

*Is disclosure necessary?*

47. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the EIR must therefore be the least intrusive means of achieving the legitimate aim in question.

48. The Council's view was that disclosure was not necessary.

49. The Commissioner has already outlined that interests can be the requester's own interests or the interests of third parties. The Commissioner does not have a view of alternative measures for realising the interest of transparency in the Council's decision regarding the noise abatement notice, and therefore has conducted the balancing test.

*Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms*

50. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the EIR in response

---

<sup>3</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615630/fer0806658-1.pdf>

to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.

51. In considering this balancing test, the Commissioner has taken into account the following factors:

- the potential harm or distress that disclosure may cause;
- whether the information is already in the public domain;
- whether the information is already known to some individuals;
- whether the individual expressed concern to the disclosure; and
- the reasonable expectations of the individual.

52. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.

53. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.

54. In that respect, the Council told the complainant:

*"We consider that disclosure of this information would amount to an unwarranted invasion of privacy of the individual concerned and this would be unfair. The individual concerned would not have had any expectation that their personal information would be released into the public domain, as a disclosure under EIR is regarded as a disclosure to the world".*

55. The Commissioner agrees that it is a reasonable expectation of the data subjects concerned that information about them will not be disclosed.

56. In its correspondence with the Commissioner, the Council confirmed that it had not contacted the data subjects to ask if they would be willing to have the requested information made public. However, it told the Commissioner that it did not consider that they would expect the data about their situation to be disclosed.

57. The Council also confirmed to the Commissioner that it does not routinely publish information about noise abatement notices. It told her:

*"We produce performance reports for internal use such as service planning. We may also release information on an ad hoc basis in relation to initiatives, for example the number of prosecutions in a*

*particular area may be made available to community representatives. But this information would be number and/or type of notices at the most, it would never contain any documentation of those notices or any personal data”.*

58. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
59. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that she does not need to go on to separately consider whether disclosure would be fair or transparent.
60. The Commissioner has therefore decided that the Council was entitled to withhold the information under regulation 13(1), by way of regulation 13(2A)(a).

## Right of appeal

---

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

62. 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.

63. 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 .....**

**Laura Tomkinson  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**