

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 3 February 2023

Public Authority: Horsham District Council
Address: Chart Way
Horsham
RH12 1RL

Decision (including any steps ordered)

1. The complainant requested correspondence between Horsham District Council (the "council") and specific individuals relating to a planning matter. The council refused to provide the information, citing the exceptions in regulation 12(5)(f) (interests of the person who provided the information to the public authority) and regulation 13 (personal information) of the EIR.
2. The Commissioner's decision is that the council is entitled to withhold information on the basis of regulation 13 of the EIR but that it did not respond to the request in time and breached regulation 5(2).
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 19 February 2022, the complainant wrote to Horsham District Council (the "council") and requested correspondence between the council and specific individuals regarding a planning application.
5. On 22 March 2022 the complainant submitted a clarified version of their request which (as summarised by the council) asked for the following information:

"(In relation to comments for Planning Application DC/18/2514)

Regarding HDC's interaction with the owners of [redacted] and members of their immediate family;

Specifically regarding references within the published comments to discussions, group meetings and various HDC interactions with this consultee neighbour/their immediate family;

All information held covering precise details of everything that was discussed."

6. The council's final position is that the request is refused because the information is subject to the exceptions in regulation 12(5)(f) (the interests of the information provider) and regulation 13(1) (personal information).

Reasons for decision

7. The scope of this notice is to determine whether the information is exempt from disclosure.

Regulation 13 - personal data

8. Regulation 13(1) 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) is satisfied.

9. In this case the relevant condition is contained in regulation 13(2A)(a)¹. 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 UK General Data Protection Regulation ('UK GDPR').
10. The request for information specifies the name of third parties in relation to a planning application. The Commissioner considers that, in the context of this request, the information clearly relates to those individuals and is, therefore, their personal information.
11. Disclosure under either FOIA or the EIR is effectively an unlimited disclosure to the world at large, without conditions.
12. The Commissioner acknowledges that the complainant considers that they have a legitimate interest in disclosure of the withheld personal information. However, the Commissioner must balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms.
13. In this case, the Commissioner is satisfied that the individuals concerned would have the reasonable expectation that their personal data would not be disclosed to the wider world in response to an EIR request. Disclosing their personal data would be likely to cause them harm or distress.
14. The Commissioner has not seen any evidence of any wider public interest in disclosure of the withheld information. He also considers that, should individuals have concerns about the handling of a planning matter, there are remedies available for addressing this which do not require the disclosure of individuals' personal data.
15. 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 disclosing the information in question would contravene a data protection principle as it would not be lawful. Therefore, he has decided that the data is exempt under regulation 13(1) by virtue of 13(2A)(a).

¹ As amended by Schedule 19 Paragraph 307(3) DPA 2018.

16. It follows that the council is entitled to withhold this information.
17. In considering this matter the Commissioner has referred to previous decision notices which relate to requests for comparable information². He considers that the conclusions reached in these case are directly transposable to the facts of the request which is the subject of this decision notice.
18. As he has determined that the information is excepted under regulation 13(1) the Commissioner has not gone on to consider the council's application of regulation 12(5)(f).

Procedural matters

19. Regulation 5(2) of the EIR requires public authorities to respond to a request for environmental information within 20 working days. In this case the complainant's clarified request was submitted on 22 March 2022 and the council's response was issued on 6 May 2022.
20. The Commissioner has, therefore, concluded that the council breached regulation 5(2) in this case.

² See, for example: <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022676/ic-185189-y5y9.pdf>; <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021342/ic-143049-b6l4.pdf>; <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4023714/ic-191403-d6k3.pdf>

Right of appeal

21. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

22. 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.
23. 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

Christopher Williams
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF