

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 September 2023

Public Authority: Environment Agency

Address: Horizon House
Deaney Road
Bristol
BS1 5AH

Decision (including any steps ordered)

1. The complainant has requested information from the Environment Agency (EA) regarding staff members qualifications.
2. The Commissioner's decision is that EA was entitled to rely on section 40(2) to withhold the requested information.
3. The Commissioner does not require further steps.

Request and response

4. On 15 March 2023, the complainant wrote to the EA and requested information in the following terms:

"This request concerns the applicant's habitats assessment and the EA's Habitats Regulations Assessment (HRA) for EPR/SP3609BX/A001 (CA6 4SE, Fortum Carlisle Ltd).

1. Please provide the relevant qualifications, and membership of relevant professional bodies, of the author(s) of the AQMAU air quality report.

2. The AQMAU air quality report recommends "the permitting officer consults with a habitats lead considering applicant's ecological interpretation of the impacts". Please provide the

relevant qualifications, and membership of relevant professional bodies, of any person meeting the description of "habitats lead" who provided written comments to the permitting officer in response to the applicant's ecological interpretation of the impacts. Do not include people who responded on behalf of Natural England. Do not include members of the public who submitted comments in response to the public consultation.

3. Regarding the HRA shown with the draft permit and draft decision document for EPR/SP3609BX/A001 at <https://consult.environment-agency.gov.u...>, please provide:

a) the relevant qualifications, and membership of relevant professional bodies, held by the writer of the HRA.

b) the relevant qualifications, and membership of relevant professional bodies, of the person (or people) who signed-off the HRA.

c) the relevant qualifications, and membership of relevant professional bodies, of all the people who provided written comments on the HRA prior to the HRA's issue with the draft permit. Do not include people who responded on behalf of Natural England. Do not include comments received from any members of the public who submitted comments on the HRA prior to the HRA's release with the draft permit.

4. If there is a later version of the HRA than the version released with the draft permit for EPR/SP3609BX/A001 (including any new draft version of the HRA since the version released with the draft permit), please also provide the relevant qualifications, and membership of relevant professional bodies, of the author(s) of the later version of the HRA too.

For the avoidance of doubt, for all the above, I am not requesting an electronic copy of qualification certificate(s)/professional membership certificate(s), but rather the information held on the level and nature of the qualification(s)/membership of the specified people."

5. The EA responded on 6 April 2023. It stated that the information was exempt under section 40(2).

6. Following an internal review, the EA wrote to the complainant on 22 May 2023. It stated that it was upholding its original position.

Scope of the case

7. The complainant contacted the Commissioner on 23 May 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to consider whether the requested information is exempt under section 40(2).

Reasons for decision

Section 40 personal information

9. Section 40(2) of the FOIA 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 section 40(3A)(3B) or 40(4A) is satisfied.
10. In this case the relevant condition is contained in section 40(3A)(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 General Data Protection Regulation ('GDPR').
11. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data, then section 40 of the FOIA cannot apply.
12. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

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

"any information relating to an identified or identifiable living individual".¹

¹ As amended by Schedule 19 Paragraph 58(3) DPA

14. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
15. 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.
16. 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.
17. In the circumstances of this case, the requested information consists of details of relevant qualifications and relevant memberships of the professional bodies. It is clear that this information relates to a living person and is therefore personal data.

Legitimate interests

18. In considering any legitimate interests in confirming whether or not the requested information is held in response to a FOI request, the Commissioner recognises that such interests can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.
19. 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. However, the more personal or more trivial the interest, the less likely it is that such an interest will outweigh the rights of the data subject in the balancing test.
20. The complainant explained that pollution arising from emissions has the potential to cause great environmental harm. The legislation to protect national and international ecological sites from harm requires an "appropriate assessment" to be made. This assessment is known as a Habitats Regulations Assessment (HRA).
21. The complainant advised that disclosing the HRA authors qualifications and professional membership is of prime importance, and would allow the public to have confidence and trust in the EA's assessments and judgements.
22. The complainant concluded that releasing the requested information would allow for the effective protection of ecological sites and inform public debate.

23. The Commissioner recognises that there is a legitimate interest in the knowing whether the EA employs individuals with relevant qualifications and memberships to make HRA's and recommendations.

Is disclosure necessary?

24. '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 FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
25. The Commissioner is satisfied in this case that there are no less intrusive means of achieving the legitimate aims identified

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

26. 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 FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
27. 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.
28. 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.
29. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.

30. The Commissioner acknowledges that disclosing the requested information would provide the public with confidence that the authors of HRA do hold relevant qualifications.
31. The Commissioner also acknowledges that if the EA were to disclose the requested information it would demonstrate that they are operating in an open and transparent manner.
32. The EA informed the Commissioner that the individuals whom the data relates to have no given consent for the information to be disclosed, especially as the request for information has been linked to a controversial site of high public interest. The EA advised this disclosure would not contribute to the matter of high interest.
33. The EA explained to the Commissioner that its staff expect their data to be processed fairly and in accordance with the DPA. The EA explained that one member of staff advised that if the requested information were disclosed, they would consider resigning from their position.
34. The EA also explained that during public consultation events, permitting officers identities were not disclosed for their own protection. The EA advised historically, staff members have been followed and personal social media accounts had been targeted for access by pressure groups.
35. The EA stated that due to a recent CAPITA breach of personal data, any further disclosures would be unfair and not in the public interest.
36. The EA concluded that on the basis of health, safety and wellbeing of the individuals involved, the requested information should be withheld under section 40(2).
37. 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.
38. 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.

Right of appeal

39. 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

40. 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.
41. 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

Amie Murray
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF