

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 7 December 2023

Public Authority: Durham County Council
Address: County Hall
Durham
DH1 5UF

Decision (including any steps ordered)

1. The complainant requested information held by Durham County Council (the council) about repairs carried out on a particular footpath.
2. The council initially refused the complainant's request, citing regulation 12(4)(e) – internal communications, and regulation 12(5)(b) – course of justice, of the EIR.
3. At the internal review stage, the council advised that it now considered that it had previously misunderstood what the complainant required, and provided some information in response to the request.
4. During the Commissioner's investigation, the council located additional information and disclosed this to the complainant. The council also confirmed that it was withholding some information that was the personal data of third parties under regulation 13 of the EIR.
5. The Commissioner's decision is that the council has correctly withheld information under regulation 13. Furthermore, he considers that, on the balance of probabilities, the council has provided the information held that is relevant to the request, and has complied with its obligations under regulation 5(1) of the EIR.

6. However, as the council failed to release all of the relevant information within 20 working days, the Commissioner has found a breach of regulation 5(2) of the EIR.
7. The Commissioner does not require the council to take any steps as a result of this decision notice.

Request and response

8. Following repairs that were made by the council's Highways Department to a footpath, on 21 April 2023, the complainant wrote to the council and requested information in the following terms:

"Any information on the replacement of stone flags and the commissioning and laying of a stretch of new tarmac surface on the footpath at North Green, Staindrop, approximately opposite N°s32 to 27 North Green, in 2023."
9. On 8 June 2023, the council issued a refusal notice, citing regulation 12(4)(e), and 12(5)(b) of the EIR, as its basis for withholding the requested information.
10. On 16 June 2023, the complainant requested an internal review, and on 14 August 2023, the council provided its response. The council said that it now considered that it had misunderstood what the complainant was asking for, as it had initially assumed that they wanted an update on the "ongoing negotiations" between Raby Estate and the council about the legal status of the footpath which, when concluded, may then result in a resurfacing programme.
11. The council said it now understood that the complainant only required information held about the repairs that had already been carried out, and that given this, it was no longer relying on either of the exceptions cited in the original response to the request.
12. The council referred to information which it had sent on 25 April 2023, in response to separate correspondence sent by the complainant about the footpath. The council said that whilst these communications had post dated the request, its response of 25 April 2023, contained all the information held that was relevant to the request. The council therefore provided the complainant with a further copy of this information.

Scope of the case

13. The complainant initially contacted the Commissioner to complain about the council's failure to respond to their internal review request.
14. Following receipt of the council's internal review response, the complainant then advised the Commissioner that they remained dissatisfied with the council's handling of their request.
15. Following receipt of the Commissioner's investigation letter, the council contacted the complainant again and asked for further details of the information that they believed might be held. The council then identified some additional information which it released to the complainant. The council confirmed that some personal information relating to third parties had been withheld under regulation 13 of the EIR.
16. The complainant has said that they are unhappy that the council has withheld some information in response to their request and still believes a substantial body of relevant documents exist which have not been disclosed. They have also complained about the quality and timeliness of the council's responses to their request.
17. The Commissioner will therefore decide:
 - whether the council is entitled to rely on regulation 13 as its basis for withholding information in response to the request.
 - whether, on the balance of probabilities, the council has identified and provided all of information held that is relevant to the complainant's request.
 - certain procedural matters, as requested by the complainant.

Reasons for decision

Regulation 13 – third party personal data

18. 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) is satisfied.
19. In this case the relevant condition is contained in regulation 13(2A)(a). 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).

20. The Commissioner is mindful that the complainant may have made the assumption that the council has withheld sets of information in their entirety under regulation 13 of the EIR. However, the council has only applied regulation 13(1) to the contact details of individuals and officers contained within that information that has been released to the complainant.
21. The Commissioner is satisfied that the withheld information identifies and relates to certain individuals, and as such is their personal information.
22. The council has said that, as far as it is aware, the redacted information is not already in the public domain. The Commissioner is satisfied on the basis of the council's statement that the withheld information is not already publicly available.
23. The Commissioner has found difficulty establishing any legitimate interest in the disclosure of the contact details of individuals in this case, other than further transparency regarding information held by the council. Furthermore, the Commissioner considers that the disclosure of the withheld information to the 'world at large' in response to an EIR request would not have been within the reasonable expectations of such individuals, and the loss of privacy may cause unwarranted distress.
24. Therefore, it is the Commissioner's view that there is insufficient legitimate interest in this case to outweigh the relevant individuals' fundamental rights and freedoms, and that disclosure of the withheld information would contravene a data protection principle, as it would not be lawful.
25. The Commissioner therefore concludes that the council is entitled to rely on regulation 13(1) of the EIR as its basis for withholding this information.

Regulation 5(1) - duty to make environmental information available on request

26. Regulation 5(1) provides that a public authority that holds environmental information shall make it available on request. This is subject to any exceptions that may apply.
27. In those circumstances where a requester disputes whether a public authority has provided all of the environmental information that it holds, it is important that the public authority is able to demonstrate that it has carried out reasonable searches to identify all the relevant information.

28. The Commissioner is not required to prove beyond doubt that a public authority does, or does not, hold further information. When determining a complaint, the Commissioner makes a decision based on the civil standard of the 'balance of probabilities' – that is, more likely than not.
29. The Commissioner is aware that, at the time of the request, issues concerning ownership of the footpath remained unresolved. The complainant states that whilst the council has insisted for a number of years that the footpath is a privately owned permissive path in which it does not have any interest, it has spent public money on repair work, without prior consultation with either the landowner, or the local parish council.
30. The complainant has said that additional information must be held, and that it is important that the public has access to such information so that they are fully informed as to how and why the council decided to carry out repairs on a road it claims not to be responsible for.
31. The information which the council has provided in response to the request includes a copy of the case management system report; this records the initial service request received by the council from the local councillor who raised concerns that damage to the footpath was a "tripping hazard". The council has also provided copies of photos taken of the damage, full details recorded on the service ticket, and an email trail of the discussions which took place about the issue. The released report confirms that an inspection was carried out by the Highways team and the relevant officer recorded the following:

"I have raised an order to have dangerous flags taken out and replaced with tar. This is an unadopted Footway".
32. The correspondence sent by the council to the complainant dated 25 April 2023, (which was sent again with the internal review response) explained that the council has a duty of care, and that a repair had been undertaken on what was considered to be a damaged and dangerous footway caused by vehicle overrun that posed an immediate risk of vehicle damage or personal injury to drivers and pedestrians.
33. The council has confirmed that it was the Highways team that investigated the concerns that were raised about the damage to the footway and made the decisions regarding safety and the repair; no other departments were involved in this process. The council has said that it therefore considered it appropriate to conduct a search of the email accounts of all relevant officers, the Customer Management Recording Systems and also copies of correspondence held, in order to locate the information relevant to the request.

34. Having considered the content of the communications received from the complainant about what they require, the Commissioner is mindful that they may have been hoping to receive some additional information that relates to the issues concerning the footpath which he does not consider to fall within the terms of their request.
35. The Commissioner is satisfied that the council has conducted reasonable searches to locate all the information that is directly relevant to the terms of the complainant's request, and he has seen no compelling evidence indicating that further information is held.
36. Therefore, the Commissioner finds that, on the balance of probabilities, the council does not hold any further information falling within the scope of the request.

Procedural matters

37. The complainant has raised concerns about what they consider to be contradictory information provided in the council's initial response to the request and the internal review response. However, the Commissioner considers the internal review to be an opportunity for a public authority to review its handling of a request, and either confirm its position or correct any errors it may have made in its original handling of the request, which is what the council did in this case.
38. In saying the above, the Commissioner does note that it was only following his intervention that the council then identified certain additional information. Therefore, as the council failed to provide the complainant with all the information held that was relevant to the request within the required 20 working days, the Commissioner has found a breach of regulation 5(2).
39. The complainant submitted their internal review request on 16 June 2023, and the council responded on 14 August 2023. A public authority is required to respond to an internal review request within 40 working days. All bank holidays within the four nations comprising the UK are calculated as non-working days for the purposes of the EIR. Having taken this into account, the Commissioner calculates that the council did meet its obligations by providing its internal review response within the statutory 40 working days.

Right of appeal

40. 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

41. 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.
42. 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

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