

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

Decision notice

Date: 11 December 2023

Public Authority: Forestry Commission
Address: 620 Bristol Business Park
Coldharbour Lane
Bristol BS16 1EJ

Decision (including any steps ordered)

1. The Commissioner's decision is that, under regulation 13 of the EIR, the Forestry Commissioner is entitled to withhold information it redacted from disclosed communications about Wych Lodge, Somerset. This is because that information is other people's personal data, and it would be unlawful to disclose it.
2. It's not necessary for the Forestry Commission to take any corrective steps.

Request and response

3. On 11 June 2023 the complainant wrote to the Forestry Commission (FC) and requested information in the following terms:

"Please could you provide all email communication between Forestry Commission, Forest Enterprise England or Forestry England and any representatives of the builders of the mountain bike trails at Wych Lodge in Somerset, laterly [sic] known as Wych Lodge Bike Club, including any attached documents

I am happy to accept redactions of personal or financial information in order to respect confidentiality..." [the Commissioner's emphasis]

4. FC disclosed relevant information and its final position is that some of the information is exempt from disclosure under regulation 13 of the EIR.

Reasons for decision

5. This reasoning focusses on FC's reliance on regulation 13 of the EIR to withhold some of the information the complainant has requested.
6. Regulation 13 of the EIR provides that information is exempt from disclosure if it's 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) of the Data Protection Act (DPA) is satisfied.
7. 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 UK General Data Protection Regulation ('UK GDPR').
8. 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 regulation 13 of the EIR cannot apply.
9. Second, 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?

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

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

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

11. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
12. 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.
13. 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.
14. The redacted information comprises the names, locations and contact details of members of the public, Forestry England staff and former Forestry England staff. The Commissioner is satisfied that the information relates to the individuals concerned. He's satisfied that this information both relates to and identifies those individuals ('the data subjects'). This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
15. The fact that information constitutes the personal data of an identifiable living individual doesn't 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.
16. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

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

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".
18. 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.
19. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

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

20. Article 6(1) of the UK 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.

21. 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”².

22. In considering the application of Article 6(1)(f) of the UK 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

23. 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

24. In considering any legitimate interest(s) in the disclosure of the requested information under the EIR, the Commissioner recognises that

² 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, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA and by Schedule 3, Part 2, paragraph 20 the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK 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”.

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. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

25. The complainant has an interest in the mountain bike trails at Wych Lodge, a site that's managed by Forestry England. The Commissioner understands that the mountain bike trails in question are to be demolished. The complainant's interest in the trails is a legitimate interest for them to have and, from a brief review of the internet, there appears to be some wider, local interest.

Is disclosure necessary?

26. '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.
27. In its submission to the Commissioner, FC has argued that disclosing the personal information isn't necessary. It has pointed out that other information relevant to the management of Wych Lodge has been disclosed in full as requested. Identifying individuals wouldn't change how Wych Lodge is managed and it wouldn't add further transparency or accountability. That's because it's Forestry England (the organisation) rather than individuals within the organisation, which is responsible and accountable for how the site is managed.
28. FC has noted that, as well as members of the public the information it's withheld includes staff who've since moved on from their roles, or roles that have had different members of staff in them over the years covered by the request.
29. It's not clear to the Commissioner whether the complainant is against the mountain bike trails being demolished or for it. Either way, the Commissioner agrees that disclosing the identities of the individuals referred to in the correspondence wouldn't further the complainant's interest in that matter. It's Forestry England that makes decisions about how Wych Lodge is managed and that organisation's senior leaders. FC has confirmed to the Commissioner that no senior decision-makers are

included in the information that's been redacted. Furthermore the FC has provided the remaining content of the correspondence, which in the Commissioner's view is the most meaningful and useful information.

30. The Commissioner has also noted that in their request for information the complainant states that they're happy to accept redactions of personal information "in order to respect confidentiality."
31. As the Commissioner has decided in this case that disclosure isn't necessary to meet the legitimate interest in disclosure, he hasn't gone on to conduct the balancing test. As disclosure isn't necessary, there's no lawful basis for this processing and it's unlawful. It therefore doesn't meet the requirements of principle (a).
32. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he doesn't need to go on to separately consider whether disclosure would be fair or transparent.

The Commissioner's view

33. The Commissioner has decided that FC was entitled to withhold the redacted information under regulation 13 of the EIR by way of section 40(3A)(a) of the DPA.

Right of appeal

34. 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

35. 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.
36. 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

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