

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

Date: 11 July 2024

Public Authority: St Albans City and District Council
Address: Civic Centre
St Peter's Street
St Albans
Hertfordshire
AL1 3JE

Decision (including any steps ordered)

1. The complainant has requested from St Albans City and District Council ("the Council"), information about reports of rat problems in neighbouring properties. The Council provided a general explanation of its investigation of the reports but it refused to disclose the recorded information it held, citing regulation 13(1) (Personal data) of the EIR.
2. The Commissioner's decision is that the Council was entitled to apply regulation 13(1) of the EIR to refuse the request.
3. The Commissioner requires no steps as a result of this decision.

Request and response

4. On 10 November 2023, following an exchange of correspondence about the Council's investigation of reports of rats in the area, the complainant made the following request for information:

"Thank you for your response and, I have to under Freedom of Information, request the Council's findings at neighbouring properties."
5. The Council replied on 17 November 2023. It refused the request, saying that the recorded information comprised personal data and was

being withheld under regulation 13(1) of the EIR. It also cited regulation 12(5)(b) (The course of justice) of the EIR, although it did not explain why.

6. Following an internal review, the Council maintained that regulation 13(1) had been correctly applied to withhold the requested information.

Scope of the case

7. The complainant contacted the Commissioner on 4 March 2024 to complain about the way her request for information had been handled. She disagreed with the decision to apply regulation 13(1) to withhold the information.
8. In submissions to the Commissioner, the Council did not offer any arguments in support of the application of regulation 12(5)(b) of the EIR. The analysis below therefore considers the Council's application of regulation 13(1) to withhold the information. The Commissioner has viewed the withheld information.

Reasons for decision

Is the requested information environmental?

9. If information falls within the definition of "environmental information" at regulation 2(1) of the EIR, any request for it must be considered under the EIR.
10. Regulation 2(1)(c) of the EIR applies to information on:

"(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements..."
11. Regulation 2(1)(f) applies to information on:

"(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);"

12. As it is information relating to investigations of reports of rat infestations, the Commissioner believes that the requested information is likely to be information on measures (regulation 2(1)(c)) and the state of human health and safety (regulation 2(1)(f)) as they affect the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 13 - Personal data

13. The withheld information comprises correspondence and two report sheets detailing the chronology of the Council's contact with neighbouring residents regarding reports of rats, the Council's observations and conclusions, and actions taken.
14. The Council has given the complainant an overview of its findings on the matter (including that it did not find any active infestation) but it refused to disclose the recorded information, on the grounds that it is the complainant's neighbours' personal data.
15. Regulation 13 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.
16. In this case, the relevant condition is contained in regulation 13(2A). 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').
17. 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(2A) of the EIR cannot apply.
18. 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?

19. Section 3(2) of the DPA defines personal data as:
"any information relating to an identified or identifiable living individual".
20. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

21. 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.
22. 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.
23. Although the request did not name the neighbouring residents visited by the Council, they are known by, and identifiable to, the complainant, and it is clear from the correspondence which led up to the request that the complainant was aware that the Council had visited them regarding reports of a rat infestation. The correspondence asked about a particular address, asking to know what was found in the garden and whether treatments for rodent infestations had been carried out. The correspondence also asked what other gardens had been visited and for "...the Council's findings at neighbouring properties".
24. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that it relates to the residents of the neighbouring properties and that they are therefore readily identifiable to the complainant.
25. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
26. The fact that information constitutes the personal data of one or more identifiable living individuals 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.
27. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

28. 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".

29. 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.
30. 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

31. 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”¹.

32. 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.

Legitimate interests

33. 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.

34. 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

¹ 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) the EIR (as amended by Schedule 19 Paragraph 58(8) DPA) 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”.

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.

35. In this case, the Council argued that the withheld information is very specific to a localised problem, rather than a wider district issue, and it felt that this weakened the legitimate interest in disclosure. It believed there is a clear need to ensure that the public is not discouraged from assisting the Council in carrying out one of its main functions because they are concerned that personal data will be shared with neighbours.
36. However, the Commissioner accepts that the complainant is pursuing a legitimate personal interest in openness and transparency, in relation to what the Council knows, and has done about, a rat problem in the area, and particularly whether there is information about the site of, or contributory factors for, any infestation.

Is disclosure necessary?

37. '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.
38. The Commissioner notes that the Council has given a general explanation of its findings and the actions it has taken, to the complainant. However, the complainant is interested in knowing more specific information about its investigation of individual properties, to see if anything in its findings accounts for the problems with rats in the area. The Commissioner is satisfied that the legitimate interests identified above could not be met by other means and that disclosure of the reports is therefore necessary.

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

39. It is necessary to balance the legitimate interests in disclosure against the data subjects' interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subjects would not reasonably expect that their information would be disclosed to the public under the EIR 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.
40. In the Commissioner's view, a key issue is whether data subjects have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as their general

expectation of privacy, whether the information relates to them in their professional role or to them as individuals, and the purpose for which they provided their personal data.

41. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to the data subjects.

42. The Council said:

"The sharing of some information to assist [the complainant] in understanding what the Council has done to resolve her complaint is necessary and that information has been shared. It is not normal practice for us to share details of the exchanges with neighbours during this type of investigation because it means personal data will be shared. We do not consider it is fair to share details about neighbours or their gardens as they would not expect us to do so. However, [the complainant] was told that no active infestations were found, so she had the information to resolve her query.

On balance, I consider that the rights and freedoms of the neighbours to cooperate with our investigations without us sharing their personal data with any other neighbour/individual is higher than any legitimate need for the public, or [the complainant], to know what those details were. This is particularly the case where the concerns that [the complainant] has, and explains as her reasons for requesting the information, have been addressed by the Environmental Health Team's work. Therefore, any necessity for [the complainant] to have this information is weakened."

43. The Council explained that information about the neighbours' properties and gardens, relates to their homes and to their private lives. It considered it was a fundamental expectation held by members of the public that the Environmental Health Team will address pest control complaints without sharing their personal data with third parties. Disclosure of such information to the world at large would be both unexpected and intrusive. In the Council's experience, it could lead to disputes between neighbours, which could cause some distress to those individuals.

44. The Commissioner recognises that the issue of pest control can be a sensitive topic among neighbours. He has no difficulty in accepting that the data subjects consider that this information, provided for the specific purpose of obtaining assistance with rat problems, would not be disclosed to the wider world in response to an EIR request.

45. The Council has already outlined its findings to the complainant. While the withheld information goes into more specific detail, the Commissioner has seen nothing in it which contradicts its account to the complainant.

46. Having considered all the above, the Commissioner is satisfied that disclosure of the requested information would be unexpected, distressing and intrusive to the data subjects and that this could not be justified by any wider benefit which would flow from the disclosure of the information. Based on the above factors, the Commissioner has determined that there was insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there was no Article 6 basis for processing and so the disclosure of the information would not be lawful.
47. Given the above conclusion that disclosure would not be lawful, the Commissioner does not need to go on to separately consider whether disclosure would be fair or transparent.
48. His decision is therefore that the Council was entitled to apply regulation 13(1), by way of regulation 13(2A)(a), to refuse the request.

Right of appeal

49. 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

50. 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.
51. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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