

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

Decision Notice

Date: 26 August 2014

Public Authority: Department for Regional Development
Address: Clarence Court
10-18 Adelaide Street
Belfast
BT2 8GB

Decision (including any steps ordered)

1. The complainant requested information from the Department for Regional Development. The complainant wanted to know what assistance the Department had provided to a particular family during a construction project. The Department refused the request under regulation 13 of the EIR (third party personal information). The Commissioner's decision is that the Department was entitled to refuse the request. No further steps are required.

Requests and response

2. On 29 January 2014 the complainant made the following request to the Department:

"1. Details of all services and assistance provided to [named family] residing [named address].

2. In particular, please confirm whether Roads Service has agreed to fund the relocation of [named family] to another address in [named address] while work continues on the A8.

3. Further, please detail all agreements made by Roads Service with [named family] as to the final outcome of plans for them."

3. The Department responded to the complainant on 25 February 2014. The Department advised that the requested information was exempt under section 40 of the FOIA.
4. The complainant requested an internal review on 28 February 2014 and the Department communicated the outcome of that review on 29 April 2014. At this stage the Department advised that the request ought to have been considered under the EIR rather than the FOIA, and stated that the requested information was exempt under regulation 13 of the EIR.

Scope of the case

5. On 30 April 2014 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant argued that the Department ought to have provided him with the requested information, redacting personal information if necessary. The complainant did not raise any issue with the Department's decision to consider the request under the EIR.
6. Therefore the Commissioner has considered whether the Department was entitled to rely on the exception at regulation 13 of the EIR.

Reasons for decision

Regulation 13: personal data

7. Regulation 13 of the EIR provides that third party personal data is exempt from disclosure under the EIR if its disclosure would contravene any of the data protection principles set out in Schedule 1 to the Data Protection Act 1998 (the DPA). Further, regulation 13(5) provides that a public authority may refuse to confirm or deny that it holds third party personal information in response to a request if to do so would contravene any of the data protection principles.
8. When considering this case the Commissioner has been mindful of his role as the data protection regulator, particularly given that disclosure of information under the EIR constitutes disclosure to the public at large. The Commissioner understands that the complainant made his request because he wishes to ascertain whether or not the family named in the request was treated more favourably by the Department than other families affected by the construction project. However the Commissioner cannot restrict his decision as to whether the information can be disclosed to an individual who has a personal interest, he can only

decide whether the requested information should be put into the public domain. Therefore, although in this case the Department did confirm to the complainant that it held information relevant to the request, the Commissioner has also considered whether the Department was in fact required to confirm or deny that it held the requested information.

9. The wording of the request makes it clear that the complainant is seeking information relating to a third party, ie the family named in the request, and their interaction with the Department in relation to the construction project. If disclosed this information would inform the public as to how the family was affected by the construction project, and how the Department dealt with the family. Therefore the Commissioner is satisfied that the requested information is personal data relating to the family named in the request.
10. The complainant has suggested that personal information could be redacted from the requested information before disclosure. However, given that the request is specifically for information relating to a named family, any information disclosed in response to the request must relate to that family, or it would not be relevant to the request. Therefore the Commissioner does not believe that redaction is possible in this case, and he has gone on to consider whether confirmation or denial that the requested information is held would breach any of the data protection principles. As indicated above the Department's arguments focused on disclosure of the requested information, but the Commissioner considers it appropriate to consider these arguments in the context of the duty to confirm or deny.
11. The Department argued that in this case disclosure of the requested information would breach the first data protection principle because it would be unfair to the family named in the request. In considering the issue of fairness the Commissioner has taken into account the reasonable expectations of the individuals concerned, the nature of those expectations and the consequences of disclosure to the individuals. The Commissioner has then balanced these against the general principles of accountability, transparency and legitimate public interest in disclosure.
12. The Department confirmed to the Commissioner that it does not routinely publish details of agreements reached with individuals affected by construction works. The Department was of the strong view that any such individuals would expect that details of their contact with the Department would not be published into the public domain.
13. The Commissioner accepts that private individuals are more likely than public authority employees to have a reasonable expectation that their

personal information will not be disclosed into the public domain without good reason. In this case the complainant has requested details of any assistance given to a named family by the Department, including potential relocation to temporary accommodation. The Commissioner wishes to stress that in setting out his analysis he has made no comment as to the extent of the information held by the Department. The Department has confirmed that relevant information is held, but has not provided any further detail, for example it has not confirmed that temporary accommodation was provided.

14. In the Commissioner's view most people would be likely to consider information relating to their domestic living arrangements as inherently private. Therefore the Commissioner accepts that the individuals concerned, ie the family named in the request, would have a reasonable expectation that their personal information would not be disclosed into the public domain.
15. Given that the Commissioner accepts that the information in question could properly be considered private, it follows that the unexpected disclosure of such information into the public domain would be likely to cause distress to the individuals. Even so, the Commissioner is of the opinion that in some cases it may still be fair to disclose such personal information if there is an overriding public interest in doing so.
16. The Commissioner would stress that this is a different balancing exercise than the normal public interest test described at regulation 12(2) of the EIR. Given the importance of protecting an individual's personal information the Commissioner's default position is in favour of maintaining the exception at regulation 13. Therefore the Commissioner needs to consider whether there is a more compelling interest in disclosure; that is to say any public interest in disclosure of the requested information must outweigh the public interest in protecting the rights and freedoms of the individual.
17. In this case the Commissioner accepts that disclosure of the requested information would be an unwarranted intrusion of privacy and would potentially cause unnecessary and unjustified distress. The Commissioner understands that the complainant wishes to find out if the family named in the request received what may be described as preferential treatment from the Department. However the Commissioner does not consider that disclosure of the family's domestic circumstances into the public domain to be a proportionate way of achieving this aim. The Commissioner does not consider the complainant's personal interest to constitute a compelling public interest in disclosure.

18. The Commissioner has considered the extent to which there is, or may be, a legitimate public interest in disclosure of information which may demonstrate whether a public authority has treated people fairly or equally. If the family named in the request – or any individual – has received assistance from the Department, then this may involve public money. The Commissioner acknowledges that there is a general public interest in accountability and transparency. However the Commissioner is of the strong view that any general public interest in disclosure is insufficient to justify disclosure of the requested information.
19. In light of the above the Commissioner is satisfied that disclosure of the requested information would be unwarranted by reason of prejudice to the rights, freedoms and legitimate interests of the family named in the request. Therefore the Commissioner concludes that the Department was entitled to refuse the request.
20. The Commissioner is of the opinion that the analysis above applies equally to the duty to confirm or deny that personal information is held in response to a request, which is set out at regulation 13(5)(a) of the EIR. For the same reasons the Commissioner also finds that the Department was entitled to refuse to confirm or deny that it held the requested information. It follows that the Department is not required to disclose any information, or take any further steps.

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.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 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

Alexander Ganotis
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Wycliffe House
Water Lane
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