

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 18 January 2023

**Public Authority:** Harrogate Borough Council  
**Address:** P.O. Box 787  
Harrogate  
HG1 9RW

#### **Decision (including any steps ordered)**

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1. The complainant requested information relating to a planning enforcement case. Harrogate Borough Council (the "council") disclosed some information and refused to provide other information, citing regulation 13 (personal information) of the EIR.
2. The Commissioner's decision is that the council is entitled to withhold the information on the basis of regulation 13(1) of the EIR.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 18 March 2022, the complainant wrote to Harrogate Borough Council (the "council") and requested the following information:

"I would therefore request, under the Environmental Information Regulations/Freedom of Information Act, copies of all the written representations received by the Council in respect of the enforcement case for [redacted]."

5. The council disclosed some information and withheld other information because it considered that it constituted the personal data of third parties and was, therefore, subject to the exception in regulation 13(1) of the EIR. At the time of the Commissioner's investigation this remained the council's position.

## Reasons for decision

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6. This section sets out the Commissioner's conclusions in relation to the council's application of the exception in regulation 13(1) in this case.

### Regulation 13 - personal data

7. Regulation 13(1) 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.
8. The council has stated that the complainant requested copies of all written representations received by the council in respect of a planning enforcement case. The council explained that the complainant was acting as the planning consultant on behalf of the owner of the property which was the subject of an enforcement case.
9. The council has further stated that, at the time of the request, a retrospective planning application made by the owner via their agent had not yet been determined. The council has explained that the complainant confirmed that the reason for the request under EIR was in relation to this application as they considered this material to the planning application which was due to be determined by the council's Planning Committee.

10. The council has explained that the withheld information relates to a complaint from a third party (the "party") about how the enforcement team had dealt with the enforcement case.
11. The council has explained to the Commissioner why disclosing the information would, when considered alongside publicly available information relating to this matter, lead to the identification of the party.
12. The council has stated that it recognises there is a public interest to be served in transparency but that it also needs to protect individuals' rights and freedoms and considers in this instance, there is no public interest to be achieved in the disclosure of the party's personal information.
13. The council has suggested that the complainant might believe that accessing this information would assist them to secure planning permission, however, it considers that this interest is outweighed by the public interest in maintaining the exemption. In addition, the council also considers that disclosure of information which identifies an individual could also deter future complainants from making complaints to the council. This in turn, the argument runs, would inhibit the effectiveness of the council's enforcement obligations.
14. The Commissioner is of the view that individuals who raise planning concerns with the council would have a reasonable expectation that their personal data would not be disclosed into the public domain.
15. The Commissioner recognises that planning matters can be controversial and as such he considers that disclosure of the identity of anyone who raised planning concerns in this case is likely to cause harm and distress to them. The Commissioner also considers that individuals would be less likely in the future to raise planning concerns if they were aware that their identity would be made public.
16. Whilst the Commissioner accepts that the complainant has a legitimate interest in disclosure of the information in question, he has been unable to identify any wider legitimate interest that would outweigh the fundamental rights and freedoms of the individuals in this case. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
17. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he does not need to go on to separately consider whether disclosure would be fair or transparent.

18. The Commissioner has therefore decided that the council was entitled to withhold the information under regulation 13(1) by way of regulation 13(2A)(a) of the EIR.
19. In reaching his conclusions in this case the Commissioner has referred to a number of previously issued decision notices which relate to similarly formulated requests for information and which reached the same conclusion. He considers that the reasoning and conclusions reached in these decision notices are transposable to this complaint<sup>1</sup>.

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<sup>1</sup> See: <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022772/ic-178247-c4b4.pdf>; <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022676/ic-185189-y5y9.pdf>; <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021342/ic-143049-b6l4.pdf>.

## Right of appeal

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20. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

21. 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.
22. 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** .....

**Christopher Williams**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**