

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

Date: 21 March 2023

Public Authority: Shropshire Council
Address: Shirehall
Abbey Foregate
Shrewsbury
SY2 6ND

Decision (including any steps ordered)

1. The complainant has requested copies of communications relating to two planning applications for a nearby property. Shropshire Council ('the Council') disclosed all the information it said it held, with minor redactions for personal data. The complainant disagreed with the redactions and he also thought that the Council held more information.
2. The Commissioner's decision is that the redacted information was personal data, which the Council was entitled to withhold under regulation 13(1) of the EIR. He also decided, on the balance of probabilities, that the Council held no further information. However, the Council breached regulation 5(2) of the EIR by failing to comply with the request within 20 working days of receipt.
3. The Commissioner requires no steps as a result of this decision.

Request and response

4. On 11 October 2022, the complainant wrote to the Council and requested information in the following terms:

“All communications between the Council and the developers and / or their agents in respect of Planning Applications [redacted] and [redacted]. Also all communications between different Officers and / or between Officers and Members of the Council also in respect of Applications [redacted] and [redacted]. This is a request under both the Freedom of Information Act and the Environmental Information Regulations.”

5. Following the Commissioner's intervention, the Council responded to the request on 7 December 2022. It disclosed a small amount of email correspondence about the planning applications, with redactions made under section 40 (Personal information) and 41 (Information provided in confidence) of FOIA. It also referred the complainant to more extensive information about the planning applications, on the Planning Portal on its website.
6. The complainant requested an internal review, expressing concern about the time taken to respond, the small amount of information disclosed and the redaction of too much information.
7. Having conducted the internal review, the Council indicated that the request fell to be considered under the EIR. However, it maintained that it held no more information and that the redactions it made were correct.

Scope of the case

8. The complainant contacted the Commissioner on 11 January 2023 to complain about the way his request for information had been handled.
9. He explained that the development of a nearby property had adversely impacted his quality of life and he believed the Council had granted planning permission for it without following the proper consultation procedures.
10. He told the Commissioner his concerns regarding the request were as follows:
 - “1. The Council blacked out an image believed to be concerning a purported planning notice that was allegedly publicly displayed. It is contended this information is not exempt from public release and should be released accordingly.
 2. The Council states that the planning application was determined at a "team meeting". It claims there are no minutes or records of this meeting, and that there are no records of conversations or further emails or letters about the matter. It is contended that no

professional organisation runs "team meetings" that involve the discharge of statutory obligations without minutes being taken...It is therefore contended there are minutes or further records that must exist and they should be released accordingly.

3. The Council claims that the identity of Officers is also exempt from release. It is acknowledged that in some situations this may be the case. However, as an absolute minimum a list of job roles of who attended the meeting should be supplied. But in this case it is also contended that the names themselves should be released. This is because the Officers concerned were involved in the determination of a planning application. Had the application been determined by Members of the Council, names would be included in the public record with a record of any possible pecuniary and non-pecuniary interests. So in these particular circumstances, it is contended the names of the Officers involved in the determination of this planning application should be released, along with any information regarding procedures for declaring interests that could reasonably be expected to be found in any record of a meeting at which planning applications were determined. There is a very obvious risk of impropriety where records are lacking in respect of applications involving substantial private financial gain, as is the case here, adding to the likelihood, it is contended, of further so far undisclosed information being available."
11. The withheld information in this case, which the Commissioner has viewed, comprises the names and contact details of the various parties to email correspondence about the planning applications. Three photographs, forwarded by the developer and showing the property in question, have also been withheld.
12. The analysis below considers the application of regulation 13(1) of the EIR to withhold personal data. The complainant has specifically asked that the Commissioner consider the disclosure of the Council officers' identities, and the disclosure of the photographs. The Commissioner has therefore excluded the small amount of personal data that relates to other parties, from the scope of this investigation.
13. The Commissioner has also considered whether, on the balance of probabilities, the Council disclosed all the information it holds which falls within scope of the request.

Reasons for decision

Is the requested information environmental?

14. Having initially handled the request under FOIA, when conducting the internal review, the Council dealt with the request under the EIR.

15. The Commissioner has considered the wording of the request and viewed the withheld information, and he notes that it is on a measure (planning) likely to affect the elements of the environment (regulation 2(1)(c) of the EIR). He is satisfied that the request should be considered under the EIR.

Regulation 13 – Personal data

16. The Council has withheld information about Council officers and the developer, on the grounds that the information is their personal data.
17. Regulation 13(1)(a) of the EIR provides that information must not be disclosed if it is the personal data of an individual other than the requester, and where one of the conditions listed in regulation 13(2A) is satisfied.
18. In this case, the relevant condition is contained in regulation 13(2A)(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, as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR'). The Commissioner has considered whether disclosure would breach principle (a) of Article 5(1), which states that personal data shall be:
- (a) processed lawfully, fairly and in a transparent manner in relation to individuals ('lawfulness, fairness and transparency').
19. The Commissioner is satisfied that an individual's name and email address is information which identifies, and relates to, them. He is satisfied that this is their personal data.
20. As regards the three photographs the Council has withheld, they contain images of the developer's property, including its name. The address of the property is in the public domain in connection with the planning application, and is known to the complainant. The Commissioner's established position is that the address of a private property (and consequently, information about it) constitutes the personal data of its owner/occupier². The photographs are, therefore, the personal data of the developer.

¹ As amended by Schedule 19 Paragraph 307(3) DPA 2018.

² See, for example, <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013677/fs50623497.pdf> and https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432001/fs_50558963.pdf

21. Disclosure under the EIR is effectively an unlimited disclosure to the world at large, without conditions. The Council has argued that disclosing the personal data in response to this EIR request would lead to a loss of privacy for the data subjects which is not justified by any wider public interest in the information being placed in the public domain, and so it would be unlawful and unfair.
22. The Commissioner acknowledges that the complainant considers he has a legitimate interest in the disclosure of the information. However, the Commissioner must balance the legitimate interests in disclosure against the data subjects' interests or fundamental rights and freedoms.
23. In the Commissioner's view, a key consideration is whether the individuals concerned have a reasonable expectation that their personal data will not be disclosed. These expectations can be shaped by such factors as their general expectation of privacy, whether the information relates to them in their professional role or as private individuals, and the purpose for which they provided their personal data.
24. The Council told the Commissioner:

"The Planning Application process is transparent and as such Planning Case Officer names are available publicly on the Planning Portal. The information available from the Portal more clearly demonstrates responsibilities in relation to the planning matters being considered. We therefore feel that further publication of staff names through responses to formal requests has no additional benefit to the general public and in some cases could be a cause of confusion. Therefore we relied on the personal information exemption when providing the response."
25. The complainant was referred to the documents on the Planning Portal in the Council's initial response to his request. Having reviewed that information, the Commissioner notes that it identifies the key decision makers and officers involved in each planning decision. The complainant can therefore refer to that information if he wishes to pursue a complaint about the decisions.
26. The names and email addresses in the withheld information are of non-senior members of staff. The Commissioner is satisfied that they would have the reasonable expectation that their personal data would not be disclosed to the wider world in the context of this correspondence, in response to an EIR request.

27. He finds that the developer would have a similar, reasonable expectation that their personal data, provided for the specific purpose of seeking planning approval from the Council, would not be disclosed to the wider world in response to an EIR request. The Commissioner has conducted internet searches, and he has been unable to locate any images of the property which are similar to the withheld images. Disclosure would therefore be placing new information into the public domain.
28. For all parties, disclosing their personal data in response to this request would be unexpected and may cause them distress.
29. The Commissioner has not seen evidence of any wider public interest in the disclosure of the withheld information. If the complainant's underlying concern is that the Council handled the planning application incorrectly, he may complain to the Local Government Ombudsman³ ('the LGO'), which can consider such complaints. The Commissioner does not consider that any such complaint would be disadvantaged by the complainant not having had access to the withheld information; he may make a complaint about procedural matters regardless of whether or not he has seen it.
30. The Commissioner considers the LGO to be the appropriate avenue for the complainant to pursue such concerns, rather than trying to access this information via the EIR, which, as stated above, involves the publication of information to the world at large; it is not a private disclosure to the requester alone.

The Commissioner's decision

31. The Commissioner considers that while the complainant has a legitimate interest in the withheld information in this case, its disclosure is not necessary to meet that legitimate interest, as he can complain to the LGO. The data subjects have a strong expectation of privacy relating to the withheld information and as disclosure is not necessary to enable the complainant to pursue his concerns, their consequent loss of privacy would be disproportionate and unwarranted.
32. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest in disclosure to outweigh the data subjects' fundamental rights and freedoms.

³ <https://www.planningportal.co.uk/planning/having-your-say/planning-applications/#:~:text=In%20some%20cases%2C%20you%20can,State%2C%20through%20the%20Planning%20Inspectorate>

33. The Commissioner therefore considers that disclosing the personal data would contravene principle (a) of Article 5(1) of the UK GDPR, as it would not be lawful. Therefore, regulation 13(1) of the EIR applies and the withheld information must not be disclosed in response to the request.

Regulation 5 – duty to make environmental information available on request

34. Under regulation 5(1) of the EIR, and subject to a number of EIR provisions, a public authority which holds environmental information shall make it available on request.
35. The requested information in this case relates to two planning applications – one for permission to partly convert an outbuilding into a living accommodation annex (which was previously granted in 2015, but lapsed), the other to install dormer windows in the main property and in the converted annex.
36. The Council has told the complainant that it has disclosed to him all the non-exempt information it holds which falls within the scope of his request. However, the complainant believes that it must hold more information about the determination of the planning applications. He understands that the applications were discussed at a team meeting of planning officers and he finds it improbable that such a meeting would be unminuted.
37. The complainant's position is as set out in paragraph 10. He has also commented:
- “...it would appear unlikely there was so little communication about a planning application involving the sudden overlooking of around a dozen properties with associated works involving the conversion of a formally mature garden into a combination of a vehicles car parking area and a waste dump with sporadic burning of trade waste also occurring [sic]. The emails released suggest there was activity previous to it?”
38. The Commissioner has asked the Council a series of questions aimed at understanding how it had satisfied itself that it held no further information falling within the scope of the request.
39. The Council has explained to him the searches it carried out and why they would have located all the relevant information it held regarding the request. It said that, in addition to the information published on its Planning Portal, all relevant information had been located and disclosed (with redactions). It said that there were no other locations left to check for relevant information.

40. As regards the team meeting the complainant had referenced, it said:

"The meeting referred to was an informal weekly team meeting. This provides an opportunity for officers to discuss cases. These meetings are not minuted as they are informal and do not relate to decision making about planning matters".

The Commissioner's decision

41. When dealing with a complaint to him under the EIR about the amount of information a public authority holds, the Commissioner is mindful that the Information Tribunal, in the case of Johnson / MoJ (EA2006/0085), has commented that FOIA:

"... does not extend to what information the public authority **should** be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they **do** hold".

42. The Commissioner considers the same observation applies in respect of the EIR.

43. In such cases, it is seldom possible to prove with absolute certainty that there is no further information to add. The Commissioner will, therefore, apply the normal civil standard of proof in determining the case and will decide on the 'balance of probabilities' whether more information is held.

44. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. He will also consider the searches carried out by the Council, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded, and any other relevant information.

45. The Council has provided the Commissioner with a cogent account of the searches it carried out. The Commissioner is also mindful that the Council has published information on its Planning Portal which documents the applications and their approval. Finally, he recognises that one application was essentially re-applying for permission that had previously been granted, and which had lapsed. The other was for modifications to existing structures. The Commissioner does not consider that their approval would necessitate the level of deliberation which the complainant envisages.

46. From the information before him, the Commissioner concludes that, on the balance of probabilities, the Council does not hold further information falling within the scope of the request. He is therefore satisfied that it complied with regulation 5(1) of the EIR.

Procedural matters

47. The Commissioner notes that the Council took 41 working days to respond to the request. This was a breach of regulation 5(2) of the EIR, which sets a time limit of 20 working days for complying with a request for information.
48. The Commissioner has made a separate record of this delay for monitoring purposes.

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.

Signed

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