

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 27 June 2023

Public Authority: Hampshire County Council
Address: The Castle
Winchester
Hampshire
SO23 BUJ

Decision (including any steps ordered)

1. The complainant requested information from Hampshire County Council ("the Council") relating to road defects and maintenance or inspection logs. The Council disclosed all the information it said it held, with minor redactions for personal data. The complainant disagreed with the redactions and also thought that the Council held more information.
2. The Commissioner's decision is that not all of the withheld data falls under the definition of personal data. Police reference numbers, police log numbers and incident numbers are not personal data, in the context of this request, and should be disclosed. The Commissioner considers that the Council was entitled to withhold all other data which it identified as 'personal data' under regulation 13(1) of the EIR. The Commissioner has also decided, on the balance of probabilities, that the Council holds no further information and has complied with regulation 5(1) of the EIR. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose the previously redacted police reference numbers, police log numbers and incident numbers or issue a new refusal notice which does not rely on regulation 13(1) to withhold that information.
3. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner

making written certification of this fact to the High Court pursuant to section 54 of the Freedom of Information Act and may be dealt with as a contempt of court.

Request and Response

4. On 30 January 2023, the complainant made the following request for information to the Council:

“For the period 01/01/2021 to 30/01/2023, for the location: BASINGSTOKE ROAD, ALTON charlist: 76A339 NA 09. I would like to request: Reports of defects received by HCC from any source. (To include date, detail of defect and source).

Any maintenance and inspection logs that were not included in my previous request with neighbouring charlist.

Source detail may be obfuscated / redacted where data protection dictates.”

5. On 13 February 2023 the Council provided a 29-page “Enquiry History Report” detailing highway defects reported on Basingstoke road between 25 September 2020 and 6 January 2023 and a 24-page “Inspections and Defects history Report” detailing inspections of defects carried out on Basingstoke road between 19 January 2021 and 19 January 2023. Both documents contained some redactions made under regulation 13(1) (personal information) of the EIR.
6. The complainant requested an internal review, expressing concern about the redaction of too much information and about missing information that they believed the Council held.
7. Having conducted the internal review, the Council found that the wrong report had been run from its highway management maintenance system. It provided the correct report, with redactions made under regulation 13(1) (personal information). This constituted a 47-page document detailing highway defects and the inspections carried out, on Basingstoke road, between 25 January 2022 and 6 January 2023. On some of the pages, the boxes containing lexical data appear to have been cut off meaning some words are only partially visible and illegible.
8. On 27 February 2023 the complainant wrote to the Commissioner and expressed dissatisfaction with the internal review explaining they thought the Council held further information, and that redactions had been applied where they should not have been.

Scope of the Case

9. In response to the internal review, the complainant contacted the Council explaining that they thought some of the comments were missing because the comments box on the enquiry history report cut off the comments. They also complained that they thought that some of the reports were missing completely.

10. The complainant explained to the ICO that they thought data was missing from comment boxes in the following terms:

"You've provided some more reports and some more of the fields but much of the information is incomplete and/or missing. It can be seen very clearly that the comments are cut short because of the box size on your query."

11. The Council explained why some lexical data was cut off:

"The comment boxes being cut off is the same on all reports and is a known issue. Due to the lack of a dynamic box size the Service would run into issues where some reports look to have missing information due to the large gap."

Further to this, it is clear from a comparison of the data contained in the 47-page report provided in the internal review, which contains comment boxes which are cut off, that that same data can be seen in full in the 29-page Enquiry History Report provided in the initial response. Consequently, the data can be accessed in full via the three documents provided by the Council. The Council also later provided the reports in the form of an Excel spreadsheet so that all words previously cut off by comment boxes were legible.

12. The complainant explained why they thought some data was missing in the following terms:

"Some reports are completely missing, for example: Enquiry 21640951 acknowledged by you one 12/01/2023 at 21:14 Please provide ALL of the information I have request UNABRIDGED, UNALTERED, UNMODIFIED and COMPLETE."

13. The Council explained how it may have appeared that some requested information was missing in the following terms:

"Looking at enquiry 21640951, this is on chalist 76 A339 NP (the most recent report was for 76 A339 NA). The chalist changes at the junction to Medsted Road. In your original request you asked for information for this chalist (76 A339 NP) but this did not include the enquiry report, just a jobs and inspection report. For information, a chalist does not always cover the entire length of a road, only short roads may only have one chalist while longer roads will tend to have multiple chalists covering different sections."

14. The withheld information in this case, which the Commissioner has viewed, comprises names of individuals, telephone numbers linked to individuals, addresses of individuals' workplaces, company names of individuals, websites linked to individuals, car number plates, police reference numbers and incident log references and, in one case, a description of a family's actions following a road incident including where they stayed and went.
15. On 31 May 2023 the Council informed the ICO that it no longer considered "police log", "police ref" and "incident" numbers to comprise personal data.
16. On 1 June 2023 the ICO instructed the Council to either release the information which it no longer considered exempt under regulation 13(1) of the EIR or to issue a new refusal notice, by 15 June 2023. To date, the Council has not responded to the ICO regarding this matter.
17. The analysis below considers the application of regulation 13(1) of the EIR to withhold personal data.
18. 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, as stipulated by regulation 5(1) of the EIR.

Reasons for Decision

Personal Data

18. The Council has withheld certain information on the grounds that it is personal data.
19. Regulation 13(1) 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.

20. In this case the relevant condition is contained in regulation 13(2A)(a) . 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').
21. 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?

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

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

23. 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.
24. 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.
25. The Commissioner is not satisfied that "police ref", "police log" and "incident" numbers are pieces of information which identify individuals, nor are they information which, in the context, relates to already identified individuals. The Council has explained that it withheld the numbers believing that individual police officers dealing with an incident could be identified from them. The Council has since confirmed, following consultation with its Traffic Management Team, that:

"[...] the police reference numbers are made up as follows: the first two digits identify the police force – used nationally. The second two digits are the year ie. 2023 and the rest of the figures are a unique number assigned to the incident. We understand that the police may also issue a police log number for out of hours attendance at an incident. They have also clarified that although there may be a difference in reference and log numbers, none of these will identify a police officer."
26. The Commissioner finds that "police ref", "police log" and "incident" numbers do not relate to an identified or identifiable living person and therefore do not fit the definition of 'personal data' in the EIR. This

information should therefore be disclosed if not exempt via an alternative exception.

27. Two redactions in the data set are of information which describes a family's actions following a traffic incident, including where they stayed and went. It is unlikely that any individuals could be identified from such information alone. However, when that information is combined with other personal data such as a car registration, then those actions would become personal data as the world at large would know specific information about specific people. For this reason, the Commissioner finds that the information about a family's actions falls within the definition of 'personal data' in section 3(2) of the DPA.
28. The Commissioner finds that the rest of the withheld information, that is, names of individuals, telephone numbers linked to individuals, addresses of individuals' workplaces, company names of individuals, websites linked to individuals and car number plates also constitutes personal data, either directly or indirectly.
29. The fact that information constitutes the personal data of an identifiable living individual 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.
30. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

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

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".
32. 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.
33. 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

34. 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.

35. 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.

36. 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.

37. The Commissioner considers that the test of ‘necessity’ under stage (ii) must be met before the balancing test under stage (iii) is applied.

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, regulation 13(6) EIR (as amended by Schedule 19 Paragraph 307(7) DPA and Schedule 3, Part 2, paragraphs 53 to 54 of 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”.

Legitimate interests

38. 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.
39. 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 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.
40. The requester only has a legitimate interest in seeking the disclosure of specific personal data, that is, the names of individuals who carried out inspections. The requestor has made it clear to the Commissioner that they are not seeking disclosure of personal data about members of the general public.
41. The Commissioner considers that the legitimate interest in this case arises from the requester's own interest, which, regardless of specific motivation, is to obtain information about reports of defects, and maintenance and inspection logs.
42. The Commissioner is satisfied that there is a legitimate interest in disclosure of the information.

Is disclosure necessary?

43. '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.
44. As disclosure under the EIR is disclosure to the world at large, it is rare that such processing will be necessary to achieve a legitimate interest.
45. The Council has already provided information in response to the complainant's request, including details of inspections which took place on the specific roads between the specific dates set out in the request. This information has included maintenance and inspection logs. The Commissioner considers that the individuals who carried out such inspections would have a reasonable expectation that their personal data would not be disclosed to the world at large, and that any

disclosure of such personal data would be highly intrusive. Furthermore the Commissioner is satisfied that the Council has already fulfilled the legitimate interest by disclosing details of inspections and maintenance including the location, time, date and identified issues.

46. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest identified, he has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing and it would be unlawful. It therefore does not meet the requirements of principle (a) (lawful processing).
47. The Council was therefore correct to withhold this information under regulation 13(1) of the EIR.

Information held

48. Regulation 5(1) of the EIR states that:

"a public authority that holds environmental information shall make it available on request."

49. 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."

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

51. On 13 February, following the Council's initial response, the complainant wrote to the public authority raising complaints about potential missing information:

"This enquiry history is wholly unacceptable. It is so heavily abridged it is of no use whatsoever. I can see from my own report that it has been altered and only contains 10 or 15% of what I actually submitted. Some reports include pothole sizes, some do not. Being that the form for submitting these reports are all the same and the database is administered automatically, there can be no reason for one report to be different from another. It is my understanding that you're only permitted to redact personal information or information that could be

considered sensitive, not whole sections of a database because they are inconvenient to HCC ! Please find below a list of fields I require you to supply.

enquiry_number; enquiry_time; enquiry_easting; enquiry_northing;
 enq_status_name; service_name; subject_name; site_name;
 feature_location; asset_id; asset_number; en-quiry_location;
 enquiry_desc; status_notes; action_officer; location_search; site_code;
 ser-vice_code; subject_code; logged_by; work_group_code;
 work_group_name; enq_status_code; follow_up_date;
 outstanding_flag logged_date

I have no confidence in the accuracy or validity of your tool for providing reference numbers for your roads and so I would like this information for the A339 between 01/01/2021 and 30/01/23”

52. The Commissioner notes that, following Johnson / MoJ (EA2006/0085), some of the complaint refers to the use of technical tools, namely the reporting system and the way in which reference numbers are applied. However, being dissatisfied with the way in which information is processed, stored or classified by a technical tool, or believing that information should exist due to inferences made about the way technical tools work, does not logically mean that such information does exist. Furthermore, the complainant’s lack of confidence in the tools used to process or store information is not relevant to the EIR as the legislation is an access regime to information that is held or not held by a public authority rather than to information that a complainant believes should be held.
53. 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.
54. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant’s evidence and arguments and the response of the Council.
55. The Council has reasonably responded to the complainant with an explanation of why information was not provided that the complainant expected to be provided. The Commissioner is also mindful that the Council has sought to remedy the issue of information being illegible due to comments boxes being cut off, by providing that information in different formats. The Commissioner considers that opinions about the way in which information should be held do not always reflect the reality of how information is held.

56. 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.

Right of appeal

57. 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-regulatorychamber

58. 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.
59. 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.....

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