

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

### **Decision notice**

**Date:** 10 June 2024

**Public Authority:** Wakefield Council  
**Address:** County Hall  
Wakefield  
West Yorkshire  
WF1 2QW

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

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1. The complainant requested a copy of a noise abatement notice issued in respect of a particular property.
2. The council refused the request, citing regulation 13 (personal information) of the EIR.
3. The Commissioner has decided that the council is entitled to rely on regulation 13 of the EIR as its basis for refusing to provide the requested information.
4. The Commissioner does not require the council to take any further steps as a result of this decision notice.

#### **Request and response**

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5. On 19 December 2023, the complainant made the following request for information:

“Please accept or advise me the process to request a copy of the noise abatement notice that was issued to [address redacted].

The notice went live on the 6 December 2023.”

6. On 16 January 2024, the council issued a refusal notice, citing regulation 13, and regulation 12(5)(b)(course of justice), of the EIR.
7. On 24 January 2024, the complainant requested an internal review and on 21 February 2024, the council issued its response. The council advised that it was no longer relying on regulation 12(5)(b) of the EIR, but did still consider regulation 13 of the EIR to apply to the requested information.

## **Reasons for decision**

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8. This reasoning covers whether the council is entitled to rely on regulation 13 of the EIR when refusing to comply with the complainant's request.

## **Regulation 13 – third party personal information**

9. Regulation 13 of the EIR provides that information is exempt from disclosure if it is the personal data of an individual other than that of the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.
10. 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').
11. 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.
12. 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?**

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

“any information relating to an identified or identifiable living individual”.

14. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

15. 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.
16. 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.
17. The council has advised that the noise abatement notice (the notice) requested by the complainant relates to a residential property. It has said that it considers the information contained within the notice to be the personal data of an individual, or individuals, who reside at the property and would be identifiable from that information.
18. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to an individual or individuals. Furthermore, the Commissioner considers that, if any names and the address were to be redacted from the notice, the remaining information would still be sufficient to enable an individual, or individuals, to be identified, at the very least by the individual making the request, and also members of the local community who are aware of the issues relevant to the notice.
19. The Commissioner is therefore satisfied that the information falls within the definition of 'personal data' in section 3(2) of the DPA.
20. The fact that information constitutes the personal data of an identifiable living individual, or 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.
21. The most relevant DP principle in this case is principle (a).

**Would disclosure contravene principle (a)?**

22. 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”.

23. 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.
24. 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

25. 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”<sup>1</sup>.

26. 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.

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

## Legitimate interests

28. 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.

29. 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

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<sup>1</sup> 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.

30. The complainant has argued that the noise caused by the dogs being kept within the buildings on the land is having a detrimental effect on both them and their neighbours. They have argued that openness and transparency is important and that the local community, and any prospective buyers of property in the area, should be made fully aware of, and have access to, the notice.
31. The council has said that it accepts that the requester has a right to certain information in this particular instance, as they have had some involvement in the matter to which the request relates.
32. The Commissioner is satisfied that there is a legitimate interest in understanding the actions which are taken, and decisions that are reached, in relation to allegations made about excessive and unacceptable noise that may be affecting the local community. He also considers that the principle of transparency and openness in relation to a public authority's activities and decision making processes is of relevance in this case, and that the legitimate interest is broader than simply the complainant's own interest.

### **Is disclosure necessary?**

33. '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.
34. The Commissioner is satisfied in this case that there are no less intrusive means of achieving the legitimate aims identified.

### **Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms**

35. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the 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.

36. In considering this balancing test, the Commissioner has taken into account the following factors:
  - the potential harm or distress that disclosure may cause;
  - whether the information is already in the public domain;
  - whether the information is already known to some individuals;
  - whether the individual expressed concern to the disclosure; and
  - the reasonable expectations of the individual.
37. The complainant states that whilst the council has said that they have the right to pursue their own action regarding any matter of noise nuisance through the courts, it has prevented them from having access to the information that they need in order to be able to do this.
38. The complainant has also referred to an information request made (by a different individual to a different public authority) where information about a noise abatement notice was released. They have said that the council should follow the same approach taken by that public authority.
39. The council has said that the request relates to a matter that essentially concerns a local dispute between neighbours. It also states that noise abatement notices are only released into the public domain where it has pursued a public prosecution in the Magistrates Court.
40. The council has argued that any recipient of the notice would not expect its full content to be accessible to the world at large in response to an information request, and that such a disclosure may have a negative impact on them, and cause them harm or distress. The council has gone on to say that it also considers that there would be a breach of an individual's right to privacy, should the information requested be placed into the public domain.
41. The council has said that it has provided some information directly to the complainant, due to their involvement in matters to which the request relates. It states that it has also kept the complainant updated on matters, which includes some details relating to the notice which has been issued. The council has argued that the information that has been provided to the complainant outside the EIR, should be sufficient for the complainant's 'stated purpose', in that they have been made aware that the council is fully investigating complaints it has received, and that where necessary, it will take legal action.
42. The council has argued that disclosure would breach the privacy rights of any individual who received the notice, and that the legitimate

interests in disclosure do not outweigh the legitimate interests in protecting the privacy rights of an individual, or individuals in this case.

43. The Commissioner notes that the complainant has received some details relating to the noise abatement notice issued by the council. However, he considers that the release of a copy of the notice in response to an EIR request to be significantly different, as it would be a release of information to the "world at large" and not just to the complainant.
44. Furthermore, whilst the council has said that it has published information on the planning portal of its website that confirms that a notice was issued at the relevant property, the Commissioner considers that it would not have been within the reasonable expectations of any recipients of the notice, that a copy would be made available to the "world at large" by way of a request made under the EIR. In such circumstances, the Commissioner considers that disclosure would be likely to cause harm or distress to an individual.
45. The Commissioner has also considered the details provided by the complainant about an EIR request submitted to another public authority where information about a notice was released. It is the Commissioner's opinion that the circumstances relating to the two cases are very different. In the previous case, the public authority had already pursued a criminal prosecution through the courts (which would have been publicly available information), and this had been concluded. Furthermore, the individuals that had been issued with the notice in that case had actively released information about this into the public domain.
46. With regard to the complainant's concerns that they may not be able to take their own action through the courts without having a copy of the notice, the Commissioner understands that this is not required in order to instigate proceedings by an 'occupier', and this would therefore not prohibit the complainant from taking direct action themselves (this includes action against the council for failing to take appropriate action in response to a complaint about noise), should they wish to do so.
47. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subject's fundamental rights and freedoms 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.
48. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he does not need to go on to consider whether disclosure would be fair or transparent.

49. The Commissioner's decision is that the Council is entitled to withhold the requested information under regulation 13(1) of the EIR, by way of regulation 13(2A)(a).



## **Right of appeal**

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50. 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)

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

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