

Freedom of Information Act 2000 (Section 50)
Environmental Information Regulations 2004

Decision Notice

Date: 11 January 2011

Public Authority: Snowdonia National Park Authority
Address: National Park Office
Penrhyndeudraeth
Gwynedd
LL48 6LF

Summary

The complainant requested information received by the Authority from members of the public in relation to the threat of a tree being felled. The Authority refused the request on the basis of the exception at regulation 12(5)(f) of the EIR. The Commissioner finds that the information was correctly withheld on the basis of regulation 12(5)(f). The Commissioner requires no steps to be taken.

The Commissioner's Role

1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Authority Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

The Request

2. On 27 July 2010, the complainant wrote to Snowdonia National Park Authority ("the Authority") and requested:

"The report from [named Authority official] says:

"The Authority was alerted to the threat of the tree being removed by concerned neighbours, a local arborist and Scottish Power who were both asked to fell the tree.

In addition the area Planning Officer was alerted by enquiries made concerning a potential development with the possibility of using the access point where the tree is situated at the end of the cul-de-sac"

I would like to see evidence supporting these statements".

3. The Authority responded to the request on 28 July 2010 and stated that information that would identify an individual or group of individuals who have given information to the Authority on the threat of tree felling was exempt from disclosure by virtue of regulation 12(5)(f) of the EIR. The Authority provided evidence in respect of the notification received from Scottish Power. The Authority did not provide a written response to the request in respect of the second statement above, regarding the potential development, and has since stated to the Commissioner that this was due to the fact that the complainant was already in possession of this information. However, this does not fall within the scope of the investigation.
4. The complainant requested an internal review of the Authority's decision on 28 July 2010. The Authority provided the outcome of its internal review on 2 September 2010, upholding its original refusal to withhold the information by virtue of regulation 12(5)(f) of the EIR.

The Investigation

Scope of the case

5. On 2 September 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the Authority's refusal to provide the withheld information by virtue of regulation 12(5)(f) of the EIR. The withheld information consisted of evidence to support the fact that reports were received by the Authority from concerned neighbours and a local arborist.
6. The complainant confirmed that she was not pursuing the complaint in respect of the second statement above, or in respect of the notification received by the Authority from Scottish Power.

Chronology

7. On 13 October 2010, the Commissioner informed the Authority that he had received a complaint regarding its handling of the above request for information and requested a copy of the disputed information.
8. On 21 October 2010, the Authority forwarded a copy of the withheld information to the Commissioner, and confirmed its reliance on regulation 12(5)(f).
9. The Commissioner wrote to the Authority on 8 December 2010 asking it whether it had considered the application of regulation 13 in withholding the information in question.
10. The Authority responded in full on 10 December 2010 to confirm its agreement that the information would be exempt by virtue of regulation 13 of the EIR, but also reasserted its reliance on regulation 12(5)(f) of the EIR.

Analysis

Exceptions

Regulation 12(5)(f)

11. Regulation 12(5)(f) provides that:

For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect-

(f) the interests of the person who provided the information where that person-

(i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;

(ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and

(iii) has not consented to its disclosure

12. The purpose of the exception at 12(5)(f) is to protect the voluntary supply to public authorities of information that might not otherwise be

made available. In such circumstances a public authority may refuse disclosure when it would adversely affect the interests of the provider.

13. The Commissioner considers that the threshold to engage an exception under regulation 12(5) of the EIR is a high one compared to the threshold needed to engage a prejudice based exemption under the Act:
 - a. Under regulation 12(5), for information to be exempt it is not enough that disclosure of information will have an effect, that effect must be 'adverse'.
 - b. Refusal to disclose information is only permitted to the extent of that adverse effect – i.e. if an adverse effect would not result from disclosure of part of a particular document or piece of information, then that information should be disclosed.
 - c. It is necessary for the public authority to show that disclosure 'would' have an adverse effect, not that it may or simply could have an effect. With regard to the interpretation of the phrase 'would' the Commissioner has been influenced by the Tribunal's comments in the case *Hogan v Oxford City Authority & Information Commissioner* (EA/2005/0026 & 0030) in which the Tribunal suggested that although it was not necessary for the public authority to prove that prejudice would occur beyond any doubt whatsoever, prejudice must be at least more probable than not.
14. Furthermore, the wording of the exception at regulation 12(5)(f) makes it clear that the adverse effect has to be to the person who provided the information rather than the public authority that holds the information.
15. The withheld information in this case consists of evidence that reports were received by the Authority from concerned neighbours and a local arborist about the threat of a tree being removed. The information in question is contained within a document produced by the Authority, in which it has recorded the contact made by the neighbours and arborist in question. Whilst the document in question was produced by the Authority, the information contained within it was provided to the Authority by the third parties in question. Therefore the Commissioner considers that the information contained in the withheld document consists of information provided to the Authority by the various third parties.
16. The Commissioner also notes that some small sections of the withheld document fall outside the scope of the complainant's original request for information of 27 July 2010. Only information which relates to the fact that the Authority was alerted to the threat of the tree being removed is

considered to fall within the scope of the complaint, and therefore only this information is considered within this Decision Notice.

17. Before considering the nature of the adverse effect, the Commissioner has considered whether the three limbs of 12(5)(f) are met. With regard to the first limb, the Commissioner accepts that members of the public are under no legal obligation to inform the Authority of any concerns they have relating to the threat of tree felling. Similarly, there was no legal obligation in place for the arborist to inform the Authority of any concerns.
18. The Commissioner considers that the second limb will be met where there is no specific statutory power to disclose the information in question. It is clear that there is no such power in this case in respect of either the neighbours or the arborist, and thus the second limb is met.
19. Finally with regard to the third limb the Authority has confirmed that none of the individuals in question; i.e. the neighbours or the arborist; have consented to disclosure of the withheld information. The Authority confirmed that it specifically notes in its information leaflet to the public on reporting such issues that an individual's identity will remain anonymous.

Adverse effect

20. The Authority has argued that disclosure would have an adverse effect on the individuals who provided the information in question; that is to say the arborist and the neighbours who had provided the information. The Authority commented on the small size of the residential area in question and the proximity of residents to one another. The Authority argued that disclosure of the information would lead to the deterioration of relationships between the informants and their neighbours, and that disclosure could result in recriminations experienced by informants as a direct result of their identities being publicised. Since the withheld information was provided to the Authority by informants, the individuals in question were concerned about the potential reaction of the individual about whom they had complained. The Commissioner is therefore satisfied that disclosure of the information would adversely harm the individuals in question.
21. In relation to the likelihood of such effects occurring, the Commissioner believes that the higher threshold of 'would occur' is met. This is due to the small size of the local area, which would heighten the likelihood of dissatisfied residents taking up personal issues with neighbours. The neighbours in question would be known personally to the dissatisfied residents, and therefore knowledge of the fact that the neighbours had raised concerns to the Authority about an individual's property would

mean that the dissatisfied party would be in close proximity to the individual(s) who had complained about them, thus heightening the likelihood of adverse effects being experienced by the informants. The same arguments can be replicated for the likelihood of adverse effects being experienced by the arborist, who is described as "local", and therefore potentially in close proximity to individuals about whom he/she has provided information to the Authority.

22. The Commissioner therefore accepts that regulation 12(5)(f) is engaged in respect of the withheld information. However, all exceptions contained within the EIR are qualified and therefore the Commissioner must consider the public interest test set out at regulation 12(1)(b). This test is effectively the same as the test set out in section 2 of the Act and states that information may only be withheld if the public interest in maintaining the exception outweighs the public interest in disclosing the information. Regulation 12(2) states explicitly that a public authority must apply a presumption in favour of disclosure.

Public interest arguments in favour of disclosing the requested information

23. The Authority recognised the general public interest in the transparency of its own operations.
24. In addition, the Authority recognised that possession of the information in question would be of interest to the complainant, who would be in a position to legally challenge the individuals in question in relation to the information that they provided to the Authority.

Public interest arguments in favour of maintaining the exemption

25. The Authority provided its arguments in respect of the public interest in maintaining the exemption. Firstly the Authority argued that informants are given some expectation that their identities will be protected when alerting the Authority to these sorts of concerns.
26. The Authority argued that it relies on the public to assist it in discharging its duties efficiently and effectively. If the information in question were to be disclosed, the general public would be aware that their identities may not be protected in such circumstances. This would be likely to have a severely detrimental impact on the passing on of such information by members of the public to the Authority.
27. The Authority argued that, as mentioned above, disclosure of the information could lead to the deterioration of relationships between local residents, arguments and recriminations. This would clearly not be in the public interest.

28. Finally, the Authority argued that the release of the information in question would set a precedent for the release of future, similar, requests, which could lead to even more serious examples of the effects described above; unrest between local residents, and an even stronger detrimental impact on the passing on of such information by members of the public.

Balance of the public interest arguments

29. The Commissioner recognises the general public interest in furthering the understanding of and participation in the public debate on issues of the day and the promotion of accountability and transparency in the spending of public money.
30. The Commissioner is mindful of the fact that there will always be some inherent public interest in preserving confidentiality, but the Commissioner will be cautious about placing significant weight on this generic argument. The Commissioner has taken into account the presumption in favour of disclosure provided in regulation 12(2) of the EIR.
31. The Commissioner is persuaded by the view that the request for information appears to demonstrate the private interests of the complainant in this case, rather than the interests of the public at large. The Commissioner is of the opinion that there is strong public interest in maintaining the exception regarding this type of information as it enables the Authority to operate in an effective way. The Commissioner believes that in this case there is a greater interest in protecting the integrity of the Authority's actions in relation to information received voluntarily from members of the public and that disclosure could damage the public trust in the Authority's processes. Disclosure of the information in question would damage the voluntary supply of information to the Authority, which in turn would affect the effectiveness of the Authority. It is more cost effective for the Authority to react to voluntarily provided information about these issues, rather than using valuable resources in attempts to seek out this information; for example via spot checks or inspections.
32. The Commissioner does not consider that it would be in the public interest to disclose information which could deter members of the public from providing such information to the Authority, and which could have an adverse effect on the providers of the information.
33. For the reasons set out above, the Commissioner is of the view that the public interest in maintaining the exception outweighs the public interest in disclosing the withheld information. Therefore the Commissioner is

satisfied that the Authority correctly withheld the information in reliance on the exception under regulation 12(5)(f) of the EIR.

Regulation 13

34. In its refusal notice of 28 July 2010, the Authority did not cite the exception at regulation 13 of the EIR. This exception provides in certain circumstances for the non-disclosure of personal information. The Commissioner recognises he is not under any obligation to consider exceptions not raised by the public authority. Nevertheless, as the Tribunal has stated in *Bowbrick vs the Information Commissioner* (EA/2005/0006), it is appropriate for the Commissioner to consider whether disclosure of the information may constitute a breach of the data protection rights of data subjects.
35. The Authority confirmed that, in its view, regulation 13 would be engaged, but maintained its reliance on regulation 12(5)(f) of the EIR in withholding the requested information.
36. Since the Commissioner considers that regulation 12(5)(f) is engaged in respect of the withheld information, the Commissioner is not required to consider the Authority's application of regulation 13 to the withheld information.

The Decision

37. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Regulations.

Steps Required

38. The Commissioner requires no steps to be taken.

Right of Appeal

39. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

40. 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.
41. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 11th day of January 2011

Signed

**Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Regulation 12(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

- (f) the interests of the person who provided the information where that person –
 - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
 - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
 - (iii) has not consented to its disclosure;