

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

Date: 21 September 2011

Public Authority: London Borough of Southwark Council
Address: PO BOX 64529
London
SE1P 5LX

Decision

1. The complainant requested information about a noise complaint against a church within the London Borough of Southwark ('the council').
2. The Commissioner's decision is that the council has disclosed all of the information that it holds within the scope of the investigation with the exception of a letter dated 27 November 2007.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Disclose a letter dated 27 November 2007 to the complainant
4. The public authority 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 (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 20 March 2011, the complainant wrote to the council and requested information the following information:

"...all information that you have in respect of complaints of noise nuisance from the Mount of Salvation Church, 53 Chatham St, SE17...all correspondence and emails both internal to Southwark

Council and external...minutes of meetings where noise from the church was discussed...any relevant file notes...notes of informal contact with the church by Southwark Council's officers or councillors in respect of noise complaints, copies of all abatement notices issued, records of court proceedings taken and court judgments...all documentation relevant to the issue of noise from the church"

6. The council responded on 18 February 2011. It disclosed some information and stated that the remainder was withheld under regulation 12(3) of the EIR as it comprised personal data.
7. The complainant requested an internal review and the council provided this on 9 March 2011. This review stated that the council should have stated that some information had been redacted from the information disclosed to the complainant under regulation 12(3), as in fact no additional documents or information had been 'withheld'.

Scope of the case

8. On 20 March 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. In particular, the complainant was not satisfied that the council had disclosed all of the information that it held to him. He believed that the explanation set out in the council's original response was correct and that the council had withheld additional relevant information, rather than simply making redactions from the information disclosed to him.
9. The Commissioner has considered the following matters:
 - i. Whether the council holds any further information within the scope of the complainant's requests; and
 - ii. Whether the council was entitled to redact some information under regulation 12(3)

Reasons for decision

Regulation 2

10. Regulation 2(1)(b) provides that any information on "factors such as ...noise" which affect or are likely to affect the elements of the environment, will be environmental information. Regulation 2(1)(c) provides that any information on "measures" that affect these factors will be environmental information. The complainant has requested any

information relevant to noise at a specific property and complaints made about this. The Commissioner considers that the council's environmental health complaints procedure for dealing with noise complaints is a "measure" that is likely to affect the factor of noise itself. The Commissioner is therefore satisfied that the information requested by the complainant will constitute environmental information under regulation 2(1)(c).

Regulation 5

11. Regulation 5(1) provides that a public authority in receipt of environmental information should disclose it upon request. Where there is a dispute about whether a public authority holds information, the Commissioner will make a decision using the civil standard of the balance of probabilities test.
12. The council has disclosed print outs from its 'APP' system to the complainant. These mostly consist of records of calls that have been logged regarding noise complaints about the church. They also include officer's notes about actions taken in response to the complaint – so for example details of a site visit or a discussion with the complainant.
13. The complainant however believes that the council would hold further information relevant to noise complaints about the church, particularly given the history of the matter which apparently began over ten years ago. He also points to the fact that the council's original response stated that information had been "withheld" under regulation 12(3). The council later explained that this should have in fact read "redacted".
14. The council has explained to the Commissioner that it has conducted searches of both its manual records and electronic records. It confirms that it does not maintain any working case file of complaints related to the church. The council explains that information is only held on the APP system. The council's call centre uses a system called CRM to log calls, but these are then "auto transferred" onto the APP system. The council also uses this system to log any actions it has taken regarding complaints. The Commissioner notes that the council transferred records to the APP system from a previous record system in 2008, and "not every record was correctly or fully migrated across". The council "cannot say what was not migrated". However, given the complainant has advised that the history of this matter extends back some ten years, it is possible that the council did previously hold documents that have not been retained.
15. The Commissioner has asked that the council explains how it monitors the ongoing noise complaints about a property in the absence of information of this nature. The council states that it would rely on the

electronic records held on the APP system in order to monitor the situation.

16. However, to a certain extent the council has conceded that it is not sure of the history of the actions it has taken regarding this noise complaint. For example, the council has stated that whilst it may have previously issued noise abatement notices against the church, it does not retain any centralised record of these or a record of the fact that a notice has been issued. The council advised the Commissioner that "if a notice was issued a warning letter would be sent first". The Commissioner then asked the council to explain why no warning letters appeared to be held, despite the council's disclosed notes stating that "we issued a warning letter...a s80 notice had been served on the church". The council conceded that the "records appeared to contradict each other, looks like a notice was going to be served and was changed to a warning letter, we cannot give any definite answer". The council has also confirmed to the Commissioner that whilst it holds a 'warning letter' about the noise issue at the church, it cannot say whether or not this was actually sent.
17. The council therefore appears to be unaware of the exact actions that it has taken regarding the noise complaint about the church. The Commissioner is however satisfied given the council's explanations of the searches conducted of the APP system, that it has disclosed all of the information that it holds relevant to the matter. Whether it should have created or maintained more or better quality information is not a matter that falls within his remit.

Regulation 12(3)

18. Regulation 12(3) provides an exception where the disclosure of personal data would be "otherwise than in accordance with regulation 13".
19. Regulation 13(1) of the EIR provides that information cannot be disclosed to the general public (all disclosures made under the EIR are considered to be to the general public rather than just the requester) if that disclosure would breach any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 ("the DPA").
20. The Commissioner understands that the council has redacted the names and addresses letters sent to individuals who had, like the complainant, made complaints about the problem of noise at the church. Several of the records relate to telephone calls made by the complainant himself and the Commissioner assumes that these have been disclosed to him under the Subject Access provisions of the DPA. The Commissioner has considered whether the council was correct to redact the names and addresses of other complainants.

Is the information personal data?

21. According to section 1(1) of the DPA, personal data can be defined as follows:

“personal data’ means data which relate to a living individual who can be identified –

o from those data

o from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller or any other person in respect of the individual”

22. The two main elements of personal data are that the information must “relate to” a living person, and that person must be identifiable. The withheld information in this case consists of the names and addresses of individuals who have complained to the council about the church. The Commissioner considers that this information clearly relates to living individuals, and that it identifies them.

Would disclosure contravene any of the principles of the DPA?

23. As the Commissioner is satisfied that the requested information constitutes the personal data of the individual in question, he has gone on to consider whether disclosure would breach any of the data protection principles.
24. The Council has not specified which of the data protection principles disclosure would breach. The Commissioner considers the first data protection principle to be the most relevant in this case and he has therefore considered whether disclosure would breach that principle.
25. The first data protection principle has two main components. They are:
- i. The requirement to process all personal data fairly and lawfully; and
 - ii. The requirement to satisfy at least one DPA Schedule 2 condition for the processing of all personal data.

Would disclosure of the information be fair?

26. The Commissioner has first considered whether it would be fair to disclose the requested information. The Commissioner is satisfied that the individuals who have complained about noise issues would have a reasonable expectation that their identity would not be disclosed to third parties. The Commissioner has reviewed the correspondence and notes that the Council did not inform the complainants that their identity might be disclosed outside of the Council. The Commissioner considers

that the principle that a council's correspondence with an individual in relation to a complaint will be kept confidential is a widely-held and legitimate expectation.

27. The Commissioner considers that the disclosure of personal data where that disclosure was not within an individual's reasonable expectations could be distressing to them as it could represent an unwarranted invasion of their privacy. He consequently considers that the council was entitled to redact the names and addresses of individuals who had complained about the noise problem from correspondence.
28. The council has however apparently not disclosed a copy of a letter dated 27 November 2007 to the complainant. It appears that this is because it believes that the information constitutes personal data. The Commissioner however observes that the letter is addressed to an organisation, specifically the church, rather than any one individual. He therefore does not accept that it can constitute personal data. The Commissioner considers that this information cannot be withheld under regulation 13 of the EIR, and he requires the council to disclose this letter to the complainant.

Right of appeal

29. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

30. 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.
31. 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

Andrew White
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