

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 30 January 2012

Public Authority: Environment Agency Wales
Address: Maes Newydd
Llandarcy
Neath Port Talbot
SA10 6JQ

Decision (including any steps ordered)

1. The complainant requested information relating to an investigation into a specific instance of illegal tipping. The Environment Agency Wales (the "EAW") confirmed that it held some relevant information but refused to disclose it under the third party personal information exception (regulations 12(3) and 13). The EAW argued that this information was sensitive personal data as it related to statutory enforcement action taken against both the named County Council and the landowner.
2. The Commissioner's decision is that the EAW correctly relied upon regulations 12(3) and 13 in order to withhold the information.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 18 February 2011, the complainant wrote to the EAW and requested information relating to its investigation into an instance of illegal tipping in a Welsh County Council.
5. The EAW responded on 17 March 2011 and released information to the complainant in response to his questions.

6. Following an internal review the EAW wrote to the complainant on 03 May 2011. It disclosed information and documents satisfying all his requests except:
 - The name and address of the landowner who was found to have been complicit in the unlawful tipping of waste.
 - The tipping address where the Highway Department of the named County Council was found to have illegally dumped waste.
 - Photographs taken as part of the EAW's investigation on the site.
7. The EAW stated that it was relying on regulation 12(3) and 13 to withhold this information. It argued that the information was sensitive personal data. However, the EAW did agree to release 23 of the 53 photographs in a redacted form.

Scope of the case

8. On 02 June 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant argued:
 - The disclosure of the name and address of the landowner is in the public interest.
 - It is the public's right to know where a tax-payer funded council unlawfully tipped waste.
 - The photographs do not constitute sensitive personal information as the public authority claim. The public have a right to see the waste the council have tipped.
9. Therefore the scope of the case will be to consider the EAW's use of regulations 12(3) and 13 to withhold the outstanding information.

Reasons for decision

10. Regulation 12(3) states that to the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.
11. Regulation 13(1) provides an exception for information which is the personal data of an individual other than the applicant, and where one

of the conditions listed in regulation 13(2) or regulation 13(3) is satisfied.

12. One of the conditions, listed in regulation 13(2)(a)(i), is where the disclosure of the information to any member of the public would contravene any of the principles of the Data Protection Act 1998 (the "DPA").
13. In this case the EAW has stated that it is relying upon regulations 12(3) and 13 on the basis that the disclosure of this information would breach the first principle of the Data Protection Act 1998 (the "DPA"). Bearing this in mind, the Commissioner considers that the EAW is relying upon the condition listed in regulation 13(2)(a)(i) to withhold this information.
14. The Commissioner has first considered whether the outstanding withheld information is the personal data of the landowner.
15. Section 1 of the DPA defines personal data as information which relates to a living individual who can be identified:
 - from that data, or
 - from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
16. The Commissioner is satisfied that the release of the name and address of the landowner would disclose his or her identity. These details have been redacted in the information and documents already disclosed to the complainant by the EAW. The disclosure of the landowner's name and address would also furnish the public with information concerning his or her involvement in this instance of unlawful tipping. Bearing these points in mind, the Commissioner is satisfied that the withheld information is personal data of the individual concerned.
17. The Commissioner has gone on to consider whether this information is sensitive personal data. Section 2 of the DPA defines sensitive personal data as personal data relating to, amongst other things, the commission or alleged commission by an individual of any offence.
18. In this instance the EAW has explained that its investigations into the named County Council and the landowner were in order to ascertain whether each party had committed an offence under regulation 12(1) and 38(1)(a) of the Environmental Permitting (England and Wales) Regulations 2010 – depositing waste material without an environmental permit or relevant waste exemption being in place.

19. The EAW concluded that both the named County Council and the landowner had broken the law. By means of enforcement action, formal warnings were issued to both parties.
20. After taking these arguments into account the Commissioner is satisfied that the name and address of the landowner constitutes his or her sensitive personal data.
21. The Commissioner is also satisfied that the disclosure of the tipping address, in it having the capacity to identify the landowner, also constitutes the sensitive personal data of the landowner.
22. The Commissioner has gone on to consider whether the withheld photographs constitute the personal data of the landowner.
23. The EAW argued that the photographs were withheld because they contained images of specific buildings and landmarks which would lead to the identification of the landowner. This argument is strengthened given the size of the hamlet and information already disclosed to the complainant by the EAW in response to his request.
24. The tipping site can easily be identified in the photographs. The Commissioner is convinced that disclosure of the photographs would allow third parties to then proceed to identify the landowner from that data.
25. The Commissioner considers the photographs to constitute personal data.
26. The Commissioner has gone on to determine whether the photographs should be considered sensitive personal data.
27. Information relating to the commission or alleged commission by an individual of any offence is defined as sensitive personal data in section 2 of the DPA. Given the Commissioner has already established that the disclosure of the photographs would identify the landowner found to have committed a statutory environmental offence, he is satisfied that the photographs constitute sensitive personal data.
28. The Commissioner has gone on to consider whether the disclosure of the information that he considers is the personal data of the landowner (the name and address of the landowner, the tipping address and the photographs) would contravene the first principle of the DPA.
29. The first principle states that personal data shall be processed fairly and lawfully and shall not be processed unless:
 - at least one of the conditions in Schedule 2 is met, and

- in the case of sensitive personal data, at least one of the conditions in schedule 3 is also met.
30. In considering whether disclosure of this information would be fair the Commissioner has taken the following factors into account:
- whether disclosure would cause any unnecessary or unjustified damage or distress to the individual concerned (i.e. the consequences of disclosure);
 - the individual's reasonable expectations of what would happen to their information; and
 - are the legitimate interests of the public sufficient to justify any negative impact to the rights and freedoms of the data subject.
31. The Commissioner has considered each of these factors, with reference to the withheld information, in turn.
32. In this instance the Commissioner finds that disclosure of the landowners name and address is likely to have a detrimental or distressing effect on him or her, as the release of the landowner's identity would disclose his or her part in a criminal offence. The Commissioner is satisfied that such a consequence would amount to a disproportionate invasion of the landowner's privacy.
33. The Commissioner has gone on to consider the second factor – whether the individuals concerned would have reasonably expected that this information would be made public. Bearing in mind the fact that the individual was served with a formal statutory warning by the EAW without the benefit of any hearing, he or she would have no expectation that this information would be put into the public domain by way of disclosure under the FOIA.
34. The Commissioner's approach is that where information constitutes sensitive personal data, disclosure of that information will in most circumstances be unfair. By its very nature, sensitive personal data has been deemed to be information that individuals regard as the most private information about themselves. The Commissioner acknowledges that in this instance the identity of the landowner relates to his or her right to privacy. It follows then that the legitimate interests of the public do not justify the identification of the landowner.
35. Taking all these factors into account, the Commissioner concludes that the disclosure of the name and address of the landowner would be unfair and in breach of the first data protection principle. Therefore this information is exempt from disclosure under regulation 13(2)(a)(i).

36. In relation to the tipping address the Commissioner again considers that this constitutes sensitive personal data. Bearing in mind the factors listed in the previous paragraphs, the Commissioner considers that the disclosure of the tipping address would be unfair and in breach of the first data protection principle. Therefore, this information is exempt from disclosure under regulation 13(2)(a)(i).
37. It follows then that the photographs, in that they also constitute sensitive personal data given they would lead to the identification of the landowner and disclose the tipping site, follows the same conclusion – that disclosure would be unfair and in breach of the first data protection principle. Therefore this information is exempt from disclosure under regulation 13(2)(a)(i).
38. After considering all the information, the Commissioner has concluded that the EAW was correct to withhold the name and address of the landowner, the tipping address and the photographs under this exception.

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,
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

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.

Signed

Steve Wood
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