

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

### **Decision notice**

**Date:** 26 September 2012

**Public Authority:** Northumberland County Council

**Address:** County Hall  
Morpeth  
Northumberland  
NE61 2EF

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

---

1. The complainant requested the locations of noise monitoring equipment relating to the proposed development of a wind farm. Northumberland County Council (the Council) refused to disclose this information and cited the exception from disclosure provided by Regulation 13 of the EIR.
2. The Commissioner's decision is that in relation to some of the information the Council applied this exception correctly. However, in relation to the remainder of the information, the Commissioner finds that this exception was not engaged and the Council is required to disclose this information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose to the complainant the one address which has been found to not be personal data and the four addresses in relation to which there would be no breach of the first data protection principle through disclosure.
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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

---

5. On 21 February 2012, the complainant wrote to the Council and requested information in the following terms:

*"Could you please supply me with the locations of noise monitoring equipment which has been agreed between yourself, environmental health and EnergieKontor in regard to the environmental impact assessment currently being carried out ref Fenrother wind farm scoping response."*

6. Having previously sent a holding response, the Council responded substantively on 4 April 2012. It refused the request and cited the exemption provided by Regulation 13(1) (personal data).
7. The complainant requested an internal review on 12 April 2012. Following a delay, the Council responded with the outcome of the internal review on 21 August 2012 and stated that the refusal of the request under Regulation 13(1) was upheld.

## Scope of the case

---

8. The complainant contacted the Commissioner on 27 June 2012 to complain about the way his request for information had been handled. The complainant at this stage raised the issue of the failure by the Council to complete the internal review promptly, as well as the refusal to disclose the requested information.

## Reasons for decision

---

### Regulation 2

9. This Regulation defines what is environmental information. The first step for the Commissioner here is to consider whether the information falling within the scope of the request is environmental in accordance with this definition and so whether the Council correctly dealt with this request under the EIR.
10. Environmental information is defined within regulation 2(1) of the EIR as follows:

*"any information in written, visual, aural, electronic or any other material form on –*

*(a) the state of the environment, such as air and atmosphere, water, soil, land and landscape and natural sites including wetlands...*

*(b) factors, such as substances, energy, noise, radiation or waste, emissions...affecting or likely to affect the elements of the environment referred to in (a);*

*(c) measures (including administrative measures), such as policies, legislation, plans, programmes...and activities affecting or likely to affect the elements and factors referred to in (a) and (b)...".*

11. The complainant requested information concerning plans for the development of a new wind farm. The Commissioner believes that any information relating to this matter would be environmental information by virtue of Regulation 2(1)(c). A decision as to whether this wind farm should, or should not, go ahead would be a plan that would affect the state of the land or landscape as noted in Regulation 2(1)(a). Therefore, the Commissioner considers the requested information in this case to be environmental as it relates to information on an activity which would be likely to affect the land or landscape and the Council was correct to respond to the request under the EIR.

### **Regulation 11**

12. Regulation 11(4) provides that an internal review should be completed within 40 working days from receipt of confirmation from the requester that they wish for a review to be carried out. In this case the Council did not keep to this timescale and so breached this requirement. The Council should ensure that internal reviews are carried out promptly in future.

### **Regulation 13**

13. This Regulation provides that environmental information is exempt from disclosure if it is the personal data of an individual aside from the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exception is a two-stage process; first, the information in question must constitute the personal data of an individual aside from the requester and, secondly, disclosure of that personal data must be in breach of at least one of the data protection principles.
14. Covering first whether the withheld information constitutes the personal data of an individual aside from the requester, the withheld information supplied to the ICO included the names of individuals. As the complainant requested only information recording location, these names are not within the scope of the request. The following analysis relates to

the information recording location; it does not cover the record of individuals' names.

15. The approach of the Commissioner is that the address of a property will be the personal data of the owner of that property. The withheld information in the form supplied to the ICO showed the locations of the noise monitoring equipment to be recorded by reference to addresses. There were seven such locations; six of these are residential properties. The Commissioner accepts that the details of the six residential properties are the personal data of the owners of those properties.
16. The seventh location is a school. As this is not a residential property owned by an individual, the Commissioner does not accept that this is the personal data of any individual and so the exception provided by Regulation 13 is not engaged in relation to that information.
17. In relation to the six addresses that the Commissioner does accept constitute personal data, the next step is to consider if the disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on the first data protection principle - which states that personal data shall be processed fairly and lawfully - and on whether disclosure would be, in general, fair to the data subjects. In forming a view on whether disclosure would be fair, the Commissioner has taken into account the reasonable expectations of the data subjects, the consequences of disclosure upon the data subjects and whether there is legitimate public interest in the disclosure of the information in question.
18. Turning to the consequences of disclosure upon the data subjects the view of the Commissioner is that disclosure would be likely to result in distress to some of the data subjects. Of note here is that the Council raised with the Commissioner that the proposed wind farm has been the subject of strong opposition and has been the cause of "*bad feeling*" in that area.
19. Of the six addresses, the residents of some of these gave their consent to the locating of noise monitoring equipment on their property. Given the context of the strong opposition to the wind farm in that area, the Commissioner accepts that a disclosure of information suggesting cooperation with the company behind this proposal could result in ill feeling towards the data subjects who granted consent to the noise monitoring and this could consequently be a cause of distress to those individuals.
20. As for the other properties, these were noted within the withheld information as '*non involved properties*'. The Council subsequently confirmed that the residents of these properties had given no consent to

the location of noise monitoring equipment close to their property and that their addresses were recorded merely as the closest reference point to the location of the equipment.

21. In relation to these addresses the Commissioner does not accept that the argument concerning ill feeling towards the proposed wind farm applies. The view of the Commissioner is that the Council could make clear that the owners of these properties played no role in the siting of the equipment and that this should prevent any ill feeling from arising. In relation to the '*non involved*' properties, the Commissioner does not, therefore, believe that disclosure would be likely to result in distress to the data subjects.
22. Moving to the reasonable expectations of the data subjects, owing to the circumstances described above, the view of the Commissioner is that the property owners who gave consent to the siting of the equipment on their property would be likely to hold an expectation of confidentiality in relation to this information. The Council is aware of the sensitivities surrounding this matter and so it would be reasonable for the data subjects to expect that the Council would maintain confidentiality in these circumstances.
23. However, again the Commissioner does not accept that the same consideration applies in relation to the '*non involved*' properties. The view of the Commissioner is that it is likely that the attitude of those data subjects towards the possibility of disclosure would be neutral; they would neither expect nor object to disclosure.
24. Whilst the Commissioner has found that some of the data subjects would hold an expectation of confidentiality in relation to this information and that breaching this expectation would be likely to result in distress to these individuals, the information should nevertheless be disclosed if there is an overriding public interest in favour of this.
25. The view of the Commissioner is there is some public interest in this information; the proposed wind farm is the subject of legitimate public interest and this public interest would extend to the information in question here. Disclosure would add to public knowledge as to whether appropriate steps were being taken in relation to noise pollution that may be created by the wind farm.
26. The view of the Commissioner is that some of the data subjects would suffer distress through the disclosure of the information in question as this individual would hold an expectation of confidentiality in relation to this information. He does not regard the public interest in favour of disclosure as outweighing the impact of disclosure upon the data subjects and as a result the Commissioner finds that disclosure of those

individuals' personal data would be unfair and in breach of the first data protection principle.

27. The Commissioner has found that the majority of the information in question is the personal data of individuals aside from the requester and, in relation to some of the addresses, that the disclosure of this personal data would be unfair and in breach of the first data protection principle. The exception provided by Regulation 13 does, therefore, apply in relation to these addresses and the Council is not required to disclose the information in question.
28. In relation to the '*non involved*' addresses, the Commissioner does not believe that disclosure would be likely to result in distress to the data subjects or would be in contravention of any reasonable expectations that they may hold. For this information to be disclosable, a condition for fair processing from Schedule 2 of the Data Protection Act 1998 must be fulfilled. Amongst these conditions are that the processing is necessary for the legitimate interests of the data controller, which in this case would be the general public, given that disclosure through the Regulations renders information effectively publicly available.
29. The Commissioner has covered above that there is a legitimate public interest in this information. However, in order for disclosure to be fair it must be the case that disclosure in response to the request is necessary in order for this public interest to be met. The Council has confirmed that this information could only be disclosed into the public domain via an information request made to it; no other public authority holds this information. It has also stated that the private company which is planning the wind farm has stated that it does not wish for this information to be disclosed, indicating that this information has not previously been made available by this company. The Commissioner accepts, therefore, that disclosure of this information in response to the complainant's request would be necessary in order to satisfy the aforementioned public interest.
30. In relation to these '*non involved*' addresses the Commissioner finds that the exception provided by Regulation 13 is not engaged. He also reaches the same conclusion in relation to the address that is not personal data. At paragraph 3 above the Council is required to disclose this information.

## Right of appeal

---

31. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

32. 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.
33. 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** .....

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**