

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 12 August 2013

Public Authority: London Borough of Richmond upon Thames

Address: Civic Centre
44 York Street
Twickenham
TW1 3BZ

Decision (including any steps ordered)

1. The complainant requested emails between a number of named staff members and councillors within London Borough of Richmond upon Thames (the Council) concerning planning and property maintenance issues ongoing between him and the Council. The Council refused to disclose this information and cited the following exceptions from the EIR:
 - 12(4)(e) (internal communications)
 - 12(5)(b) (adverse effect to the course of justice)
 - 12(5)(d) (adverse effect to the confidentiality of legal proceedings)
 - 12(5)(f) (adverse effect to the interests of the provider of the information)
 - 13 (personal data of third parties)
2. Following the intervention of the Commissioner the Council agreed that the requested information was the personal data of the complainant and issued a fresh response under section 7 of the Data Protection Act 1998 (DPA).
3. The Commissioner's decision is that the requested information is the personal data of the complainant and so regulation 5(3) of the EIR provided that the Council was not obliged to disclose this information.

Request and response

4. On 25 October 2012, the complainant wrote to the Council and requested information in the following terms:

"...under the Freedom of Information Act 2000, I wish to request via your office that the email correspondence [relating to my planning and land maintenance issues] between the various officers is made public for investigation by my solicitors...The period I seek access under the Freedom of Information Act 2000 is from January 2011 up until today the 25th October 2012

The following named workers I seek access to their internal correspondence:

[names redacted]"

5. The Council responded on 29 November 2012. At this stage it stated that the request was refused under the exceptions provided by the following regulations:

12(4)(e) (internal communications)

12(5)(b) (adverse effect to the course of justice)

12(5)(d) (adverse effect to the confidentiality of legal proceedings)

12(5)(f) (adverse effect to the interests of the provider of the information)

13 (personal data of third parties)

6. It also at this stage recognised that some of the information was the personal data of the complainant – it identified this as "*information provided by you or relating to you*" – and informed the complainant that regulation 5(3) provides that personal data of the complainant is not required to be disclosed under the EIR.
7. The complainant responded on 31 January 2013 and requested an internal review. The Council responded with the outcome of the internal review on 28 February 2013 and stated that the refusal was upheld under the same grounds as given previously.

Scope of the case

8. The complainant contacted the Commissioner on 29 November 2012 to complain about the way his request for information had been handled. The complainant indicated at this stage that he did not agree with the grounds given by the Council for withholding the information.
9. During the investigation of this case the Council stated that the complainant had also made a subject access request under section 7 of the Data Protection Act 1998 (DPA). In response to this the information within the category of "*information provided by you or relating to you*" had been disclosed to the complainant.
10. Given that the information request related to various issues between the complainant and the Council concerning planning and land maintenance, the Commissioner asked the Council to consider whether it may have been the case that all of the information falling within the scope of the complainant's request was his personal data. If the Council concluded that the information requested was the personal data of the complainant and hence not subject to the EIR by virtue of regulation 5(3), it was asked to issue a fresh response to the complainant that addressed the entirety of his request under section 7 of the Data Protection Act 1998 (DPA).
11. The Council responded to the ICO and indicated that it now agreed that the requested information was the personal data of the complainant. A fresh response was issued to the complainant, dated 3 July 2013. This addressed the request as a subject access request made under section 7 of the DPA. The Council maintained that it would not disclose this personal data and now cited sections 29 (crime and taxation) and 35 (disclosures required by law or made in connection with legal proceedings) of the DPA.
12. Following this fresh response, the complainant confirmed that he wished the ICO to issue a decision notice formalising the conclusion that the information he requested was his own personal data and to reach a conclusion on whether this request had been dealt with in accordance with section 7 of the DPA. The analysis in this notice concerns regulation 5(3). The issue of whether the request was dealt with in accordance with section 7 of the DPA is commented on further in the "*Other matters*" section below.

Reasons for decision

Regulation 2

13. The first question for the Commissioner to address here is whether the information is environmental in accordance with the definition given in regulation 2(1) of the EIR, which defines environmental information 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)...".

14. The view of the Commissioner is that this information is 'on' measures that fall within the scope of regulation 2(1)(c). As covered previously, the information requested by the complainant concerns planning and land maintenance. Information relating to planning processes will generally be considered environmental due to the impact that this process will inevitably have on several of the elements and factors referred to in regulations 2(1)(a) and (b). Clearly land maintenance will have an impact on land and landscape, as mentioned in 2(1)(a). The information in question is, therefore, environmental under regulation 2(1)(c).

Regulation 5(3)

15. The duty to make environmental information available on request is imposed by regulation 5(1) of the EIR. Regulation 5(3) provides that regulation 5(1) does not apply to information that is the personal data of the requester. The task for the Commissioner here is to consider whether the requested information is the personal data of the complainant. If it is, the EIR did not require the Council to disclose this information.

16. The definition of personal data is given in section 1(1) of the DPA:

"personal data' means data which relate to a living individual who can be identified-

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller".

17. As covered above, when responding to this request, the Council was aware that some of this information was the personal data of the complainant. That information was disclosed to the complainant in response to a separate subject access request.

18. In relation to the remainder of the information, the Commissioner initially set out to consider the other exceptions cited by the Council. As part of this process, the Council supplied to the ICO some of the withheld information. Having reviewed this, it was clear to the Commissioner that, as all of this concerned issues around planning and property maintenance between the complainant and the Council, it all related to the complainant. Much of this information also identified the complainant.

19. Other materials when viewed in isolation did not identify the complainant. However, when considering if this request should have been dealt with as a subject access request, the issue is whether this information constituted personal data for the purposes of the Council. The view of the Commissioner was that the Council would hold additional information that could be combined with the information in question to identify the complainant. When that point was raised with the Council, it did not dispute this.

20. As covered above, when this issue was raised with the Council it agreed that all of the information in question would be the personal data of the complainant. Whilst the Commissioner has not had sight of all the information in question, clearly the Council has. On the basis of his viewing of some of the information, his understanding of the background to the request and the agreement from the Council, the Commissioner concludes that all of the information falling within the scope of the request above relates to the complainant.

21. Some of that information clearly identifies the complainant. In relation to the remainder of the information, some of which when viewed in isolation does not identify the complainant, the Commissioner relies on the Council holding other information that these materials could be combined with in order to identify the complainant as the data subject.

22. For these reasons, the conclusion of the Commissioner is that all of the information falling within the scope of the request set out above is the personal data of the complainant. Therefore, regulation 5(3) applies and the Council was not obliged to disclose this information via the EIR.

Other matters

23. As covered above at paragraph 12, the complainant asked the Commissioner to also consider whether his request was dealt with in accordance with section 7 of the DPA. An assessment has been carried out under section 42 of the DPA and the outcome of this communicated to the complainant separately.
24. The approach of the Commissioner is that where a request is made under the Freedom of Information Act (FOIA) or the EIR for information that is the personal data of the requester, the request should automatically be dealt with under section 7 of the DPA without requiring the requester to make a further request specifically citing section 7 of the DPA and without issuing a refusal notice under the FOIA or the EIR. This continues to be the case even where the requester has been specific that their request is made under the FOIA or EIR.
25. The Council should be aware of this and ensure that it adopts this approach in future situations where an individual mistakenly seeks to access their own personal data via the FOIA or EIR.

Right of appeal

26. 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

27. 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.
28. 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