

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

Date: 14 March 2013

Public Authority: East Hampshire District Council
Address: Penns Place
Peterfield
Hampshire
GU31 4EX

Decision (including any steps ordered)

1. The complainant requested information relating to a particular site in Surrey. East Hampshire District Council (the Council) provided some of the requested information but withheld other information under regulations 12(5)(f) and 13(1) of the EIR. The Commissioner's decision is that the Council was entitled to withhold information under regulation 13(1), therefore he has not considered regulation 12(5)(f). The Commissioner also found that the Council failed to respond to a further request within the time for compliance, but requires no steps to be taken.

Request and response

2. On 14 February 2012, the complainant requested the following information from the Council:
 1. *All information held by the Council which included the complainant's name*
 2. *All information held by the Council relating to [named site] covering the past three years.*
3. The complainant advised the Council that part 1 of this request was a refined version of a request made on 23 November 2011.

4. On 9 March 2012 the Council responded to the request of 14 February 2012. The Council stated that the complainant had further refined his request on 24 February 2012 as follows:

"...information relating to [named site] and the current tree issue".

5. The Council provided some information to the complainant and advised that it had withheld personal information relating to third parties. The Council cited sections 40(3)(i)(a) and 41(1) of the FOIA, and regulations 13(1) and 12(5)(f) of the EIR, in respect of the withheld information.

6. On 12 March 2012 the complainant asked the Council to reconsider its response. In this correspondence he also requested the following information:

"...a report published by EHDC explaining their compliance with equality act".

7. The complainant contacted the Commissioner on 13 March 2012 to complain about the way his requests had been handled. However at this stage the Commissioner did not accept the complaint for investigation, as he considered that the Council had not been given sufficient time to complete its internal review.
8. On 30 May 2012 the complainant advised the Commissioner that he had still not received the outcome of the internal review. The Commissioner contacted the Council on 6 June 2012 to remind it of its obligations.
9. On 3 July 2012 the Council responded to the complainant. The Council clarified that it had also considered the complainant's request under the Data Protection Act 1998 (the DPA) and had provided him with all the information he was entitled to receive under that access regime. The Council had considered the remainder of the requested information under the FOIA and EIR.
10. The Council also referred to a letter it had received from the complainant dated 27 March 2012, which the Council said re-opened the scope of the request beyond the "tree issue". The Council stated that it had requested a fee of £34.90 to cover photocopying and postage in relation to this additional information, but that the complainant had confirmed on 29 May 2012 that he preferred to close the case.
11. The Council accepted that there had been some confusion about the scope of the complainant's request, and on this basis it adopted the original, broad interpretation of the complainant's request (as set out at paragraph 2 above). The Council consequently provided some further information to the complainant, although other information was withheld

under section 40(3)(i)(a) FOIA/regulation 13(1) EIR and section 41(2) FOIA/regulation 12(5)(f) EIR. However the Council did not provide any indication that it had reviewed its refusal of other information as communicated to the complainant on 9 March 2012.

Scope of the case

12. The complainant remained dissatisfied following the outcome of the internal review and on 25 July 2012 he asked that the Commissioner investigate whether his request had been properly handled. The complainant suggested that some of the withheld information would indicate evidence of "*harassment and victimisation against myself and others*".
13. The complainant did not specify which of his requests he wished to complain about. Nor did the complainant provide a full, unedited copy of the correspondence between him and the Council. The Commissioner usually requires sight of all the relevant correspondence so that he can make a fully informed decision as to the facts of the case. In addition the complainant is required to specify his grounds for complaint, rather than the Commissioner going through the correspondence to identify possible issues of contention.
14. In the absence of a clear complaint the Commissioner has defined the scope of this case as the Council's decision to withhold some information from the complainant, as set out in the Council's responses of 9 March 2012 and 3 July 2012.
15. In addition the Commissioner noted that the complainant had made a further information request on 12 March 2012, but had not received a response by 25 July 2012. Following the Commissioner's intervention the Council responded to this request on 8 February 2013.

Reasons for decision

Access regime

16. The Commissioner notes that the Council considered the complainant's request under both the FOIA and the EIR. The EIR will apply to any information which falls under the definition of "environmental information" as set out at regulation 2 of the EIR:

"...any information in written, visual, aural, electronic or any other material form on-

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, 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, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);"

17. In the Commissioner's view the phrase 'any information... on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. The Commissioner considers a broad interpretation of this phrase will usually include information concerning, about, or relating to the measure, activity, factor etc., in question. It is not necessary for the information itself to have a direct effect on the elements of the environment, or to record or discuss such an effect. Rather, the information should be *on* something falling within these sections.
18. The request in this case was for information relating to a named site. Having inspected the withheld information the Commissioner is satisfied that it all relates to planning enforcement. The Commissioner considers this to be a measure designed to protect the elements and factors referred to in 2(1)(a), ie the land and the landscape.

19. In light of the above the Commissioner finds that it is only necessary to consider the request under the EIR, rather than the FOIA as well.

Regulation 5(3): personal information of the applicant

20. The Commissioner noted that the Council considered the complainant's request of 14 February 2012 under the DPA in addition to the EIR. This is because the complainant had clearly requested information relating to himself, which would be his personal data under the DPA. Personal data of the applicant is exempt from disclosure under regulation 5(3) of the EIR, because it falls to be considered as a subject access request under the DPA. The Commissioner has written to both parties separately about this aspect of the complaint.

Regulation 13(1): third party personal information

21. Regulation 13(1) of the EIR states that a public authority is not obliged to disclose information if to do so would:
- constitute a disclosure of personal data, and
 - this disclosure would breach any of the data protection principles or section 10 of the DPA.

Would disclosure of the requested information constitute a disclosure of personal data?

22. The DPA defines personal information as:

"...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, and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual."

23. Having inspected the information in question the Commissioner is satisfied that it does constitute personal data. Names and addresses, as well as the actual content of the withheld information, provide sufficient information to identify the individuals concerned.

Would disclosure of the requested information breach any of the data protection principles?

24. The Council argued that disclosure of the requested information would breach the first data protection principle because it would be unfair to

the third parties. In support of this conclusion the Council argued that these individuals would have a reasonable expectation that information relating to them would not be disclosed into the public domain. The Council was of the view that, if individuals thought that the Council might disclose their details, they would be less likely to make complaints, or may instead make anonymous allegations which the Council could not accept. On this basis the Council did not seek consent from the residents in relation to the request.

25. The Commissioner accepts the Council's argument in relation to the residents' reasonable expectations. This is because the residents are private individuals rather than public officials, and the correspondence contains details of complaints made by these individuals to the Council. The Commissioner agrees with the Council that private individuals should generally be able to expect that this type of correspondence with the Council would not be publicly disclosed. The Commissioner accepts that in this case the Council did not seek consent as it was already of the view that the information in question should not be disclosed, and it is likely that such consent would not be given.
26. The Commissioner has considered this issue of information relating to complaints in a number of contexts, including local government, and has consistently found that private individuals will often be entitled to greater protection than public officials. The Commissioner sees no reason to depart from that general principle in this particular case, and for this reason he finds that it would be unfair to disclose the requested information.
27. In light of the above the Commissioner finds that disclosure of the requested information would breach the first data protection principle. Therefore the exception at regulation 13(1) is engaged and the information has been correctly withheld.
28. As the Commissioner has found that regulation 13(1) of the EIR is engaged in relation to all of the withheld information he is not required to make a decision in respect of regulation 12(5)(f).

Procedural requirements

Regulation 5(2): time for compliance

29. As indicated at paragraph 18 above the complainant had made a further request to the Council on 12 March 2012:

"...a report published by EHDC explaining their compliance with equality act".

30. The Council referred the Commissioner to a letter it had sent to the complainant dated 31 October 2012. In this letter the Council advised that it had reviewed the enforcement action taken to date, and had found no evidence of discrimination against any party. However the Commissioner did not consider that this answered the complainant's request. The Commissioner was of the view that the complainant had asked for information held by the Council which would explain how it complied with the relevant equality legislation.
31. The Council accepted the Commissioner's interpretation of the request and issued a further response to the complainant on 8 February 2013. The Council referred the complainant to its Comprehensive Equality Policy and Corporate Equality Objectives, and provided links to this information. The Commissioner is satisfied that these documents meet the complainant's request as they explain how the Council complies with equality legislation. Therefore, although neither document is technically a report, it does comprise information which meets the description as specified in the request. Therefore the Commissioner is satisfied that the Council has now responded to this request by providing the relevant information it holds. The Commissioner has seen no evidence to suggest that the Council deliberately failed to provide the complainant with the requested information. Rather, it appears that the Council assumed that the complainant was asking for information relating to his dispute. The Council has now provided the requested information, but as it took longer than twenty working days to provide the information, the Commissioner finds that the Council failed to comply with regulation 5(2) of the EIR.

Right of appeal

32. 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

33. 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.
34. 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

Alexander Ganotis
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