

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

Decision notice

Date: 26 February 2015

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

Decision (including any steps ordered)

1. The complainant requested unredacted copies of objection letters against a planning application that he submitted to the public authority.
2. The Commissioner's decision is that the public authority was entitled to withhold the information redacted from the objection letters on the basis of the exception at regulation 12(3) of the EIR.
3. No steps required.

Request and response

4. According to the complainant, he visited the public authority's offices on 23 September 2014 to follow up a request for the following information he had previously made during a telephone conversation with a planning officer regarding his planning application:

'Sight of the names and addresses of the people who have written to complain about a planning application [14/AP/1636].'

5. The public authority subsequently informed the Commissioner that it had no record of when the discussions took place or what was discussed. For the avoidance of doubt, the public authority did not deny that the discussions ever took place, it simply did not have the records

to confirm that they did because such discussions would have been handled as a '*business as usual*' enquiry regarding a planning application. What it did have though was an email of 26 September 2014 from the complainant in which he asked to '*view non-redacted objection letters* [relating to] *14/AP/1636*' which was also sent to planning officers in the context of ongoing discussions regarding the planning application.

6. The Commissioner understands that the objection letters (to planning application 14/AP/1636) with the names and part of the addresses of the objectors redacted had already been published by the public authority online¹ which is why the complainant contacted planning officers to view the unredacted versions. He is satisfied therefore that the public authority's version of events more accurately reflects the complainant's request. Although it is necessary to clarify the exact nature of the request, it is important to note that the complainant's own representation of his request to the Commissioner is not too dissimilar to the public authority's, and in any event makes little, if any, difference to the reasons for the Commissioner's decision explained further below.
7. The public authority provided a response to the request in an email of 26 September 2014 in which it explained that complying with the request would be a breach of the Data Protection Act 1998 (DPA). However, as mentioned, the request was considered in the context of ongoing discussions between the complainant and planning officers in relation to his planning application rather than as a request for information under the terms of the FOIA or the EIR.
8. The complainant wrote back to the public authority on the same day (26 September) and, with reference to the Commissioner's guidance, asked the authority to conduct an internal review.
9. Having not received any response from the public authority, the complainant initially contacted the Commissioner's office on 29 October 2014 to complain about the lack of response. He was advised to give the public authority more time to respond.

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<http://planningonline.southwark.gov.uk/AcolNetCGI.exe?ACTION=UNWRAP&RIPNAME=Root.PgeDocs&TheSystemkey=9554790>

Scope of the case

10. On 21 November 2014, the complainant contacted the Commissioner's office once again to advise that the public authority had yet to respond to his email of 26 September. The complaint was subsequently accepted by the Commissioner on 27 November 2014.
11. During the course of the Commissioner's investigation (on 18 December 2014) however, the public authority wrote to the complainant and, in effect, issued a refusal notice in reliance on section 40(2) FOIA. The complainant was also advised to submit a request for an internal review if he disagreed with any aspect of the public authority's response. Although he did not explicitly request an internal review, the complainant's dissatisfaction with the public authority's response was conveyed in an email of 18 December 2014.
12. On 23 January 2015, the public authority provided its response to the Commissioner's queries and also issued a further response to the complainant purporting to be the details of the outcome of the internal review that the authority had conducted following the complainant's email of 18 December.
13. The public authority slightly revised its position in this latest response. It explained that the request should have been handled under the EIR rather than the FOIA, and that the equivalent exception at regulation 12(3) of the EIR was being relied on to withhold the information requested.
14. The complainant maintained that the names and addresses of the individuals who objected to planning application 14/AP/1636 should be disclosed.
15. The scope of the Commissioner's investigation therefore was to consider whether the public authority was entitled to refuse the complainant's request to '*view non-redacted objection letters* [relating to planning application] 14/AP/1636' on the basis of the exception at regulation 12(3).

Reasons for decision

Applicable access regime

16. The Commissioner accepts that the information requested is *environmental information* within the meaning in regulation 2(1)(c) of the EIR for the reasons explained below.
17. The Commissioner interprets '*any information.....on....*' in regulation 2(1) of the EIR fairly widely. He has issued guidance on the definition of *environmental information* within the meaning in the EIR.²
18. Planning application 14/AP/1636 sought permission to demolish part of an industrial estate on Peckham Road in London and construct a number of workshops, residential flats with associated car parking and landscaping.
19. The information requested is therefore *information on* activities affecting, or likely to affect the elements and factors mentioned in regulations 2(1) (a) and (b) of the EIR, and therefore falls within the definition of environmental information in regulation 2(1)(c) of the EIR.

Regulation 12(3)/13 EIR

20. Information is exempt from disclosure on the basis of the exception at regulation 12(3) if it constitutes third party personal data (i.e. the personal data of an individual other than the person making the request) and the conditions in regulation 13 have been met.

Is the information requested personal data?

21. The Commissioner firstly has to determine whether the information requested is personal data.
22. Personal data is defined in section 1 of the DPA as:

'.....data which relate to a living individual who can be identified from those data or from those data and other information which 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

² <http://ico.org.uk/foikb/PolicyLines/FOIPolicyAnyinformationon.htm>

intentions of the data controller or any person in respect of the individual.'

23. The Commissioner is satisfied that the unredacted objection letters to planning application 14/AP/1636 constitute the personal data of the objectors because it is information from which they could be identified and which relates to them.

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

24. As mentioned, in order to engage regulation 12(3), the conditions set out in regulation 13 must be met.

25. Regulation 13(1) states:

'To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below [in regulation 13(2)] is satisfied, a public authority shall not disclose the personal data.'

26. The first condition in regulation 13(2) is that the disclosure of personal data would contravene any of the data protection principles or section 10 of the DPA.

27. The public authority considers that disclosure of the information requested would contravene the first data protection principle.

28. The first data protection principle states:

'Personal data shall be processed fairly and lawfully and, in particular shall not be processed unless-

At least one of the conditions in schedule 2 [DPA] is met...'

29. In considering whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:

- The reasonable expectations of the individual (ie the data subject) in terms of what would happen to their personal data and the consequences of disclosing personal data, ie what damage or distress would the data subjects suffer?
- Furthermore, notwithstanding the data subjects' reasonable expectations or any damage caused to them, it may still be fair to disclose their personal data if it can be argued that there is an

overriding legitimate interest to the public (as opposed to private interests) in doing so.

Complainant's arguments

30. The Commissioner has summarised the complainant's arguments in support of his position below.
31. The complainant submitted that objections to planning applications must by law go on the public file without names and addresses being redacted, and that the public authority states on its website that the names and addresses along with objections would be published or made accessible to the public. He provided a screen shot of the relevant page on the website. The complainant further pointed out that other local authorities routinely publish objections to planning applications, including names and addresses of the individuals who objected. He noted that the public authority had in the past published unredacted letters and emails objecting to planning applications.

Public authority's position

32. The public authority's position is summarised below.
33. It submitted that individuals who make their objections to a planning application do so based on an implicit expectation that the public authority will not publicly reveal their identity. It explained that the Planning and Building Control pages on its website carry a fair processing notice which states that planning objections will be redacted before being published. The relevant web page can be found at: http://www.southwark.gov.uk/info/485/planning_applications/3251/comment_on_planning_applications/2³
34. The public authority also explained that the *neighbour consultation letter*, which is sent to properties near where any planning applications have been made, also states that all personal information will be removed except the objector's postal address, which in this case means an anonymised or truncated postal address. It explained the wording in the letter was now being amended to ensure it is clear that it refers to anonymised addresses.

³ Last viewed by the Commissioner in February 2015.

35. The public authority submitted that generally there was no legitimate interest to the public in publishing the names and full addresses of objectors along with details of their objections because letters and emails of objections are already disclosed in redacted form which allows interested parties to see the representations made by objectors as well as their geographical relevance. More specifically, it considered that there was no legitimate interest to the public in revealing the identities of the objectors to planning application 14/AP/1636. Although it acknowledged that there was almost certainly a private interest in revealing the identities of the objectors to the planning application, it did not consider that the private interest alone was a sufficient enough justification to reveal the identities of the objectors in this case.
36. The public authority was also clear that there was no legal requirement for local authorities to publish the names and addresses of individuals who have objected to planning applications.
37. It recognised that each local authority will have its own approach, and that the old screenshot provided by the complainant showed that several years ago, the public authority did state that it would publish names and addresses of objectors in full. However, it had now changed its approach to reflect the increased understanding of its obligations under the DPA and its desire to protect the identities of objectors. It acknowledged that its website had not been updated to fully reflect the current position (which was decided some time ago) but that it was now undertaking a review of all its webpages to ensure that pages relating to the publication of objections to planning applications reflect the public authority's position.

Commissioner's findings

38. The Commissioner appreciates the complainant's frustration at the lack of clarity as to whether the individuals who objected to planning application 14/AP/1636 expected that their identities would be revealed publicly along with their representations.
39. However, on the basis of the evidence provided by the public authority, the Commissioner is satisfied that the objectors expected, and quite reasonably so in the circumstances of this case, that they would remain anonymous whilst details of their objections would be published. In addition to the fair processing notice available on the public authority's website, the objectors are likely to have also received the neighbour consultation letter which is clearly meant to reassure objectors that their identities would not be revealed publicly. Consequently, given the sometimes emotive nature of planning related issues, it is therefore

highly likely that revealing their identities along with their representations would have been distressing to the objectors.

40. Equally important is whether there is a legitimate interest to the public in identifying the objectors. The Commissioner agrees with the public authority that in the circumstances of this case, there is no legitimate interest to the public in identifying the objectors. He is satisfied that the legitimate interest to the public in understanding the nature of the objections and being able to test the veracity of any claims made in relation to the planning application has been met by publication of the details of the objections along with truncated postal addresses to provide geographical relevance.
41. As far as the Commissioner is aware, there is no legal requirement for local authorities to publish the names and addresses of objectors to planning applications.
42. In view of the above, the Commissioner finds that disclosure of the information requested would be unfair and thus contravene the first data protection principle.
43. He therefore finds that the information requested was correctly withheld on the basis of the exception at regulation 12(3).

Other matters

44. The Commissioner expressed his concern to the public authority regarding the manner in which it handled the complainant's request, especially the length of time it took for the authority to recognise that the complainant wanted his request to be treated as a request for information under the appropriate information access legislation.
45. The public authority acknowledged the error in not addressing the request under the appropriate information access legislation as soon as the complainant's intention became clear. It however explained that the confusion arose because the complainant was already in correspondence with a planning officer regarding the objections to his planning application, and after he expressed dissatisfaction with the refusal to provide him with unredacted copies of the objections to the planning application, he was referred to a member of the complaints team who subsequently left the public authority without acting on the email containing the complainant's request for an internal review.
46. It is regrettable that the public authority took some time to recognise that the complainant wanted his request dealt with under information

access legislation. However, the Commissioner appreciates how easily the oversight could have occurred in view of the discussions already ongoing with planning officers outside of the complainant's information access rights under the FOIA or the EIR. The fact that the officer who might have subsequently acted on the email requesting an internal review left the public authority before he could do so was also rather unfortunate. The Commissioner trusts that the lessons learned from this case would assist the public authority in preventing a similar occurrence in future.

Right of appeal

47. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

48. 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.
49. 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

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