

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 31 May 2016

Public Authority: Environment Agency
Address: Ergon House
Horseferry Road
London
SW1P 2AL

Decision (including any steps ordered)

1. The complainant has requested the names of individuals that hold Elver licenses.
2. The Commissioner's decision is that the Environment Agency ("EA") has correctly withheld the requested information under regulation 13 of the EIR.
3. The Commissioner requires the EA to take no steps.

Request and response

4. On 10 December 2015, the complainant met with an officer at the EA to discuss compliance with the Eels Regulations. During the meeting, the complainant and the officer discussed amongst other things, the possibility of the EA sharing the list of authorised elver license holders.
5. The officer wrote to the complainant on 31 December 2015 and explained that it was unable to release the names of the people purchasing the licences.
6. A further telephone conversation took place between the complainant and the officer on 25 January 2016. The complainant asked again whether the information he sought could be shared.
7. The officer forwarded the request to the EA's data protection team. The data protection team responded on 27 January 2016 and confirmed the request within its letter. The EA believed that the complainant was seeking the following information:

"The names of the persons holding Elver licenses"

8. The EA explained that this information was exemption from release under regulation 13.
9. The complainant was unhappy with the EA's response. It is important to note at this stage that the complainant did not dispute the EA's understanding of the information he was seeking.
10. The EA carried out an internal review and sent the complainant the outcome on 19 February 2016. The EA maintained its previous decision.

Scope of the case

11. The complainant contacted the Commissioner on 22 February 2016 to complain about the way his request for information had been handled.
12. Specifically he disputed the EA's application of regulation 13 to the request.
13. The Commissioner has had to consider whether the EA correctly applied regulation 13 to the requested information.

Reasons for decision

14. Regulation 13 of the EIR states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure would breach one of the data protection principles outlined in the DPA.
15. Personal data is defined 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 that individual and any indication of the intentions of the data controller or any other person in respect of the individual..."
16. The Commissioner considers the first data protection principle is most relevant in this case. The first data protection principle states -

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”

17. The Commissioner must first consider whether the requested information is personal data. If he is satisfied that it is, he then needs to consider whether disclosure of this information would be unfair and/or unlawful. If he finds that disclosure would be unfair and/or unlawful the information should not be disclosed and the consideration of regulation 13 of the EIR ends here. However, if he decides that disclosure would be fair and lawful on the data subjects concerned, the Commissioner then needs to go on to consider whether any of the conditions listed in schedule 2 and 3 of the DPA are also met.

Is the requested information personal data?

18. The withheld information consists of names of individuals that hold Elver licenses. A living individual can be clearly identified from a name and the Commissioner is therefore satisfied that the requested information withheld under regulation 13 is personal data.

Would disclosure breach the data protection principles?

19. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
20. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations of the data subject

21. When considering whether a disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the

disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.

22. The Commissioner considers that there is a reasonable expectation that an individual that holds an Elver license would not expect their name to be disclosed to the wider public in response to an information request.

The consequences of disclosure

23. The Commissioner considers that disclosure of the requested information may cause damage and distress to the individuals concerned.

The legitimate public interest

24. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms or legitimate interests of the individual concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainant) accessing the withheld information.
25. The Commissioner acknowledges that the complainant has an interest in the requested information. However the Commissioner must consider the legitimate public interest in the requested information rather than the interests of the requester. The Commissioner considers that there is little public interest in the requested information, other than the interests of the complainant.
26. On this basis, the Commissioner has determined that the EA was correct to apply regulation 13 to withhold the names of the individuals that hold Elver licenses.

Right of Appeal

27. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

28. 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.
29. 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

Rachael Cragg
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