

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

Date: 24 September 2018

Public Authority: Carmarthenshire County Council
Address: foia@carmarthenshire.gov.uk

Decision (including any steps ordered)

1. The complainant requested details of complaints received and action taken in respect of a specific parcel of land. Carmarthenshire County Council ('the Council') refused to confirm or deny whether it held the information by virtue of Regulation 13 of the EIR. The Commissioner's decision is that the Council correctly applied regulation 13(5) to the request. The Commissioner does not require any steps to be taken.

Request and response

2. On 18 March 2018, the complainant wrote to Council and requested information about land adjoining/between [address redacted] in the following terms:
 - "1. *Date and nature of any complaint(s) regarding the land received by the council. I do not require any personal information or information that may identify any complainant.*
 2. *Any action taken by the council. This should include site inspections and confirmation if there has been any correspondence with owners and the relevant dates of such correspondence.*
 3. *Any informal or formal action taken by the council such as enforcement notices."*

3. The Council issued a refusal notice on 27 April 2018 confirming that it had considered the request under the EIR. The Council refused to confirm or deny whether it held the requested information by virtue of the exception at regulation 13(5) of the EIR.
4. On 30 April 2018 the complainant wrote to the Council and requested an internal review of its handling of the request.

Scope of the case

5. The complainant contacted the Commissioner on 29 May 2018 to complain about the way his request for information had been handled.
6. The scope of the Commissioner's investigation into this complaint is to determine whether the Council was entitled to neither confirm nor deny if it held information within the scope of the request on the basis of regulation 13(5) of the EIR.

Reasons for decision

Regulation 13(5) – exclusion from the duty to confirm or deny

7. Regulation 13 sub-sections (1) to (4) generally apply to third party personal data held by a public authority and considered exempt from disclosure. However, regulation 13(5)(a) allows a public authority to refuse a request where confirming or denying whether the requested information is held would disclose personal data and that disclosure would contravene any of the data protection principles of the Data Protection Act 1998 ('the DPA'), which was the appropriate legislation at the time of the request.
8. In order to decide whether the Council has correctly applied regulation 13(5), the Commissioner will:
 - Determine whether the requested information (if held) would constitute the personal data of third parties.
 - Determine whether confirming or denying whether the requested information is held would contravene any of the data protection principles.

Would confirming or denying whether the requested information is held disclose personal data?

9. Personal data is defined by the DPA as information which relates to a living individual who can be identified from that data or from that data along with any other information in the possession or is likely to come into the possession of the data controller.
10. The Council confirmed that the owner of the piece of land referred to in the request is a private individual. The Council explained that details of the owner of the land in question are publicly available through searches with H M Land Registry.
11. The Commissioner is satisfied that to confirm or deny if the Council holds information would constitute the personal data of the owner of the land as he/she is directly identifiable from information which may or may not be held relating to the land.

Would confirming or denying whether the requested information is held contravene any of the data protection principles?

12. Having accepted that the information requested, if held, would constitute the personal data of a living individual other than the applicant, the Commissioner must next consider whether confirmation or denial as to whether information is held would contravene one of the data protection principles.
13. The Commissioner considers the first data protection principle to be most relevant in this case. The first data protection principle has two components:
 - personal data shall be processed fairly and lawfully; and
 - personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.
14. In considering whether confirmation or denial of whether the information requested is held would comply with the first data protection principle, the Commissioner has first considered whether disclosure would be fair. In assessing fairness, the Commissioner has considered the reasonable expectations of the individual concerned, the nature of those expectations and the consequences of disclosure to the individual. She has then balanced against these the general principles of accountability, transparency as well as any legitimate interests which arise from the specific circumstances of the case.

The Council's position

15. The Council advised the Commissioner that if it held information relevant to the request in this case it would be held as part of a planning enforcement file/case. The Council confirmed that requirements for the publication of information relating to planning enforcement cases is very different to the requirements in terms of planning applications. The only information that the Council is required to publish in relation to planning enforcement cases is a register of enforcement and stop notices.
16. The Council confirmed that it had not issued any enforcement or stop notices in this case, and as such no information regarding the matter has ever been in the public domain. As such, confirming or denying whether or not information is held relating to the request would inform the world at large whether or not an enforcement investigation had been undertaken in relation to the site in question, and therefore against the owner of the land.
17. The Council confirmed that individuals who are the subject of an enforcement investigation are not advised that information about their involvement in any investigation would be disclosed to the public in response to a request for information.
18. As very limited information is published in respect of planning enforcement matters, the Council considers that any individual who is the subject of an enforcement investigation would have a reasonable expectation that their personal data, or confirming whether they have been the subject of a planning enforcement investigation would not be disclosed into the public domain unless an investigation results in an enforcement or stop notice being issued. The Council contends that, in light of the reasonable expectations of privacy, confirming or denying whether the requested information is held in this case would be an intrusion in the privacy of the land owner and could cause some distress.

The Commissioner's position

19. In terms of the expectations of the individual the Commissioner notes that the planning application process is very public and anyone participating in that process should reasonably expect that personal data, including application forms or objections to an application, would enter the public domain. However the same is not true in the case of planning enforcement matters and it is only enforcement and stop notices which are routinely published.
20. The Commissioner considers that there is a clear distinction between information generated as part of the planning process and that held in

relation to allegation of breaches of planning control. A planning application simply seeks permission to do something; there is no inference of wrongdoing made in respect of the applicant. This is very different to information on a breach of planning control, where it is clear there has been an allegation of, and potential for there to have been, wrongdoing. This in itself would shape the expectations of the subject of any allegation that the information would remain confidential, at least up until the Council had decided there was a breach which required an enforcement notice to remedy.

21. As the request in this case encompasses information about any potential enforcement action against the land, the Commissioner accepts that a reasonable individual would hold an expectation that the Council would not confirm or deny that information relating to any enforcement action about their private property would be put into the public domain.
22. With regards to the consequences of revealing whether or not the Council holds information within the scope of the request, the Commissioner is mindful of the likelihood of damage and distress it could cause to the individual land owner. The Commissioner considers that it is quite reasonable to expect that publicly revealing whether or not any information is held in the context of the request would represent an intrusion into the individual's private life and could cause them distress.
23. There is always some legitimate interest in the disclosure of information that is held by public authorities, in this case disclosure would be a confirmation or denial whether any complaints have been made about the land and whether the Council has taken any action in respect of any complaints it may have received. Disclosure helps to encourage the general aims of achieving transparency and accountability. It also assists people in understanding what public authorities are doing and to be more involved in that process. However, public authorities have to be mindful of their obligation to protect the right to privacy that individuals have where that is reasonable as well.
24. The Commissioner does not consider that there is an overriding legitimate interest to the public in issuing a confirmation or denial in this case. The public of course need to be assured that the Council takes its responsibilities in terms of planning enforcement matters. However, in the circumstances of this case, the Commissioner is not persuaded that the legitimate interests of the public override the individual's right to privacy. The Commissioner considers that it would be unfair in the circumstances of this case for the public authority to confirm or deny whether it holds the information requested.
25. In view of the above, the Commissioner finds that confirming or denying whether the Council holds information within the scope of the request

would contravene the first data protection principle and therefore the exception at regulation 13(5) is engaged and the duty to confirm or deny does not arise.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

Andrew White
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