

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

**Date:** 21 November 2018

**Public Authority:** Stoke on Trent City Council  
**Address:** Civic Centre  
Glebe Street  
Stoke-on-Trent  
ST4 1HH

**Decision (including any steps ordered)**

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1. The complainant requested information about the road maintenance policy, and repair history, relating to a specified road.
2. Stoke on Trent City Council (the Council) disclosed some of the requested information, but withheld the remainder under regulation 12(5)(b) (the course of justice etc) and regulation 13 (personal information) of the EIR.
3. The Commissioner's decision is that the Council correctly applied regulation 12(5)(b) of the EIR to the information withheld by virtue of that exception and that the public interest in all the circumstances of the case favours maintaining the exception as set out in regulation 12(5)(b).
4. She also found that the Council correctly applied regulation 13 of the EIR to the information withheld by virtue of that exception.
5. The Commissioner requires no steps to be taken as a result of this decision.

## Background

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6. In correspondence with the complainant, the Council referred him to previously issued decision notices, including FER0742277<sup>1</sup> issued on 6 August 2018 and FER0611819<sup>2</sup> issued on 20 June 2016.
7. In FER0611819, a request was made to Cheshire West and Chester Council for information relating to highway safety inspections from the Council. The Commissioner's decision was that the Council was correct to apply regulation 12(5)(b) to the information on the specific road requested.
8. In FER0742277, a request was made to Solihull Metropolitan Borough Council for information relating to surveys and repairs of a specified highway area over a specified timeframe. The Commissioner's decision in that case was that the Council correctly applied regulation 12(5)(b) of the EIR to the withheld information and that the public interest in all the circumstances of the case favoured maintaining the exception as set out in regulation 12(5)(b).
9. While the Commissioner is not bound by previous decision notices, and will consider each case on its merits, she has taken her earlier decisions into consideration.

## Request and response

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10. Following earlier correspondence, on 27 April 2018, the complainant wrote to the Council and requested information in the following terms:

*"I am writing to request information under the Freedom of Information Act relating to a road your authority is responsible for maintaining.*

*Specifically, my query relates to the Leek Rd between its junction with Cromer Rd and School Lane.*

*Please can you send me:*

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259595/fer0742277.pdf>

<sup>2</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1624521/fer\\_0611819.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1624521/fer_0611819.pdf)

*1) A copy of your current road maintenance policy relating to that road. Please send me the full policy, but this should include details of the intended frequency of road safety inspections, how these inspections should be conducted and the maximum time between identification of a defect and repairs being carried out.*

*2) A copy of the road repair history for that road over the past year. Again, please send me the full road repair history, but this should include:*

- dates of all safety inspections between 4 9 2017 and 3 4 2018.*
- details of how safety inspections were undertaken (walked or driven, speed of inspection vehicle etc)*
- details of all carriageway defects identified, with description, date and time*
- details of how the authority handled these defects, what repairs were undertaken and the time between the identification of each defect and a repair being carried out”.*

11. The Council responded on 1 May 2018. It provided some information within the scope of the request, namely a copy of the City Council’s Highway Inspection Manual and details of how inspections were carried out along Leek Road and the frequency of these.
12. It refused to provide the remaining requested information, citing regulation 12(5)(b) (course of justice) of the EIR.
13. Following an internal review the Council wrote to the complainant on 24 July 2018, upholding its position. In support of its view, the Council told the complainant it had taken into account, amongst other things:

*“...recent Decision Notices on this issue from the Information Commissioner’s Office...”.*

## **Scope of the case**

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14. The complainant contacted the Commissioner on 15 August 2018 to complain about the way his request for information had been handled.
15. Having been notified by the Commissioner that she had received a complaint about its handling of the request, the Council revisited the request. It released further information to the complainant, namely redacted Highways Inspection reports relating to Leek Road.
16. However, it continued to apply regulation 12(5)(b) to some of the information contained in the reports. The Council also applied regulation 13 of the EIR to a small amount of information within the reports relating to third parties.

17. With respect to its additional citing of regulation 13, the Commissioner acknowledges that public authorities have the right to claim an exception for the first time before the Commissioner or the Tribunal. The Commissioner also accepts that she does not have discretion as to whether or not to consider a late claim.
18. The complainant remained dissatisfied with the revised response. Acknowledging that he had been provided with further information, he told the Commissioner that he wished to receive the documents:  
  
*"undoctored' with 'no editing' of the information".*
19. During the course of the Commissioner's investigation, the Council confirmed that the small amount of information withheld by virtue of regulation 13 related to third parties.
20. In its correspondence with both the complainant and the Commissioner, the Council described the information withheld by virtue of regulation 12(5)(b) as:  
  
*"Information regarding the date the repair was reported, the completion date for the repair, or the required completion date and the details of the location of the defect have been removed".*
21. The analysis below considers the Council's application of regulations 12(5)(b) and 13 of the EIR to the withheld information.

## **Reasons for decision**

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### *Regulation 13 personal information*

22. Regulation 13(1) of the EIR provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in regulation 13(2) or 13(3) of the EIR is satisfied.
23. The Commissioner has first considered whether the withheld information would constitute the personal data of third parties.

### *Is the withheld information personal data?*

24. The definition of personal data is set out in section 1 of the Data Protection Act 1998 (DPA), the legislation in force at the time the Council dealt with the request. Section 1 defines personal data 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 intention of the data controller or any other person in respect of the individual.”*

25. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable.
26. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
27. The Commissioner notes that the small amount of withheld information contained in the disclosed reports falls within columns headed 'source' and 'comments'.
28. Having reviewed the withheld information, the Commissioner is satisfied that it comprises personal information. She has reached this decision on the basis that the 'source' information relates to Council employees who entered details about highways defects into the system. She is also satisfied that the withheld information within the 'comments' column of one of the reports relates to reports made by members of the public, including details of a vehicle belonging to a member of the public.

*Would disclosure breach the Data Protection Principles?*

29. Having concluded that the information comprises personal information, the Commissioner has gone on to consider whether one of the conditions listed in regulation 13(2) or 13(3) of the EIR is satisfied.
30. One of the conditions listed in regulation 13(2)(a)(i) EIR, is where the disclosure of the information to any member of the public would contravene any of the principles of the DPA.
31. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle, which is the most relevant in this case, requires that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness.
32. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual, the potential consequences of the disclosure, and whether there is a legitimate public interest in the disclosure of the information in question.

*Reasonable expectations*

33. In its submission to the Commissioner, the Council stated that it did not consider that the individuals concerned, whether its employees or members of the public, would have a reasonable expectation that their personal data would be disclosed into the public domain or that the information would add to the information provided in any beneficial way.
34. With respect to the Council employees, the Council confirmed that the employees are not considered to be senior members of staff and would not, therefore, have a reasonable expectation that their details would be released.

*Consequences of disclosure*

35. As to the consequences of disclosure upon the data subjects, the question – in respect of fairness - is whether disclosure would be likely to result in unwarranted damage or distress to those individuals.
36. The Commissioner considers that disclosure in this case has the potential to cause damage and distress, particularly as she has found that disclosure of the information would not have been within the reasonable expectations of the data subjects.

*Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure*

37. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to provide the information if there is an overriding legitimate interest in disclosure to the public. Under the first principle, the disclosure of the information must be fair to the data subject, but assessing fairness involves balancing their rights and freedoms against the legitimate interest in disclosure to the public and the private interests of the requester.
38. The complainant did not put forward any arguments in favour of disclosing the personal information.
39. In reaching a decision about the application of regulation 13 to the information within the scope of the request, the Commissioner must consider whether there is a legitimate interest in the public or the requester having access to the information and the balance between this and the rights and freedoms of the data subjects.
40. After considering the nature of the withheld information, and the reasonable expectations of the data subjects, the Commissioner considers that disclosure under the EIR would be unfair and in breach of

the first principle of the DPA and that any legitimate public interest would not outweigh the rights of the data subjects.

41. The Commissioner is satisfied that regulation 13 of the EIR is engaged, and provides an exception from disclosure in this case.

*Regulation 12(5)(b) course of justice etc*

42. The Commissioner has next considered the Council's application of regulation 12(5)(b) to the information withheld by virtue of that exception.

43. Regulation 12(5)(b) provides an exception from the disclosure of environmental information which would adversely affect:

- the course of justice;
- the ability of a person to receive a fair trial; and
- the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.

44. In correspondence with the complainant, the Council told him:

*"This exception has been applied to the information you have requested because it makes it possible for fraudulent claims for damage as a result of highway defects to be made. The details that would be required to make a claim for damage could be obtained from the information you have requested".*

45. It told him that the Council considered that release of the requested information into the public domain would enable individuals to misuse it by submitting fraudulent claims to the local authority:

*"...thereby engaging officers in unnecessary investigations with a potential fraudulent financial loss to the local authority".*

46. It told him that it did not consider that it was in the public interest to put the public purse at such risk, both through the impact of the time taken to investigate the claim and the monetary sum that could potentially be paid out for a successful claim.

47. It also advised him:

*"The Council considers that there is a more appropriate regime other than the EIR for accessing information that is relevant to a claim whereby through the claims process the courts decide what information is made available".*

48. In its submission to the Commissioner, the Council confirmed its view that disclosure of the withheld information would put into the public domain information that could be used fraudulently by unscrupulous individuals. It explained that this is contradictory to the Council's efforts to try to prevent fraud and protect the public purse.
49. It said that it had based its view, in part, on recent ICO decision notices and also following discussions with its risk and Insurance Manager.
50. In support of its withholding of the information under consideration, the Council told the Commissioner that it actively engages with genuine claims, but that it believed that these need to be pursued through the claims and insurance process.

*The Commissioner's view*

51. The Commissioner acknowledges that the request in this case is similar to requests for information from other individuals which the Commissioner has previously considered. Specifically, she considers FER0611819 relevant in this case.
52. The Commissioner's decision in case reference FER0611819 was that the public authority correctly applied regulation 12(5)(b). Having considered all the factors applicable to this case, the Commissioner is satisfied that the similarity between the information requested and the arguments presented in this case and FER0611819 is such that she is able to reach the same decision about disclosure without the need for further analysis.



## Right of appeal

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53. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

54. 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.
55. 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 .....**

**Deborah Clark  
Group Manager  
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Wycliffe House  
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