

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 March 2019

Public Authority: Environment Agency
Address: Horizon House
Deanery Road
Bristol
BS1 5AH

Decision (including any steps ordered)

1. The complainant requested information relating to the number of complaints to the Environment Agency per anonymous household adjacent to a recycling site. The Environment agency refused to disclose the requested information under section 13 EIR.
2. The Commissioner considers that the Environment Agency incorrectly applied regulation 13 EIR in this case.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:

The Environment Agency must disclose the number of complaints per anonymous household.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 26 June 2018 the complainant wrote to the Environment Agency and requested information in the following terms:

"Could I please request from the EA a list of the complaints against our company in 2018 so far, I am not interested in individual complaints or how many complaints from the same household..."

6. The Environment Agency refused to provide a list of the complaints as it considered the information to be personal data on the grounds that listing the nature of the complaints could lead to the identification of the residents who had complained.
7. The complainant asked for an internal review on 10 July 2018. The request for review asked for information that had been specifically precluded in the original request.

"... I am not asking for any addresses or locations I am merely requesting for such data as:

House A complained 20

House B complained 20

House C complained 20..."

8. The Environment Agency upheld its original disclosure decision and withheld the information on the basis it was personal data. Although the complainant was at that point asking for the number of complaints made by anonymised properties, as the number of complainant properties was small it considered that disclosure of this information could lead to both the identification of complainants, and also the wrongful identification of residents who were more proximate to the site who had not complained.

Scope of the case

9. The complainant contacted the Commissioner on 3 September 2018 to complaint about the way his request for information had been handled.
10. On 13 March 2019, the Commissioner asked the complainant to clarify that the scope of his complaint to the ICO was to investigate the information requested at internal review stage, that is the number of complaints per anonymised household. On 26 March 2019 the complainant confirmed that he wished the ICO to investigate his request for how many houses have complained. The Commissioner has therefore focussed her investigation on the revised wording of the complainant's request at the time of the internal review.
11. The Commissioner has considered whether the Environment Agency was correct to refuse to disclose the information requested at the time of the internal review under regulation 13 EIR.

Reasons for decision

12. Regulation 13(1) of the EIR provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.
13. In this case the relevant condition is contained in regulation 13(2A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
14. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then regulation 13 of the EIR cannot apply.
15. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

16. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

17. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
18. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
19. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
20. In this case the Environment Agency has refused to disclose the number of complaints made per anonymous household. As the number of

¹ As amended by Schedule 19 Paragraph 307(3) DPA.

properties was small it considered that disclosure of this information could lead to both the identification of complainants, and also the wrongful identification of property residents that hadn't complained. The Environment Agency has said that other information in the public domain could be used to identify which properties had made the complaints if it were to disclose the number of properties that had made complaints and how many complaints had been made per anonymised property.

21. The Environment Agency is not aware of what information exists in the public domain about complainants, which makes it difficult to identify the likelihood of the mosaic effect. However it has argued that the absence of knowing whether something exists is very different to whether it exists or not. It said that the following factors influenced its disclosure decision to withhold the exact number of properties:
 - the small number of properties in scope;
 - the nature of the information, i.e. that residents of the properties have complained to the Environment Agency about a site being investigated, which could lead to enforcement action and prosecution; and
 - the motives of the applicant.
22. The Environment Agency said that it is mindful that information may already be known that, coupled with the exact number, could lead to harm to the complainants if they were to be identified.
23. As a final point the Environment Agency has said that there is approximately 100 properties within the vicinity of potential complainants.
24. In this case the Environment Agency has not explained what information is or could be in the public domain that could be used to enable the households which have complained to be identified if it were to disclose the number per anonymised household. It said that they could be identified because of the small number of properties that have complained. Of the 100 properties it is not clear how anyone could determine which properties had complained if the numbers are disclosed anonymously.
25. Furthermore the Commissioner does not consider that the motives of the applicant would further identification in this case. If the particular applicant already has knowledge of complaints via other means, disclosing the requested information in this case, in anonymised format, is unlikely to provide further means of identification to the applicant.
26. The Commissioner has provided further analysis in the Confidential Annex attached to this Notice.
27. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information does not

relate to or identify the data subjects concerned. This information therefore does not fall within the definition of 'personal data' in section 3(2) of the DPA.

28. Regulation 13 was therefore incorrectly engaged in this case.

Right of appeal

29. 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

30. 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.
31. 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.....

Gemma Garvey
Senior Case Officer

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF