

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 14 August 2020

Public Authority: Essex County Council
Address: County Hall
Chelmsford
CM1 1QH

Decision (including any steps ordered)

1. The complainant requested from Essex County Council ("the Council") information about the Council's decision-making process and enforcement action relating to a highway encroachment case. The Council disclosed some information in response to the request and withheld the remaining information under regulation 12(5)(b) (course of justice) of the EIR. The Council also provided information which contained some redactions in accordance with regulations 12(3) and 13(1) (third party personal data) of the EIR.
2. The Commissioner's decision is that the Council correctly applied regulation 12(5)(b) to most of the withheld information. Where regulation 12(5)(b) was not engaged, the Council correctly applied regulations 12(3) and 13(1) to withhold the remaining information. Therefore, the Commissioner does not require the Council to take any steps as a result of this decision.

Background information

3. The complainant raised a concern with the Council about his neighbour's encroachment of the highway. The Council provided assurances to the complainant that the matter was being investigated, but stated that it would be a lengthy legal process which would not be quickly resolved.
4. The complainant subsequently submitted a request for information to the Council on 3 September 2018 about its decision-making process and enforcement action relating to the encroachment case.

5. On 9 November 2019, following the Council's refusal, he contacted the Information Commissioner to complain about the way his request for information of 3 September 2018 had been handled. Following an investigation of that complaint, the case under reference FS50801349 was progressed to a decision notice¹, which was served on 18 June 2019. The decision notice concluded that the Council did not hold any further information within the scope of the complainant's request.
6. The complainant appealed against the decision notice to the First-tier Information Rights Tribunal (FTT) on 5 December 2019. The appeal was upheld².
7. The Tribunal noted in its judgement that "*[the complainant] may need to make further requests for more recent information that has been generated by the Council in relation to this matter, if that is what he seeks*" (paragraph 36). The Commissioner understands that this comment led the complainant to make the request below.

Request and response

8. On 12 December 2019, the complainant wrote to the Council and requested information in the following terms:
 - (1) "*All the information the enforcement team hold in relation to [address redacted] from September 2018-Present day.*
 - (2) "*I would also like to have any correspondence the enforcement team have had with [name redacted] and CEO [name redacted]. This is so I can determine what actions the enforcement have taken.*
 - (3) "*My last request is for the name of the person who is now responsible for this policy having replaced [name redacted]."*

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615299/fs50801349.pdf>

² EA/2019/0207

9. On 14 January 2020 the Council responded and confirmed that it held the information requested. The Council withheld the information under regulation 12(5)(b) and regulations 12(3) and 13 (personal information) of the EIR.
10. On 16 January 2020 the complainant asked the Council for an internal review in relation to all parts of his request, specifically, he stated that this was so he could make a complaint to the ICO and again to the FTT.
11. On 17 February 2020 the Council provided its internal review response. It maintained its original position to withhold the information under regulation 12(5)(b) and regulations 12(3) and 13(1) of the EIR.

Scope of the case

12. The complainant contacted the Commissioner on 19 February 2020 to complain about the way his request for information had been handled. Specifically, the complainant stated his concern was regarding the exceptions which the Council applied to the withheld information.
13. During the course of the Commissioner's investigation, the Council reviewed the information relating to part 1 of the request and revised its response. The Council said that six documents had been identified within the enforcement file and considered that this would not attract legal professional privilege. The Council therefore disclosed this information to the complainant. It maintained the refusal under regulation 12(5)(b) for the remaining content of the enforcement file.
14. With regards to part 2 of the request, the Council stated that the information was not held and confirmed that there had not been any correspondence between its Highways Enforcement Team and the two individuals named in the request. This was explained to the complainant previously under the Council's request reference ECC5731415 11 18. The Council clarified again to the complainant under its request reference ECC8216108 01 20 that the information was not held.
15. The Council, however, stated that also within a previous response it had provided the complainant with information which included correspondence between the CEO and Customer Services who liaised with the Enforcement Team. Some of the information was redacted as the Council considered that it consisted of personal data of third parties.

16. The complainant was asked to confirm the information he was seeking, he stated to the Commissioner that he still wanted information within the scope of part 1 of his request. The complainant notified the Commissioner that he did not wish the scope of this case to cover parts 2 and 3 of his request. The Commissioner notes that the Council had confirmed that some of the information was not held to part 2 of the request, and it disclosed redacted information to the remaining part of this. With regards to part 3, the complainant accepted the Council's explanation relating to the contact details of the officer. Therefore, the following analysis will not focus on parts 2 and 3 of the request.
17. The Commissioner has noted the decision of the FTT which the complainant referred to in his initial complaint, and which is described in the background information above. However, as the information in question within this notice was not considered by the FTT in that case, nothing in that judgement is relevant to the consideration of the exceptions in this particular case. In any event, decisions of the FTT are not binding upon the Commissioner.
18. The following analysis focuses on whether the Council correctly withheld the non-disclosed information within the scope of part 1 of the request under regulation 12(5)(b) and under regulations 12(3) and 13(1) of the EIR.

Reasons for decision

Is it environmental information?

19. Regulation 2(1) of the EIR defines what "environmental information" consists of. The relevant parts of the definition are found in 2(1)(a) to (c) which state that it is information in any material form on:

"(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements..."

20. The Commissioner considers that the phrase "any information...on" should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner's opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor, etc. in question.
21. In this case the withheld information relates to measures which will have an impact on the use of land. The Commissioner considers that the information, therefore, falls within the category of information covered by regulation 2(1)(c) as the information can be considered to be on a measure affecting or likely to affect environmental elements and factors listed in regulations 2(1)(a) and (b). This is in accordance with the decision of the Information Tribunal in the case of *Kirkaldie v IC and Thanet District Council* (EA/2006/001)³.

Regulation 12(5)(b) – course of justice

22. Regulation 12(5)(b) of the EIR provides that a public authority can refuse to disclose information if its disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature. Consideration of this exception involves two stages. First the exception must be engaged. Secondly, the exception is subject to the public interest test, which means that unless the public interest in the maintenance of the exception outweighs the public interest in disclosure, the information must be disclosed.
23. Covering first whether the exception is engaged, the issue for the Commissioner here is whether disclosure of the requested information would adversely affect any of the matters referred to in regulation 12(5)(b). In order for the Commissioner to accept that an adverse effect would result, this outcome must be more likely than not.

³<http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i94/Kirkaldie.pdf>

24. The Commissioner accepts that "an inquiry of a criminal or disciplinary nature" is likely to include information about investigations into potential breaches of legislation, for example, planning law or environmental law.
25. Whilst, unlike section 42(1) of the FOIA, regulation 12(5)(b) is not limited only to information subject to legal professional privilege (LPP), information that is subject to LPP will be covered by this exception.
26. The Commissioner considered the Council's arguments and reviewed the withheld information. She recognises that the information consists of legal advice and associated correspondence which relates to the live subject of the decision-making process about a specific enforcement action concerning a highways boundary.
27. The advice was provided by the Council's legal advisors acting for Essex Highways and includes information and correspondence it received from third parties.
28. There are two categories of withheld information, one contains correspondence passed between the client - Essex Highways ('EH') and Essex Legal Services ('ELS' - a department of the Council). This correspondence consists of legal advice from a professional legal adviser, acting in that capacity in relation to a specific matter. The advice provided was for the dominant (main) purpose of providing legal advice. The second category is withheld information comprising of correspondence between EH and the potential defendant.
29. The Council quoted the following statement: *"'Legal advice' is broadly construed to include not just advice on the law but advice as to what should prudently and sensibly be done in the relevant legal context (Three Rivers District Council and others v Bank of England [2004] UKHL 48)."*
30. With regards to the correspondence between EH and ELS, the Council considers that the letters and emails which have been withheld, would attract legal advice privilege and disclosing them would adversely affect the course of justice. The Council said the reason is because it would involve public access to privileged information when the case is still 'live'. It also said that *"Disclosure of the advice would provide an indication of the arguments, strengths or weaknesses which the council might have, unbalancing the level playing field under which adversarial proceedings in a criminal prosecution are meant to be carried out."*

31. With regards to the correspondence between EH and the potential defendant, the Council explained that the letters and/or emails between these parties are sensitive and confidential. The Council considered disclosure of this information would adversely affect the course of justice. It said that during the course of the investigation, the Council also considered that legal advice privilege applied to all correspondence in this matter which had passed between the client, EH, legal advisors and ELS. These documents, it stated, were gathered to support the potential criminal proceedings.
32. The Commissioner accepts that the information has the necessary requirements to fall within the scope of legal advice privilege, which applies to confidential communications between a legal adviser and the client - EH, made for the main purpose of giving legal advice. The reason is that the legal adviser gave EH advice in a legal context regarding the topic in question, which was a highway encroachment case.
33. The correspondence between EH and the potential defendant is also considered by the Commissioner to be information which has the necessary requirement to fall within the scope of legal advice privilege. From viewing this correspondence, it is clearly sensitive and confidential information, and could be used as evidence if any criminal proceedings took place. The Commissioner considers that disclosure of this information would adversely affect the course of justice. Also, the fact that it would involve public access to privileged information when the case is still "live."
34. The maintenance of LPP is integral to the course of justice and in any case where this was not maintained, there is a strong likelihood that the course of justice would be adversely affected. In this case, there is the added factor that the process which the withheld info relates to, was ongoing at the time of the request. The Commissioner accepts that not maintaining LPP in this situation would mean a very strong likelihood of an adverse affect to the course of justice. Therefore, regulation 12(5)(b) is engaged.
35. Whilst regulation 12(5)(b) applies to most of the withheld information based on the above analysis, it does not apply to all of the information which falls within the scope of the request. The Commissioner will consider later in this decision notice whether the Council was correct to apply regulation 13(1) of the EIR to some of the withheld information.

Would disclosure have an adverse effect on the course of justice?

36. The Commissioner understands that LPP exists to protect the confidentiality of communications between a person and their legal adviser. This is a fundamental principle underpinning the justice system and the Commissioner accepts that advice on the rights, obligations and liabilities of a public authority will be relevant to the course of justice.
37. The Commissioner also understands that the maintenance of LPP is integral to the course of justice and that in any case where this was not maintained, there is a strong likelihood that the course of justice would be adversely affected. In this case, there is the added factor that the process which the withheld information relates to was ongoing at the time of the request. Therefore, the Commissioner accepts that not maintaining LPP in this situation would mean a very strong likelihood of an adverse affect to the course of justice.
38. In view of the above, the Commissioner is satisfied that it is more probable than not that disclosure of some of the withheld information would result in a loss of confidentiality, which in turn would adversely affect the course of justice. The exception provided by regulation 12(5)(b) applies to some of the information and therefore the exception is engaged.

The public interest test

39. Regulation 12(1)(b) requires that, where the exception under regulation 12(5)(b) is engaged, a public interest test should be carried out to ascertain whether the public interest in maintaining the exception outweighs the public interest in disclosing the information. In carrying out her assessment of the public interest test, the Commissioner is mindful of regulation 12(2) which states that a public authority shall apply a presumption in favour of disclosure.

Public interest in favour of disclosing the information

40. The Council considers disclosure of the requested information could demonstrate how public funds are being spent as part of the Council's responsibilities in respect of its investigation. The Council also considers that releasing the information could satisfy the public that the investigation is being properly conducted.
41. The Commissioner recognises that disclosure of the information would enable the public to see that legal advice was sought and received with regards to this encroachment case. This would serve the public interest because it would demonstrate that decisions were made on the basis of that advice.

Public interest in favour of maintaining the exception

42. The First-tier Tribunal has noted previously that the public interest in maintaining confidentiality on information falling within the scope of LPP is strong. Factors in favour of LPP being maintained include:
- Public authorities need the ability to communicate freely with legal advisors in confidence and to receive advice in confidence.
 - If legal advice were routinely disclosed this would act as a disincentive to seek advice or to provide full and frank instructions.
 - If legal advice were routinely disclosed caveats and qualifications might be given which would prevent free and frank correspondence.
 - Legal advice may include arguments for and against a course of action which can undermine public confidence in decision making. Without comprehensive advice the quality of decision making would be reduced as it would not be fully informed and balanced.
43. The Council stated that *"The enforcement file must remain confidential to be effective when formal proceedings are brought in the very near future."* It also explained that this is an ongoing investigation about highway encroachment and disclosing the withheld information could prejudice the investigation.
44. The Council believes that *"disclosure of the information could identify any possible offences and could allow an individual(s) to assess whether they and/or their methods have or have not been identified. Armed with this knowledge, individuals may take steps to destroy evidence or avoid detection."* The Council argued that although there is public interest in the investigation in question and the enquiries the Council are carrying out (*"in order to identify any possible wrongdoing of offender(s)"*) it considers that there is a greater public interest in ensuring that the investigation process and any potential proceedings are not hindered by disclosure.
45. The Commissioner has recognised that matters relating to a highways encroachment case are of legitimate public interest. In line with this, she also recognises that it is in the public interest to protect the ability of the Council to act as necessary in relation to this matter, including preserving its ability to receive confidential legal advice on matters relating to the encroachment case. The Commissioner considers this a valid public interest factor in favour of the exception being maintained in this instance.

Balance of the public interest arguments

46. The Commissioner's published guidance⁴ on regulation 12(5)(b) states the following:

"In relation to LPP, the strength of the public interest favouring maintenance of the exception lies in safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice."

47. In the Commissioner's opinion, there will always be a strong argument in favour of maintaining LPP because of its very nature and the importance of it as a long-standing common law concept.
48. The Commissioner is assisted by the Upper Tribunal's comments in *DCLG v Information Commissioner & WR*⁵. The Upper Tribunal accepted that the risk of the disclosure of legally privileged information, leading to a weakening of confidence in the general principle of LPP, was a public interest factor of "very considerable weight" in favour of maintaining the exception. It added that there would have to be "special or unusual factors" in a particular case to justify not giving it this weight.
49. This does not mean that the arguments favouring public disclosure need to be exceptional, but they must be at least as strong as the interest the LPP is designed to protect as described above.
50. The public interest inherent in this exception will always be strong due to the fundamental importance of the general principle of upholding the administration of justice, and in particular, the importance of not prejudicing inquiries and matters which might end up before the courts.
51. The Commissioner acknowledges that the withheld information is confidential and relates to an ongoing investigation about highway encroachment. She accepts that the information which consists of the legal advice on such matters could prejudice the investigation if disclosed, also in order to be effective when future formal proceedings are brought in, the information should remain confidential.

⁴ https://ico.org.uk/media/for-organisations/documents/1625/course_of_justice_and_inquiries_exception_eir_guidance.pdf

⁵ [2012] UKUT 103 (AAC)

52. The Commissioner recognises the importance of protecting a public authority's ability to defend its position properly and fairly without the other side being put at an advantage by not having to disclose its own legal advice in advance.
53. The Commissioner has consistently recognised the principle that public authorities should be able to consult with their lawyers in confidence to obtain legal advice. Any fear of doing so, from the result of disclosure, could affect the free and frank nature of future legal exchanges or it may deter them from seeking legal advice.
54. In this case, the Commissioner accepts that disclosure would be likely to affect the candour of future exchanges between the Council and its legal advisers, which could lead to advice that is not informed by all the relevant facts. In turn this would be likely to result in poorer decisions made by the Council because it would not have the benefit of thorough legal advice.
55. The Commissioner appreciates that in general there is a public interest in public authorities being as accountable as possible in relation to their decisions. She also accepts there is a clear public interest where those decisions concern activities that could have significant impacts on the environment, such as land use.
56. The Commissioner also notes that the Council, following a review of the information contained in the enforcement file, had disclosed to the complainant some information which goes some way towards meeting his interest. This included a copy of a map, water plan, a Land Registry document, and correspondence regarding planning permission, all concerning the boundary dispute in question.
57. It is clear to the Commissioner that the complainant has not accepted the action taken by the Council, and that he is seeking further information relating to updates on the progress of the boundary dispute. The Commissioner is of the view that disclosing the remaining information would undermine the Council's legal position and impede its ability to oversee the highways boundary, and that this would not be in the public interest. In other words, disclosing the information would potentially harm the interests the complainant is seeking to promote.
58. The Commissioner has seen no evidence to suggest that the Council has misrepresented its position, nor that there has been any lack of transparency over the issue. The issue is ongoing, and whilst this is the case, it is clear that a disclosure of the advice it is working to could detrimentally affect its ability to present and support its legal case before the courts should it need to do so.

59. The Commissioner recognises that the complainant's arguments for disclosure are based on his concerns that the alleged unlawful encroachment of the public highway is being investigated by the Council, and that he does not accept the action that has been taken regarding the matter. However, it is not the Commissioner's role to adjudicate in such matters. Moreover, she considers that the fact that the case is ongoing strengthens the Council's concerns regarding the timing of any disclosure. A disclosure at the current time, exposing the advice supporting the Council's legal position whilst this matter is ongoing, is a strong public interest factor in favour of the exception being maintained.

Conclusion

60. Having considered all the circumstances in this case, the Commissioner is of the view that the Council's right to obtain legal advice in confidence outweighs the public interest in disclosure. The Commissioner has seen no evidence of wrongdoing, and has not identified any significant factors that would counter the weighty public interest in protecting the principle of LPP. The Commissioner has concluded that the public interest test supports the maintenance of the exception.
61. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions. As stated in the Upper Tribunal decision *Vesco v Information Commissioner (SGIA/44/2019)*, *"If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure..."* and *"the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations"* (paragraph 19).
62. As covered above, in this case the Commissioner's view is that the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(5)(b) was applied correctly to most of the withheld information.

Regulation 12(3) / regulation 13(1) – third party personal data

63. 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.
64. In this case the relevant condition is contained in regulation 13(2A)(a)⁶. 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”).
65. 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.
66. 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?

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

“any information relating to an identified or identifiable living individual”.

68. The two main elements of personal data are that the information must relate to a living person, and that the person must be identifiable.
69. 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.
70. 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.

⁶ As amended by Schedule 19 Paragraph 307(3) DPA.

71. In this instance, some of the information where regulation 12(5)(b) has been engaged, and which was redacted, consists of the names of staff involved in providing administrative support in communications, or recording information in relation to the case. This information relates to question 1 of the request. In addition, the remaining information where regulation 12(5)(b) is not engaged relates to the data of a third party.
72. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information is regarding a third party. She is satisfied that this information both relates to and identifies the third party concerned. This information therefore falls within the definition of "personal data" in section 3(2) of the DPA.
73. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the EIR. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
74. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

75. Article 5(1)(a) of the GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

76. In the case of an EIR request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
77. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

78. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that "*processing shall be lawful only if and to the extent that at least one of the*" lawful bases for processing listed in the Article applies.
79. The Commissioner considers that the lawful basis most applicable in determining whether to disclose personal data in response to a request under the FOIA or EIR is basis 6(1)(f), which states:

"Processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"⁷

80. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under EIR it is necessary to consider the following three-part test:

i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information

ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question

iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

81. The Commissioner considers that the test of "necessity" under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

82. In considering any legitimate interest(s) in disclosing the requested information under the EIR, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.

⁷Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, regulation 13(6) EIR (as amended by Schedule 19 Paragraph 307(7) DPA) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

83. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
84. The information in this case constitutes personal data as it is the names of employees who had provided administrative support for this case and of a third party. Most of the information relates to communications between the complainant and the officers handling the enquiries.
85. The Commissioner is aware of the complainant's legitimate interest in ensuring that the alleged unlawful encroachment of public highway is being investigated by the Council. However, she does not consider that there is any wider public interest in the disclosure of the Council's employees' personal data. It is noted that the complainant is the only person to have raised this issue regarding his neighbourhood, and there had not been any other complaints received by the Council on this matter. The Commissioner is of the view that the disclosure of this personal data would not provide the complainant with any advantage in pursuing his aim of receiving regular updates on the enforcement case. She also notes that the employees in question are not in decision making roles.

Is disclosure necessary?

86. "Necessary" means more than desirable, but less than indispensable or of absolute necessity. Accordingly, the test is one of reasonable necessity, and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the EIR must therefore be the least intrusive means of achieving the legitimate aim in question.
87. The Council argued that disclosure of the names of the staff is not necessary, as this information is personal data of those involved in general administrative tasks in communications or recording information in relation to the investigation. The Council said that providing the information to the complainant would not affect the decisions or outcomes of the investigation which the Council is carrying out as part of their statutory duties under Section 130 of the Highways Act 1980. This, it said, *"would affect the fundamental rights of the data subjects whose personal data would be disclosed to the world at large if included in the response to this request."*

88. The Council stated that personal data i.e. email addresses of staff below service manager level is not placed in the public domain. The Council explained that it has a call centre to triage enquiries and direct the public to the correct person/department. It said that *“Providing or publishing email addresses of individual staff can cause the public to contact the wrong person and delay their access to the correct department. It can also increase the workload of the named officer and on occasion can cause distress through unwarranted or unreasonable levels of contacts. The other named staff members were administrative staff logging data onto a corporate system. There is no relevance or correlation to the subject matter of the request which makes it necessary, proportionate or justifiable to provide personal data of those staff to the world at large.”*

The Commissioner's conclusion as to whether disclosure is necessary

89. The Commissioner accepts the Council's argument that it is not necessary for the Council to disclose information about junior officers. She notes that the redacted information relates to the names of employees who had provided administrative support for this case. Their names in this instance, relate to their employee status.
90. The Commissioner considers that the withheld information which is not engaged under regulation 12(5)(b) is the data of a third party. Therefore her view is that the Council was correct to apply regulation 13(1) to this information.
91. The situation with a disclosure under the EIR is that that information is considered to be to the whole world, which is a far wider degree of disclosure than through general day to day business.
92. The Commissioner considers that there is no legitimate interest in the disclosure of the names of the Council's staff. At this level they are accountable to the Council, as its employees rather than to the public as a whole for their actions.
93. The Commissioner has consistently maintained in previous decision notices that, whilst it might be appropriate for senior staff to be held publicly accountable for decision-making, there is little public interest in identifying junior or mid-level staff who are ultimately responsible to the Council for such matters rather than directly to the public.
94. On consideration of the above, the Commissioner finds that, in this case, it is not necessary for the Council to disclose this information – names of the Council's staff to the complainant in order for it to meet the legitimate interests of the public.

95. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest in disclosure, she has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a).
96. Given the above conclusion that disclosure would be unlawful, the Commissioner does not need to go on to separately consider whether disclosure would be fair or transparent.

The Commissioner's view

97. The Commissioner has therefore decided that the Council was entitled to withhold some of the information under regulation 13(1), by way of regulation 13(2A)(a).
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Right of appeal

98. 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: 0116 249 4253

Email: grc@justice.gov.uk.

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

99. 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.

100. 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

Phillip Angell
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