

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 10 February 2023

Public Authority: North Yorkshire County Council

Address: County Hall
Racecourse Lane
Northallerton
North Yorkshire
DL7 8AL

Decision (including any steps ordered)

1. The complainant requested from North Yorkshire County Council (the Council) information regarding Long Lane and Selby Road, Wistow. The Council provided information in response to the request but with some redactions as it constituted third party personal information, and therefore relied on regulation 13(1) of EIR. The Council considered that all of the recorded information held relating to this request and which is not exempt, had been provided to the complainant. It also confirmed it does not hold further information within the scope of the request.
2. The Commissioner's decision is the Council was entitled to withhold information under regulation 13(1) of EIR. He also determined that on the balance of probabilities, the Council does not hold further information within scope of the request. The Commissioner does not require the Council to take any steps as a result of this decision.

Request, background and response

3. On 20 April 2022, the complainant wrote to the Council and requested information in the following terms:

"Please can you provide me with the following.

1. Complaints about blocked gullies on Selby Road Wistow.
2. Complaint made about defects on same road.
3. When the road has been swept.
4. Maintenance logs for the same road and inspections.
5. Works done on the same road.

All the above for the last three years to date.

Long lane, Wistow Selby.

Please provide the same as above.

Just to be clear, Selby Road was cleaned, long Lane has been cleaned, and long lane further away from the village was cleaned by the farmer.

Can you give me proof?

As I understand you are saying the flooding earlier this year February was caused by the farmer?

Can you prove this, e.g. reports pictures who visited etc

All my complaint logged on your system, can you give me all your information relating to each one, E.g. pictures, what if any action was recommended or done."

4. On 4 May 2022 the Council responded and provided information (copies of documents) in relation to the outcomes following the complainant's concerns about blocked gullies and road defects (questions 1 and 2 of the request). The Council also provided information – maintenance logs, inspections and works completed in respect of Selby Road and Long Lane, Wistow (questions 3, 4 and 5 of the request). With regard to question 3, the Council provided the complainant with clarification about contractors, it also provided him with an information leaflet and directed him to another Council - Selby District Council, as this Council has responsibility for street cleansing in the area.
5. However, within the supplied documents, the Council redacted third party personal information and cited regulation 13(1) of EIR. With regard to the complainant's remaining questions, the Council did not respond and explained that this is due to the on-going corporate complaint which was being completed at the time of the complainant's request.

6. On 5 May 2022 the complainant acknowledged the Council's response and clarified his request for information in the following terms:
 - "1. All my complaints listed on your online system. Each one detailing when, who (initials will do so not to reveal the full id of the officer) and any other information about how you dealt with the faults. Including pictures etc. Just saying cleared is not good enough.
 2. Can you provide the cleaning records for all the gullies within the Wistow village, this NYCC is responsible for last three years.
 3. Complaints made to you about Selby Road and Long Lane, Wistow. Same again showing when, who and how you dealt with every one, pictures etc. Can you also give me a list of abbreviations so I can understand the data last three years again.
 4. Regarding the flooding on two separate years 2021+2022 can you give me details again about who, when and what you did. Pictures to back up you replies etc."
7. On 10 May 2022 the Council logged the clarified request for internal review.
8. On 18 May 2022 the Council provided the complainant with its internal review response. With regard to question 1 of the request, the Council advised that he had already received all information held but provided further clarification of its inspection processes in respect of photographs. Question 2, the Council provided additional information. It also noted that it does not have access to or hold any information on "gully cleaning post 2018" due to a change in contractor. Question 3, the Council provided all information along with a list of abbreviations which the complainant had requested. Regarding question 4, the Council provided all the recorded information held concerning "flooding", it also provided further clarity to the information already supplied by advising the complainant that the specific flooding issues were being discussed by the landowner and Yorkshire Water Authority.
9. On 19 May 2022 the complainant contacted the Commissioner to complain about the way his request for information had been handled. Specifically, he said he wanted to complain about the Council not providing him with the information requested under FOIA.
10. During the Commissioner's investigation of the case, the Council was asked to provide its final reasoning as to why its handling of this request was compliant with the EIR. The Council responded, it provided the Commissioner with a summary and reasoning of its responses to the request.

11. The Council said the complainant had received all of the recorded information held concerning his request, it had presented additional comments and background information to the complainant in order to enable him to understand the Council's position better in respect of his complaints. The Council stated it had redacted third party personal information within the supplied documents, and explained its reasons for withholding this information.
12. The Commissioner subsequently asked the complainant to clarify the parts of his request he considered to be outstanding. However, the complainant did not provide clarification but expressed his opinion that the Council had not "followed the law". The Commissioner will therefore use his discretion and focus on whether the Council was entitled to withhold some of the information under regulation 13(1) of EIR. Also, whether on the balance of probabilities, the Council holds further information within scope of the request.

Reasons for decision

Regulation 13 – personal information

13. Regulation 13(1) of EIR provides that information is exempt from disclosure if it is the personal data of an individual other than the requester, and if its disclosure would otherwise breach any of the data protection principles.
14. 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 UK General Data Protection Regulation ('UK GDPR').
15. The withheld information in this case, constitutes the personal data of a third party, specifically members of the public that have made complaints to the Council. Also, comments held on the system which were provided by Council Highways staff following inspections.

¹ As amended by Schedule 19 Paragraph 307(3) DPA 2018

16. The Commissioner accepts the information relates to complaints and comments regarding Long Lane and Selby Road, Wistow, and it is therefore personal information of local residents and employees. Disclosure under FOIA or EIR is effectively an unlimited disclosure to the world at large, without conditions.
17. The Commissioner acknowledges that the complainant considers they have a legitimate interest in the disclosure of the withheld personal information. However, the Commissioner must balance the legitimate interests in disclosure against the data subjects' interests or fundamental rights and freedoms.
18. In this case, the Commissioner believes that the complainant is pursuing a legitimate interest. The complainant has requested information relating to work on a specific lane and road in Wistow. He has requested this information as he has concerns about the gullies and flooding in the area, and is seeking information on how the Council dealt with the faults. Whilst the Commissioner accepts the complainant is pursuing a legitimate interest, he does not consider disclosure of the withheld information is necessary to meet that interest.
19. Having viewed the withheld information, the Commissioner considers the names of third parties and other personal data which the Council withheld, would not add any value or be beneficial to the complainant. It is also noted that the names are not part of the request for information.
20. The Commissioner is satisfied that the individuals concerned - local residents that submitted complaints to the Council, would have reasonable expectations that their personal information would not be disclosed to the wider world in response to an EIR request. Also, the Council employees would not expect their details to be disclosed in this way. Disclosing the residents' and employees' personal data would be likely to cause them harm or distress.
21. Other than the requester's own personal interest, the Commissioner has not seen any evidence of a wider public interest to weigh in favour of disclosure of the withheld information, apart from the general interests of transparency and openness.

The Commissioner's conclusion

22. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. He considers the disclosure of the information in question, would contravene a data protection principle as it would not be lawful.

23. Therefore, the Commissioner concludes that the information is exempt under regulation 13(1) of the EIR and the Council was entitled to withhold some of the information.

Regulation 12(4)(a) – information held / not held

24. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
25. Regulation 12(4)(a) of the EIR allows a public authority to refuse to disclose recorded information if it does not hold that information when a request is received.
26. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
27. In this case, the complainant strongly believes the Council has not provided him with all the information he requested. He considers the information the Council disclosed was “patchy and all facts were not disclosed.”
28. During the investigation, the Council was asked to provide the Commissioner with full details of its searches to support its conclusions.
29. The Council confirmed that it does not hold any further recorded information in respect of the complainant’s request (clarified request of 5 May 2022). It also described the searches carried out to check whether any information was held within the scope of the request (emails/correspondence).
30. Regarding the searches, the Council said information is held on the “Lagan” database, which is the Council’s service request reporting software. This software, the Council explained, transfers the service request through to “Symology” where the customer services, cyclical inspection modules hold the details, all of which has been provided to the complainant. The information requested in this instance, is held on software which is part of network resources and was not held in personal emails or accounts.

31. The Council explained that the use of the terminology of the systems in place, has caused some confusion regarding information which was provided to the complainant. The Council said the information is on both systems but exactly the same, and the complainant believes because he was provided information through Symology, he has not received all of the information requested. The Council stated the information held in Symology is exactly the same on Lagan but that the data cannot be exported from Lagan in a reportable format.
32. The Council confirmed it does not hold all of the information requested, and the complainant has been advised that the Council are not the Street Cleansing Authority. Therefore, it does not hold records of road sweeping or farmer activity. This information, the Council said, is held by Selby District Council. The complainant was provided with details to contact the district council for information. The Council added that it only inspects the roads and records findings and outcomes.
33. Some of the information requested by the complainant refers to land drainage, the Council said this is the responsibility of the private landowner/farmer and not the Council. Relevant information which the Council is aware of, was provided to the complainant in respect of the farmer working with Yorkshire Water Authority (YWA) to resolve the issues. However, the Council confirmed that it does not hold recorded information regarding details of these issues as this would be held by YWA.
34. The Council confirmed a thorough search of its records was conducted and there is no further recorded information held in scope of this request. If the information was held, the Council said it would be held across the Council's service request reporting software "Lagan" and on "Symology" used by the highways service area.
35. Regarding recorded information held relevant to this request having been deleted/destroyed, the Council said there had not been any. The Council stated information would have been held by a third party contractor but due to a change in contractor in 2018, the Council is unable to access nor does it hold any information regarding works carried out by its previous contractor.
36. The Council confirmed it has a records management policy, and no information relevant to the request has been deleted. Therefore, retention schedule for this type of data is not relevant in this case. The Council also confirmed the information is held for the purpose of the highways service area to inspect the public highway and record findings and outcomes. There is no statutory requirement upon the Council to retain the requested information. The Council said the information is retained as a record for operational purposes/service delivery.

37. The Council presented the Commissioner with information which related to this request, but had been provided to the complainant during the corporate complaint.
38. The Commissioner considers that the Council has carried out adequate searches for information within the scope of the request. Therefore, his decision is on the balance of probabilities, the Council does not hold further information within the scope of the request, and the exception provided by regulation 12(4)(a) (information not held) is engaged.
39. Regulation 12(4)a is subject to the public interest test. However as the Commissioner has determined no further information is held, the only conclusion he can draw is that the public interest in maintaining the exception outweighs any public interest in disclosure.

Right of appeal

40. 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@justice.gov.uk.

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

41. 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.
42. 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

Joanna Marshall
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