

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 4 July 2023

Public Authority: South Hams District Council
Address: Follaton House
Plymouth Road
Totnes
TQ9 5NE

Decision (including any steps ordered)

1. The complainant requested pre-application planning information in relation to their own property. South Hams District Council (the Council) provided some information and stated that other information was not held. The Commissioner's decision is that the request falls under the EIR, but that regulation 5(3) of the EIR applies as the information is the complainant's own personal data. This means that the Council was not obliged to comply with the request. The Commissioner does not require any steps.

Request and response

2. On 5 January 2023 the complainant wrote to the Council and requested information in the following terms:

"I request under the Freedom of Information act to see all correspondence South Hams District Council have including within and external verbal conversations, written e-mails, letters, anything relating to our pre-application at [address and pre-planning reference number redacted]"
3. The Council responded on 19 January 2023 and provided some information, subject to some third party personal data being redacted

under regulation 13 (personal data) of the EIR. The Council also advised that a virtual Teams meeting had taken place to discuss the pre-application, but no notes or minutes were taken of the meeting. However, the Council confirmed that the points discussed in the meeting were outlined in the pre-application advice response provided on 3 January 2023.

4. The complainant requested an internal review on 21 January 2023 as they were not happy with the Council's position that no recorded information was held in relation to the Team meeting that had taken place.
5. The Council provided its internal review on the 7 February 2023 upholding its initial response that no further recorded information was held.

Scope of the case

6. The complainant wrote to the Commissioner on 30 April 2023 to complain about the way their request for information had been handled.
7. The Commissioner considers the scope of the case is to determine whether the request falls under the EIR rather than the FOIA.
8. The Commissioner has also used his discretion to determine whether the request is a request for the complainant's own personal data.

Reasons for decision

Is the request a request for environmental information?

9. The Commissioner has first considered whether the requested information would constitute environmental information as defined by regulation 2(1) of the EIR.
10. In this case the request relates to the complainant's own pre-planning application. The Commissioner considers that planning and development of land is a measure which is likely to affect the elements of the environment, namely land land landscape and therefore the request falls to be considered under the EIR.

Regulation 5(3) – the exemption for personal data - the complainant's own personal data

11. The duty to make environmental information available on request is imposed by regulation 5(1) of the EIR. Regulation 5(3) provides that regulation 5(1) does not apply to information that is the personal data of the requester. The Commissioner has first considered whether any of the requested information is the personal data of the complainant. If it is, the EIR did not require the Council to disclose this information.
12. Section 3(2) of the DPA defines personal data as:
"any information relating to an identified or identifiable living individual".
13. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable. 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 or an online identifier; or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual. 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.
14. In this case, the Commissioner has considered the request and the matter to which it relates – a pre-planning application which the complainant has submitted in respect of a property that they own. It is clear to the Commissioner that the complainant is identifiable from the information and the information is significant and biographical to them.
15. When deciding whether a request relates to an individual, it is important to consider the circumstances in which the relevant information is held. For example, it may be the case that certain information held by a public authority may not be personal data when held in isolation. However, if it is subsequently used for another purpose, for example, in order to make decisions that directly affect or have an impact on an individual, or individuals, it could then become personal data.
16. Having considered the complainant's request and the purposes for which it has been made, the Commissioner is satisfied that it relates to the complainant. It is a request for information that is connected to, and reveals something about them; it concerns matters that directly affect the complainant, and would be processed for purposes that will have an impact on them.

17. Therefore, the Commissioner concludes that as the request for this type of information identifies and relates to the complainant, it is a request for their own personal data.
18. As the Commissioner is satisfied that the request relates to the complainant's own personal data, he finds that the exception at regulation 5(3) of the EIR is engaged.
19. As the exception provided at regulation 5(3) is engaged the Council was not obliged by the EIR to disclose the requested information.

Other matters

20. Although they do not form part of this decision notice the Commissioner wishes to highlight the following matters of concern:

Correct access regime

21. In this case, the Council failed to recognise that the complainant had requested their own personal data and did not consider the request under the Data Protection Act 2018 (DPA). Whilst the Commissioner cannot require a public authority to take action under the DPA via a EIR decision notice, in view of his decision that the requested information is the personal data of the complainant, the Council should consider providing a response to the complainant under the DPA in respect of the information they requested

Right of appeal

22. 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

23. 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.
24. 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

Joanne Edwards
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF