

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 12 December 2023

Public Authority: East Suffolk Council
Address: East Suffolk House
Station Road
Melton
Woodbridge
IP12 1RT

Decision (including any steps ordered)

1. The complainant requested information from East Suffolk Council (“the Council”) regarding how the Council had become aware of an alleged planning breach. The Council disclosed some information in response to the request but has withheld the remainder of the information citing regulation 5(3) (personal data of which the applicant is the data subject), regulation 13 (personal data), regulation 12(5)(d) (confidentiality of proceedings) and regulation 12(5)(f) (interests of the information provider) of the EIR as its bases for doing so.
2. The Commissioner’s decision is that the Council is entitled to withhold all of the withheld information under regulation 12(5)(f) of the EIR (interests of the information provider). He has therefore not gone on to consider the other bases for withholding the information cited by the Council.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 3 July 2023, the complainant wrote to the Council and requested information in the following terms:

"Subject: [address redacted]

Hi,

I am [name redacted] and own the above property. We received a letter from the Council (their reference ENF/23/0128/COND) regarding possible breach of control, dated 30th June.

This is from East Suffolk council enforcement team.

Within the letter the council reference that 'it has been confirmed that the fence has not been installed.

Upon calling the council on 3rd July to ask how this has been confirmed to them, they refused to say and quoted 'confidentiality' to me.

They then suggested that they has [sic] seen it for themselves from a distance, however whilst they were here they did not knock on our door to advise or to ask about it.

We know where the complaints have come from as we were threatened by [address redacted]. All we want to know is how this was confined [sic] to the council, was this by pictures, video or letter and copies thereof."

5. The Council responded on 17 July 2023. It stated that "we can confirm that an officer has visited your address and could see what they needed to without gaining access to your rear garden". It also stated, "it is our policy not to reveal the identity of the informant, or information which is likely to reveal the identity of an informant to an alleged offender." It refused to provide copies of the information held, citing the personal information exemption under section 40 (personal information) of FOIA as its basis for doing so.
6. The complainant requested an internal review on 18 July 2023.
7. The Council provided an internal review on 14 August 2023 in which it stated that it had reconsidered the request under the EIR. It continued to withhold the requested information, citing regulations 12(5)(d) (confidentiality of proceedings), 12(5)(f) (interests of the information provider) and 13 (personal data) of the EIR as its bases for doing so.

Scope of the case

8. During the course of the Commissioner's investigation the Council disclosed six photographs taken by a Council Planning Enforcement Officer.
9. It continued to withhold the rest of the information held. It amended its position on its bases for doing so slightly, citing regulation 5(3) (personal data of which the applicant is the data subject) in addition to regulation 13 (personal data), regulation 12(5)(d) (confidentiality of proceedings) and regulation 12(5)(f) (interests of the information provider) of the EIR.
10. The scope of this case is therefore to consider whether the Council was entitled to refuse to provide the information it has continued to withhold on these bases.
11. Where the Commissioner has decided that information is exempt from disclosure under one exception (or other provision of the legislation) he will not consider whether it is also exempt under a second exception (or other provision of the legislation).

Reasons for decision

Regulation 12(5)(f) (interests of the information provider)

12. Regulation 12(5)(f) of the EIR states that:

"a public authority may refuse to disclose information to the extent that its disclosure would adversely affect -

f) the interests of the person who provided the information where that person -

(i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;

(ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and

(iii) has not consented to its disclosure;"

Would disclosure adversely affect the interests of the person(s) who provided the information to the Council?

13. The withheld information consists of information submitted to the Council regarding an alleged planning breach relating to the complainant's property.
14. The Council argues that the information providers can be identified from the withheld information and that it would not be possible to anonymise the information. It argues that if the information providers identities were revealed to the requestor, they would fear reprisals from the requestor and that this would constitute an adverse affect on their interests.
15. As with all the Regulation 12(5) exceptions, the Commissioner considers that, in order to demonstrate that disclosure "would adversely affect" the information providers' interests, a public authority must demonstrate that the adverse effect is more likely than not to occur.
16. Having seen the withheld information the Commissioner considers it clear that disclosure of the information would identify the information providers and that it would not be possible to anonymise the information.
17. Having considered the arguments provided by the Council, the Commissioner is also satisfied that disclosure of the information would cause distress to the individuals, not least because they would be identifiable from that information. A disclosure of such information may cause bad feeling between the property owner and any persons that submitted complaints/information to the council. In these situations, reprisals might be feared by anyone under the circumstances, regardless of who or what they complained about. The fear which would be caused as a result of the disclosure of the information would be against their interests, and it is therefore a strong argument in favour of the exception being engaged
18. The Commissioner considers, that in the circumstances of this case, the fear itself would constitute an adverse effect on the information providers, regardless of whether the reprisals would actually be likely to occur. This fear of this would be harm which is real, actual and of substance (ie more than trivial).

Was the person under, or could have they been put under, any legal obligation to supply the information to the public authority?

19. The Council has confirmed that the information providers provided the information to the Council voluntarily and that there is no legal obligation for the information providers or any other individual to supply

the Council with information regarding an alleged breach of planning control in circumstances such as these.

20. The Commissioner agrees that the information providers were not, and could not have been put, under any legal obligation to supply the information to the Council.

Did the person(s) supply the information in circumstances where the recipient public authority, or any other public authority, was entitled to disclose it apart from under the EIR?

21. The Commissioner's guidance states, "where information has been provided by another person, public authorities will only be able to disclose it if there is no duty of confidence or they have a specific power to do so."
22. The Council has confirmed that the information was provided to them voluntarily and that it was supplied in the expectation that it would not be disclosed to a third party. The Council stated in its submissions to the Commissioner that it had confirmed to the information providers that it would be held confidentially.
23. The Council also stated in its submissions to the Commissioner that its privacy notice states, "When you make a complaint about a possible breach of planning, we will ask for your information as well as information about the alleged breach. We will not publish or disclose any personal details about you or the breach unless we are obliged to by Law".
24. For the above reasons, the Commissioner is satisfied that the Council was not entitled to disclose the information apart from under the EIR.

Has the person(s) supplying the information consented to its disclosure?

25. The Council confirmed in its submissions to the Commissioner that the information providers have not consented to its disclosure.
26. Having found that each of the tests for regulation 12(5)(f) to be engaged are met, the Commissioner's conclusion is that the exception provided by regulation 12(5)(f) is engaged. He has therefore gone on to consider the public interest test.

Public interest test

27. While there is always a degree of public interest in transparency regarding how the Council has handled planning matters, the Commissioner considers the public interest in disclosure of the withheld information to be minimal. The request appears to relate primarily to the

private interests of the requestor rather than the wider public interest. In addition, the Council has disclosed the photographs taken by its Planning Enforcement Officer which goes a long way in meeting the public interest in transparency regarding how the Council has handled this planning matter.

28. In the Commissioner's view the relatively weak public interest in disclosure of this information is far outweighed by the public interest in ensuring that members of the public feel able to submit complaints to the Council regarding planning matters without fear of public disclosure. This is particularly so where the content of the complaint may reveal the individual's identity and place them in fear of reprisals occurring.
29. The Commissioner's decision is therefore that the Council was entitled to rely on regulation 12(5)(f) of the EIR to refuse to provide the requested information.
30. As the Commissioner has found that the Council is entitled to withhold all of the withheld information under regulation 12(5)(f), he has not gone on to consider the other bases for withholding the information cited by the Council.

Regulation 5(3) – personal data relating to the applicant for the information

31. Broadly, regulation 5(1) of the EIR provides that a public authority that holds environmental information shall make it available on request.
32. However, regulation 5(3) provides that to the extent that the information requested includes personal data of which the applicant is the data subject, paragraph 5(1) shall not apply to those personal data.
33. The complainant has requested information relating to them, their actions and about their own property. Therefore, much of the information in question will be personal data relating to them. Where this is the case, regulation 5(3) will apply and the council is not under a duty to provide the information to them under the EIR.
34. The complainant, however, has rights to request copies of their own personal data under the provisions of the Data Protection Act 2018. These rights are subject to exemptions.

Right of appeal

35. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

36. 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.
37. 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

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