

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 29 May 2024

Public Authority: Gloucester City Council
Address: Shire Hall
Westgate Street
Gloucester
Gloucestershire GL1 2TG

Decision (including any steps ordered)

1. The complainant requested information about a proposed site for a mobile phone mast. Gloucester City Council (the "Council") disclosed some information but withheld addresses under the exception for personal information (regulation 13).
2. The Commissioner's decision is that the Council was entitled to apply regulation 13 of the EIR to refuse to provide the requested addresses.
3. The Commissioner does not require further steps.

Request and response

4. On 18 January 2024, the complainant wrote to Gloucester City Council (the "Council") and requested the following information:

"I am requesting an actual photo of the site notice with the meta data of the photo of when it was taken. As soon as I download it the original the meta data is gone. Proposed 5G telecoms installation: H3G 15m street pole and additional equipment cabinets, GLO24828 5G Pole, St James, Quedgeley Gloucester APPLICATION NUMBER: 23/00450/TCM The addresses of all the residence and organisations that were sent letters of this notice and proposed planning of the 15m 5G street pole on St James Quedgeley."

5. The Council responded on 2 February 2024 and disclosed a photo of the site identified in the request. The Council refused to provide the addresses specified in the request, citing the exception for personal information (regulation 13).
6. Following an internal review the Council wrote to the complainant on 29 February 2024. It stated that it was maintaining its reliance on regulation 13 to withhold the requested addresses.

Scope of the case

7. On 5 March 2024 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The complainant considers that the withheld information does not constitute personal information. The Commissioner has considered whether the Council correctly withheld the requested addresses.

Reasons for decision

Is the requested information environmental?

9. Regulation 2(1) of the EIR defines environmental information as being information 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)...as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
10. The request relates to decisions regarding the potential siting of a mobile phone mast. The Commissioner considers that the information, therefore, relates to a measure as defined in regulation 2(1)(c). For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 13 – personal information

11. The withheld information in this case is the "...addresses of all the residence and organisations that were sent letters of this notice and proposed planning of the 15m 5G street pole on St James Quedgeley".
12. The Council refused to disclose the information, citing regulation 13(1)(a) of the EIR. It has done so on the grounds that the requested addresses are the personal data of identifiable individuals.
13. Regulation 13(1)(a) of the EIR provides that information must not be disclosed if it is the personal data of an individual other than the requester, and where one of the conditions listed in regulation 13(2A) is satisfied.
14. As regards whether the request in this case is for personal data, although the request does not name individuals nor ask for their names, it seeks the disclosure of residential addresses of individuals. Following the Tribunal's decision in the case of England & L B of Bexley v

Information Commissioner (EA/2006/0060 & 0066)¹, the Commissioner's established position is that the address of a private property constitutes the personal data of its owner/occupier². Therefore, even without disclosing their names, the individuals in question would remain identifiable from their address and disclosure would reveal biographical details about them, specifically that they had received letters of notice from the Council. The requested information is, therefore, the personal data of the persons residing at the addresses in question.

15. Turning to the conditions that must be satisfied for regulation 13(1)(a) of the EIR to apply, the Commissioner considers that regulation 13(2A)(a)³ is relevant here. This applies where the disclosure of the information to any member of the public would contravene any of the data protection principles relating to the processing of personal data, as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR'). The Commissioner has considered whether disclosure would breach principle (a) of Article 5(1), which states that personal data shall be:

"(a) processed lawfully, fairly and in a transparent manner in relation to individuals ('lawfulness, fairness and transparency')."

16. Disclosure under the EIR is effectively an unlimited disclosure to the world at large, without conditions. The Council argues that disclosing individuals' addresses in response to this EIR request would lead to a loss of privacy which, as it is not justified by any wider public interest in the information being placed in the public domain, would be unlawful and unfair.
17. The Commissioner acknowledges that the complainant considers that they have a legitimate interest in the disclosure of the withheld information, namely that it will assist them in establishing whether the Council are complying with regulations and sending out notices and informing the public about prospective sites for mobile phone masts.
18. However, the Commissioner must balance the complainant's legitimate interest in disclosure against the interests of residents at the addresses or fundamental rights and freedoms. In the Commissioner's view, a key

¹ <https://informationrights.decisions.tribunals.gov.uk/dbfiles/decision/i146/england.pdf>

² See, for example: <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013677/fs50623497.pdf> and https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432001/fs_50558963.pdf

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

issue is whether the individual concerned has a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as their general expectation of privacy, whether the information relates to them in their professional role or to them as private individuals, and the purpose for which they provided their personal data.

19. In this case, the Commissioner is satisfied that the individuals in question would have the reasonable expectation that their personal data would not be disclosed to the wider world in response to an EIR request; this information concerns them in a private, rather than public, capacity. Disclosing this information would, therefore, be unexpected, intrusive, and may cause them distress.
20. The Commissioner has not seen any specific evidence of any wider public interest in the disclosure of the withheld information.
21. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest in disclosure to outweigh the data subjects' fundamental rights and freedoms. The Commissioner also considers that, if the complainant has concerns about the substantive matter or the Council's compliance with planning regulations, these can be pursued without the disclosure of other individuals' personal data under the EIR. He does not consider that EIR is the appropriate remedy in this case.
22. The Commissioner therefore considers that disclosing the withheld information would contravene principle (a) of Article 5(1) of the UK GDPR, as it would not be lawful. Therefore, regulation 13(1) of the EIR applies and the withheld information must not be disclosed in response to the request.

Right of appeal

23. 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

24. 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.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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