

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

Decision notice

Date: 13 February 2018

Public Authority: Mid Suffolk Council
Address: Endeavour House
8 Russell Road
Ipswich
IP1 2BX

Decision (including any steps ordered)

1. The complainant has requested the planning, building control, and environmental control files for his neighbour's adjacent property. During the course of the investigation Mid Suffolk Council released some information from the environmental control file.
2. The Commissioner's decision is that on the balance of probabilities Mid Suffolk Council has provided all the information regarding the requested planning files. The Commissioner is also satisfied that the Mid Suffolk Council is entitled to rely upon the exception for personal data at regulation 13(1) to withhold the remaining information.
3. However Mid Suffolk Council) did not provide the information requested within the statutory timeframe of 20 working days and has therefore breached Regulation 5(2) of the EIR. It also failed to issue a refusal notice within the statutory timeframe of 20 working days and has therefore breached Regulation 14(2) of the EIR. As both a response and a refusal notice have now been issued, the Commissioner does not require the public authority to take any steps.

Request and response

4. On 2 July 2016, the complainant wrote to Mid Suffolk Council ('the Council') and requested information in the following terms:

"a copy of the [1] planning and [2] building control files and [3] environmental control file for [redacted property address]"

5. The Council responded on 22 August 2016 and:

[1] advised that *"Planning files are available via the online planning record on www.midsuffolk.gov.uk or any paper files are available at the Council's planning reception"*. The Council also stated that it found no applications online having checked back to 2008;

[2] refused to provide the building control information citing regulation 12(3) of the EIR, personal data:

"the council generally treats building control information as being personal information relating to the owner of the property";

[3] denied holding the requested environmental control information:

"the only record we hold in our Environmental Health team is from when you alleged some rubbish had been dumped at the back of your property by the residents of [redacted property address] and the council went and cleared the rubbish in June 2015. No contact was made with the occupiers of [redacted property address]."

6. The complainant requested a review on 8 September 2016

7. Following an internal review the Council wrote to the complainant on 12 October 2016 and:

[1] Revised the original position:

"Planning application [redacted] should now be updated on the online planning service. You would not have been supplied with the superseded plans from the application when you visited the offices as they were not the up-to-date ones. You should now be able to view all the documents on the council's website."

[2] Maintained its original position.

[3] Revised the original position:

"During the preparation of papers for review it is has come to light that some Environmental Health records were recorded against the road rather than the property. Following your complaints in June/July 2015 contact was made with the occupier of [redacted property address]. The Council is not disclosing this information as it is the personal data of the occupier of [redacted property address] under Regulation 12(3) "personal data" of the Environmental Information Regulations.

The Council also offered a further review of the changed information.

8. The complainant requested a further review on 2 November 2016:

"I note that you say all of the council's planning documents are on your website but again this is untrue and you now need to explain why documents are missing and concealed by substituted documents from other applications. Please confirm when this will be amended.

The planning file was shown to me when I visited and I was told it was the complete file and nothing had been excluded. This of course was also untrue, but you have made no apology.

Both the Dumping and the Building regs. Files should be released to me as these incidents concern my property and the nuisance they cause me, and I reported the fly tipping incidents by my neighbours and consequently I am entitled to know the redress and outcome of the Councils action."

9. On the 31 March 2017 the Council apologised and advised *"our senior officers who carry out the review have been extremely busy and it has taken longer than expected to schedule the review"*. No further update was subsequently provided to the complainant.

Scope of the case

10. The complainant contacted the Commissioner on 10 May 2017 to complain about the way his request for information had been handled. His stated concern being that the Council:

"Lied; altered and conceals public documents; refused request under FOIA for documents; did not respond; failed to review, investigate and report complaint properly; obfuscate and continues to withhold and conceal public information to protect corrupt officers and their practices; and uses information collected not for its intended purposes to harass me."

11. During the course of the investigation, the Council disclosed the majority of information requested in [3] from the environmental control file. It redacted some information and withheld one document citing regulation 13(1).
12. Taking account of the detailed reasons provided by the complainant in the request for a further review made to the Council on 2 November 2016, and the information requested in [3] provided by the Council

during the course of her investigation, the Commissioner considers that that the scope of this case is:

- a. whether, on the balance of probabilities, the Council is correct with regard to the information it states is not held for request [1];
- b. whether the Council is correct to rely upon regulation 13(1) to withhold the information requested in [2] and to withhold some information relating to request [3];
- c. whether the Council dealt with the information request and review request in accordance with the EIR.

Background to the Case

13. The complainant provided further information as background to his complaint:

- a. A court judgment was issued in October 2013 following court proceedings instigated by the complainant against his neighbour relating to the [redacted property address] ('the Property') boundary and works undertaken.
- b. The complainant took the matter to the local government ombudsman ('LGO'), who summarised in its decision dated 8 December 2016 that *"Mr X complains that Council staff have conspired with a local development, committed perjury during court action and harassed him. He also complains the Council refuses to release information to him."*
- c. The LGO concluded that it *"cannot investigate Mr X's complaint as she cannot consider criminal matters or what happened in court. Also it is reasonable for Mr X to complain to the Information Commissioners Office about the Council's alleged refusal to release information."*
- d. The complainant provided details of further complaints to the Council regarding planning permissions requested and building works on the Property. On 19 June 2017 he outlined his ongoing grievance about the same Council staff (referred to above) inspecting works. The Council responded *"the Council does not accept your unfounded allegations against [redacted] and it is for the Council to determine who will inspect building works at any site."*

Reasons for decision

Section 1 of the FOIA – General right of access to information held by public authorities

Regulation 5 – Duty to make environmental information available on request

14. Section 1(1) of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
15. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request.
16. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
17. With regard to part [1] of the request relating to the online planning application for the Property, the Commissioner found one document incorrectly filed that is not relevant to the application for the Property. Following her enquiries into this matter, the Council advised it was an error and would arrange for the file to be removed.
18. The Commissioner asked the Council a number of questions in order to assess whether any further information is held. The Council advised that "*information is held centrally on networked resource... Officers are provided with laptops but only in order to have access to networked systems*". It confirmed that searches were undertaken against all networked resources, including emails, for the address of the Property and that no further information relevant to the request is held.
19. The Council advised that planning information was originally held in an archived file which was subsequently scanned onto the online planning portal. It explained that due to changes in key personnel, after an extended period of absence, it could not categorically determine whether

any further information had previously been held and destroyed however it advised there is no record of any such destruction.

20. In reaching a decision as to whether further information in relation to part [1] of the request is held, the Commissioner also enquired whether there was any legal requirement or business need for the Council to hold the requested information. The Council said that there is no business or statutory purpose for which further information should be held.
21. The Council's final position is that *"no further information relevant to the request is held other than correspondence entered into with the complainant"*.
22. The Commissioner is sympathetic to the complainant's position that documents could be missing from the planning file. However she has not found any evidence that would justify refusing to accept the Council's position that it does not hold any further information relevant to part [1] of this request. The Council advises it has conducted searches for the information and confirmed that it has no statutory duty or business purpose to hold further information. Therefore, the Commissioner has concluded that on the balance of probabilities, further information is not held by the Council. Accordingly, she does not consider that there is any evidence of a breach of regulation 5 of the EIR.

Regulation 13(1) – Third party personal data

23. The Council has refused to provide the information relevant to part [2] and has partially disclosed information relevant to part [3] of the request citing regulation 12(3) of the EIR, personal data, in accordance with regulation 13(1).
24. Regulation 12 states that *"To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13."*
25. The exception at regulation 13(1) provides that third party personal data is exempt if its disclosure would contravene any of the data protection principles set out in Schedule 1 of the Data Protection Act 1998 ('the DPA').

Is the information personal data?

26. Part [2] of the request is regarding building control files for the Property. The Council *"considers the contents of this file contains personal information belonging to a third party(ies), and to redact the*

documents would leave very little information to enable any person to form a view"

27. The withheld information for part [2] relates to an application made to the Council by the complainant's neighbour and the ensuing investigation and approval records that were created by the Council. By definition the name and contact address of an individual will be personal data relating to that person. It identifies the individual, informs the recipient of their address and the application which they have made to the Council regarding an extension and the Council's subsequent investigations.
28. The Commissioner has considered and rejected the potential for the individuals name, address and other identifiers to be redacted from the documents. As the applicant is known to the complainant, redacting this information would not anonymise the data insofar as he is concerned.
29. The Commissioner has reviewed the withheld letter and redacted information relating to part [3] of the request and is satisfied that it identifies an individual and relates to information that is personal to them.
30. The Commissioner is therefore satisfied that the withheld information in parts [2] and [3] is personal data as defined in the DPA.

Would disclosure breach the Data Protection Principles?

31. The Data Protection Principles are set out in Schedule 1 of the DPA. The Council has considered the first principle as most relevant in this case. Amongst other things, this states that personal data should only be disclosed in fair and lawful circumstances.
32. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subject, and the potential consequences of disclosure and balanced the rights and freedoms of the data subject with the legitimate public interest in disclosing the information.

Nature of the information and reasonable expectations

33. The primary purpose in submitting an application under the Building Regulations is to obtain approval for work. Planning laws require an application for certain types of work to be approved prior to the work being considered lawful.
34. When submitting the application the individual would have expected the details which he provided on the form to be used for the purpose of

establishing what the application was for, who the application was made by and examining whether the plans meet the requirements of building regulations.

35. Whilst under normal, full planning applications there is a general expectation that the application and copies of the plans will be published and open for comment and objection by members of the public, the Council has confirmed that there is no requirement for it to do so with Building Regulations applications and the subsequent investigation and approval records. It does not therefore publish these or make them available to other parties generally.
36. The Council considers *"the withheld information contains personal information relating to a third party(ies) private life in that it identifies information about their home and an investigation by the building control team. There would be no expectation on the individual for the information held by the Council to be disclosed to a third party"*.
37. The Commissioner observes that the Council's building regulation application form is held online, it includes a privacy policy statement *"Babergh District Council and Mid Suffolk District Council (BMSDC) will be the Data Controllers of the information you are providing. That means BMSDC will be responsible for looking after it. They will only use the information for the purposes explained on a form. The information will be kept safe and secure and only shared for the purposes or where it is allowed by law"*
38. The Commissioner considers that it is relatively obvious that the privacy policy statement does not provide an exhaustive description of the purposes with which information might be disclosed. It would however create an expectation that the uses of the information would be restricted to limited, official purposes. She considers it probable that the individual would have no expectation that his information would be used for any purpose other than for the council to consider the application.
39. A disclosure under the EIR is considered to be to the whole world, rather than simply to the applicant. The test which the Commissioner must consider is whether a disclosure to any member of the public would be fair under the circumstances of the case.
40. The Commissioner therefore considers that the individual would not expect that the building regulation application and the subsequent investigation and approval records would be disclosed to the whole world in response to a request for information under the EIR.
41. The Commissioner is also satisfied that individuals would not hold any reasonable expectation that the withheld letter and redacted information

relating to part [3] would be disclosed to third parties. It relates to matters concerning the individual(s) and the Council and not the public at large.

The consequences of disclosure

42. As to the consequences of disclosure, whilst the complainant is already aware of the application and building works he is not aware of the specific details of it. The wider public would also have no awareness of it. A disclosure of this information provides biographical details about the person, their property and, to an extent, the state of their personal finances in that they have carried out the work which the application and subsequent records outline.
43. A disclosure of information relating to part [2] may not particularly cause any wider detriment to the individual other than a general loss of privacy, however in the case of a private citizen carrying out their legitimate interests on their own private property this general expectation of privacy carries a relatively strong weight.
44. Give that the Commissioner is satisfied that non-disclosure of the remaining information relating to part [3] is a reasonable expectation; then there would be some level of distress from disclosure on the basis that privacy has been unexpectedly lost.
45. The Council states that it is unable to determine whether the individual concerned has been asked if they would consent to disclosing the information. However, as outlined in the case background, the Commissioner is aware of long running disputes relating to the Property between the complainant, his neighbours, the builders and representatives from the Council. As such she is satisfied that this is not a viable option.
46. The Commissioner therefore considers that a disclosure of the information would be unfair to the individuals concerned.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

47. The Commissioner has gone on to consider whether there is a pressing social need for the information to be disclosed which might make a disclosure under the circumstances fair, in spite of the individuals expectations. The question is whether the public has a legitimate interest in the disclosure of the information to the public which outweighs any unwarranted intrusion into the rights of the individual to have his information remain private.

48. The complainant has a legitimate interest in the information sought as he is a neighbour to the Property and he has concerns about the legality of and impact of building works on his own property. He has been to the Local Government Ombudsman (LGO), who decided not to investigate his complaint to them regarding the Council, but referred to the Commissioner in terms the FOI aspect of his complaint.
49. The Complainant has also highlighted to the Commissioner that he considers there is wrongdoing on the Council's part in relation to the building works. The complainant has detailed through numerous complaint processes his issue of trust with members of the Council staff.
50. The Commissioner is of the view that had the LGO found wrongdoing in regards to the building process, then there may have been more weight added to any legitimate interests in disclosure of the withheld information.
51. The Commissioner sees that there is a legitimate public interest in the building control process to determine that Building Regulations are being applied properly. At the same time, the Commissioner considers that the building control process has been introduced with the specific aim of entrusting the Council to apply the Building Regulations appropriately. This in turn, in the Commissioner's view, creates a greater interest in protecting the integrity of the building consent process and that disclosure could damage the public trust in the Building Regulations process.
52. Other than the complainant's own private interest in the information being disclosed the Commissioner has failed to establish any pressing social need for the information to be disclosed.
53. The Commissioner recognises that the legitimate interests of the complainant must be weighed against any unwarranted prejudice to the rights, freedoms and legitimate expectations of the owner of the Property. On considering all of the above, the Commissioner's decision is that disclosure of the withheld information would be unfair to the individual who the data relates to.
54. The Commissioner is therefore satisfied that the Council was correct to apply Regulation 13(1) in this instance.

Procedural breaches

Regulation 5(2) - Duty to make environmental information available on request

55. Regulation 5(2) of the EIR states that information should be made available *“as soon as possible and no later than 20 working days after the date of receipt of the request”*. In this case, the Council took more than 20 working days in which to respond to the initial request; it therefore breached regulation 5(2) in this regard.

Regulation 14(2) – Refusal to disclose information

56. If a public authority wishes to withhold information in response to a request, regulation 14(2) of the EIR requires it to provide the requester with a refusal notice stating that fact within 20 working days after the date of the request. The Council failed to do this thereby breaching regulation 14(2) of the EIR.

Regulation 11(3)

57. Regulation 11(3) of the EIR requires a public authority to conduct an internal review of its handling of a request if asked to do so by the requestor. In the circumstances of this case the Council carried out the internal review as required and therefore did not breach regulation 11(3).

Other matters

58. The Commissioner notes that the Council changed its position a number of times with regard part [3] of the request. The Commissioner therefore recommends that the Council examines its internal response and review processes such that it can ensure that it responds in line with her guidance.
59. The Commissioner also notes that the Council offered the complainant a second review due to the changed position from the first response to the second response. It then advised it was waiting for a senior officer to become available to carry out the review. However, despite a follow-up from the complainant, this second review does not appear to have been completed. The Commissioner finds that although this does not constitute a breach it could be considered poor practice by the Council.

Right of appeal

60. 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@hmcts.gsi.gov.uk

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

61. 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.
62. 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

Andrew White
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