

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

**Date:** 27 February 2018

**Public Authority:** Gateshead Council  
**Address:** Civic Centre  
Regent Street  
Gateshead  
NE8 1HH

**Decision (including any steps ordered)**

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1. The complainant requested information relating to noise complaints made about a public house in Ryton. The council refused to provide the information, relying on the exemption under section 30 of the Freedom of Information Act 2000 ("the FOIA"). The Commissioner considered that the request should be handled under the Environmental Information Regulations 2004 ("the EIR"). The council relied on the exceptions under regulation 12(5)(b), regulation 12(4)(e) and 13(1) of the EIR. The council said that the public interest did not favour disclosure. The Commissioner was satisfied that the information should be withheld under regulation 13(1) of the EIR. She does not require the council to take any steps.

## Request and response

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2. On 2 May 2017, the complainant requested information from the council in the following terms:

*"Could you please send me full details of all noise complaints in the Ryton village area either received by yourselves or the Environmental Health since the beginning of 2014. I fully understand that you will not give me the name(s) of the complainant(s). There is significant public interest in the use of the Olde Cross and as such I believe that the presumption should be to release the information, as such, any refusal to release the requested information will be raised directly with the Information Commissioner.*

*The details I request are:-*

*Date and time of complaints*

*Nature of complaints*

*Case file from complaints*

*Noise levels taken by the council*

*Experience and qualifications of investigation and supervising officers*

*PACE notes from all visits*

*Officer Statements*

*Action taken by council including fully documented reasons for any action taken*

*Rationale behind action*

*Copies of any notices served*

*Full details of any compliance monitoring undertaken in connection with the remedial works undertaken".*

3. The council replied on 24 May 2017. It said that the information was exempt under section 30(1)(a), (b) and (c) of the FOIA and the public interest did not favour disclosure. It confirmed the dates when some noise complaints had been made.
4. The complainant requested an internal review on 26 June 2017. He said that he did not accept the exemption applied.
5. The council replied on 21 July 2017. The council said that it wished to maintain the exemption and it also cited the exemption relating to personal data (section 40(2) of the FOIA).

## Scope of the case

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6. The complainant contacted the Commissioner on 11 August 2018 to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the exemption had been correctly applied.
7. The Commissioner decided that the case should be dealt with under the terms of the EIR. The Commissioner therefore considered the council's alternative position under the EIR.
8. During the Commissioner's investigation, the council said that it was happy to disclose the dates of the complaints and the dates of relevant meetings. The Commissioner has therefore scoped this information out of his investigation.

## Reasons for decision

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### Environmental Information

9. Under regulation 2(1)(c), Environmental information is any information on activities affecting or likely to affect the elements and factors of the environment. One of the factors listed is noise. The Commissioner's view is that the request should have been considered under the terms of the EIR. The council accepted this view and relied on alternative exceptions, which have been considered below.

### Background

10. The Old Crosse public house is a public house in Ryton. Nearby residents made complaints about noise nuisance emanating from music being played at the pub and noise from the beer garden. The council has confirmed to the complainant that the former Designated Premises Supervisor was prosecuted in 2016 for failing to comply with the requirements of a statutory notice served under the provisions of the Environmental Protection Act 1990. The council explained to the complainant that the pub management company who hold the licence for the premises also agreed to revisions to the premises licence to control noise. These were imposed by the council's licensing committee at a hearing in 2016. The council explained that once a person is served with a statutory notice under Section 80 of the Environmental Protection Act 1990 they have a right to appeal that notice to a Magistrates Court within 21 days. No such applications were made by the defendant or the brewery in this particular case.

## **Regulation 13(1) – Personal data**

11. This exception 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 withheld information personal data?**

12. Personal data is defined by the DPA as any information relating to a living and identifiable individual. The council explained that the former Designated Premises Supervisor was prosecuted in 2016 for failing to comply with the requirements of a statutory notice served under the provisions of the Environmental Protection Act 1990. It said that the charges laid before the magistrates relate to criminal charges levied towards an individual rather than a corporate entity. Against this background, the Commissioner accepts that the information is personal data as it relates to the former supervisors, the complaints about the public house and the council’s actions in respect of those complaints and council staff. It is also the case that a significant amount of the withheld information comprises of information about other individuals, such as those who provided witness statements including the council’s staff, and those who complained about the noise. Details of the experience and qualifications of the staff involved is also clearly personal data about them. In brief, it includes information of the following general description:

- Details of the complaints made and council correspondence relating to those complaints
- Correspondence sent to the prosecuted individual and the premises management about the case
- Witness statements relating to the prosecution case
- Details regarding the charges laid before the magistrates
- Print outs from the council’s case recording system relating to the complaints, case notes, and the actions taken by council officers
- The experience and qualifications of the staff involved

### **Is the withheld information sensitive personal data?**

13. Section 2(h) of the DPA provides that sensitive personal information is information consisting of information as to any proceedings for any offence committed or alleged to have been committed by an individual, the disposal of such proceedings or the sentence of any court in such proceedings.
14. The council said that some of the information was sensitive personal data under the terms of the DPA. The Commissioner agrees with that.

## **Would disclosure breach the Data Protection Principles?**

15. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.
16. In the case of sensitive personal data, there are some additional considerations to taken into account. In particular, at least one of the conditions set out in Schedule 3 of the DPA must also be met so the threshold for disclosure of information of that type is appropriately higher.

### **Reasonable expectations**

17. When considering whether a disclosure of personal information is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the individual or individuals concerned. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
18. The council argued that disclosure of this information would have been outside the reasonable expectations of those involved. It explained that the prosecution took place at Gateshead Magistrates Court, and whilst the court room does have a public gallery and the matter is heard in open court, it is unusual for there to be anyone in the public gallery or indeed any press in attendance during a private prosecutions court. It said that the nature of the charge is read out and plea taken. It said that all the remaining evidence is served upon the defendant or their legal representative but is not in the public domain, and would not usually be read out in court. It said that no one who is not a party to the proceedings or court staff would have access to it.
19. The council also explained that the Criminal Procedure Rules 2015 set out at 5.8 what information about court cases can be given to members of the public. It said that it should be noted that what information a member of the public can be given is limited.
20. In relation to individuals who had made complaints to the council, the council said that this information was provided with a reasonable expectation of confidence.

21. The council pointed out that the staff members concerned were not managers. Rather they were relatively junior members of staff who would have a reasonable expectation that this information would not be disclosed. The council said that the staff concerned have some degree of autonomy, but they do not hold senior roles and were not responsible for the outcome of the investigations. It said that the decision to prosecute is taken by the Strategic Director who has power to make that decision under the Council's constitution. It said that their names would be known to the defendant and the representatives of the brewery but this is a limited disclosure purely for work in connection with their particular role.

### **Consequences of disclosure**

22. The council said that the loss of privacy that would result from the disclosure of the information would cause unwarranted distress. It said that it considered that this would be particularly so in the case of the defendant, because the case against them ended in 2016.
23. The council expressed concerns that disclosure of some of the information could increase the risk of online abuse of its staff. The council provided some context to the Commissioner to explain why it considered that this would be a particular risk.
24. The council also considered that disclosure of the information could deter individuals from complaining to the council in the future, which would in turn prejudice the effective functioning of the investigatory process.

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

25. There is always some legitimate interest in the disclosure of information that is held by public authorities. This is because disclosure helps to encourage the general aims of achieving transparency and accountability. It also assists people in understanding the decisions made by public authorities and to be more involved in that process. However, as with the disclosure of any information, there is always the question of degree and the circumstances will not always warrant the disclosure of every last detail of a particular matter in order to satisfy the legitimate public interest. Public authorities have to be mindful of their obligation to protect the right to privacy that individuals have where that is reasonable.
26. The complainant said that the information should be released. He highlighted that the council had acknowledged that disclosure of this information would promote transparency, openness and accountability. He added that the licensees of the public house concerned are no longer involved with the business, therefore the council's submission that the

information has to be held for specific investigation is surely not relevant. He also said the council seemed intent of withholding information regarding one specific case, however, it had not acknowledged that the request was for information regarding all complaints whether they resulted in a prosecution or not. Finally, he said that there was a groundswell of interest and concern amongst local residents that the pub, once open again, should be allowed to remain open and be run "as a normal pub".

27. The council acknowledged that there is a strong legitimate interest in understanding the evidence and decisions made by a public authority to determine whether enforcement action should be taken. The council argued that the legitimate interest in transparency had been met to a reasonable degree in this case by the provision of certain details about the complaints and disclosure that someone was prosecuted. The council said that the disclosure of further information relating to the investigatory process itself would not further the public's understanding of the case to an extent that would outweigh the legitimate interests in protecting the personal data of those involved.
28. The Commissioner did not find the points made by the complainant in this case to be particularly persuasive. The fact that the council has acknowledged a significant legitimate interest in transparency does not mean that the information should be released. In every case, there is a balancing act to be undertaken and where personal data is involved, there should not be unwarranted prejudice to the rights and freedoms of those concerned. While the Commissioner accepts that sometimes the passage of time since an investigation was completed may reduce the public interest in withholding information, context is important. The information is still the personal data of the individuals concerned, and in this case, it could be argued that the passage of time since the investigation and the fact that the premises is no longer being run by the same individual actually reduces the public interest in disclosure.
29. Similarly, while one individual was prosecuted, the details of all the relevant noise complaints raise similar privacy concerns whether or not the individual complaint led directly to a prosecution. The case that did culminate in prosecution is the most significant aspect and it ended in 2016. The appropriate time frame for open court transparency has passed. It is fair to surmise that the defendant will have moved on. It is also worth noting the well-trodden general principle that what is of interest to the public and what is in the public interest are two different things.
30. The Commissioner notes that the Criminal Procedure Rules 2015 do provide details about what information relating to court cases can be given to members of the public, however that right is limited in scope and time frame. The Commissioner noted that there was some

information on the council's website about prosecutions under the Environmental Protection Act 1990, which publicised the details of particular cases. The Commissioner highlighted a particular example relating to dog fouling. The council explained to the Commissioner that the Victims Code requires prosecutors to provide relevant information to victims of crime, where the crime is against a community, the community is entitled to know what happened. The council said that this is why the council made a decision to publish details about a dog fouling case on the internet. It said that the case related to an offence which had an impact on a broad community. By contrast, it highlighted that the complainant in this case was not a victim of the criminal offence nor was he a party to the proceedings and the impact of the offence was limited to individuals living nearby.

31. As noted by the council, there is a legitimate public interest in understanding the actions taken by the council in relation to enforcement. The Commissioner agrees that to some extent, the confirmation that an individual was in fact prosecuted and the provision of some detail about the relevant complaints has gone some way to satisfying this legitimate interest. The council has been able to explain why in certain cases, a decision would be taken to publish a more detailed account of what happened. The present case did not meet the relevant criteria. The time for open court transparency has also passed. Additionally, the Commissioner considered the withheld information itself. She did not consider that there was any particular unusual circumstances or mismanagement of the case that would suggest the need for further transparency in this matter.
32. As the case ended in 2016, the Commissioner accepts the council's view that disclosure at this stage may very well cause distress to the defendant. As highlighted above, certain information will be sensitive personal data about the defendant and the threshold for disclosure is even greater. The Commissioner was not convinced that any of the relevant conditions set out in schedule 3 of the DPA would be met in this case.
33. Disclosure may also be distressing for a variety of other people involved in this matter. The Commissioner readily accepts that those making complaints generally do so with a reasonable expectation of confidentiality unless there is specific reason to suppose otherwise. The Commissioner accepts that if the information was disclosed this may deter individuals from making complaints, and this would have wider effects on the ability to pursue successful investigations in the public interest. There is also certainly information that would have been provided with a high and entirely reasonable expectation of confidence. This is the case in relation to witness statements, correspondence with individuals and details of qualifications and experience of junior council officers for example. As the council has pointed out, the seniority of the

staff concerned and their decision-making authority affects the level of transparency that would be appropriate about their work and qualifications. The circumstances do not indicate that additional transparency is proportionate.

34. The Commissioner was satisfied that regulation 13(1) applied to all of the information, which is the personal data of the defendant and a variety of other people involved in the case relating to the public house. A convincing case for disclosure of further case details at the time of the request was not supported by the particular circumstances or the arguments made. The Commissioner's view is that the legitimate interest in disclosure does not outweigh the legitimate interest in protecting the right to privacy of the individuals concerned in accordance with schedule 2 of the DPA. The disclosure of these specific case details would not be a fair or proportionate means to the end of increasing transparency about the council's enforcement processes. The Commissioner considers that there would be less intrusive ways of exploring the effectiveness of these processes without disclosing all the details of an individual case, which did in fact result in a successful prosecution. In the case of the sensitive personal data, no schedule 3 conditions are met.
35. As the Commissioner was satisfied that regulation 13(1) applied, it has not been necessary to consider the applicability of the alternative exceptions under regulation 12(4)(e) and 12(5)(b) of the EIR.

## Right of appeal

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36. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

37. 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.
38. 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 .....**

**Elizabeth Archer**  
**Senior Policy Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**