

Environmental Information Regulations 2004 (EIR) Decision notice

Date: 31 May 2023

Public Authority: Wiltshire Council
Address: County Hall
Bythesea Road
Trowbridge
BA14 8JN

Decision (including any steps ordered)

1. The complainant requested information regarding the number of reports of anti-social behaviour in a specific area over a period of three years. Wiltshire Council ("the Council") disclosed some information within scope of the request; however, it withheld some information under regulation 12(3) (personal information) of the EIR.
2. The Commissioner's decision is that the Council was entitled to rely on regulation 12(3) of the EIR to withhold the requested information.
3. The Commissioner does not require any steps to be taken as a result of this decision.

Request and response

4. On 1 February 2023, the complainant wrote to the Council and requested information in the following terms:

“I would like information on the number of reports of antisocial behaviour made to Wiltshire Council in the area of (name redacted), Salisbury within the past three years. I would like the nature and dates of these reports and what action, if any has been taken by the council.”
5. On 28 February 2023, the Council disclosed some information within scope of the request. However, it withheld information under regulation 12(3) of the EIR with regard to the specific dates of reports as it argued these would enable the identification of the complainants and the third parties being complained about.
6. The Council upheld its reliance on regulation 12(3) of the EIR at internal review on 15 March 2023.

Reasons for decision

7. The following analysis sets out why the Commissioner has concluded that the Council was entitled to rely on regulation 12(3) of the EIR in this particular case.

Regulation 12(3)/regulation 13(1) – personal information

8. Regulation 13(1), by way of regulation 12(3) of the EIR provides that information is exempt from disclosure if it is the personal data of an individual other than the requester, and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.
9. In this case the relevant condition is contained in regulation 13(2A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data (“the DP principles”), as set out in Article 5 of the General Data Protection Regulation (“GDPR”).
10. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 (“DPA”). If it is not personal data, then regulation 13 of the EIR cannot apply.

11. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, He must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

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.
14. 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, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of the individual.
15. 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.
16. In this instance, the withheld information relates to the data of the complainant and third parties, correspondence regarding reports of anti-social behaviour in a specific area on specific dates over a three-year period and identifies those people. This information therefore falls within the definition of “personal data” in section 3(2) of the DPA.
17. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the EIR. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
18. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

19. Article 5(1)(a) of the GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.”

20. In the case of an EIR request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair, and transparent.
21. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

22. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that “processing shall be lawful only if and to the extent that at least one of the” lawful bases for processing listed in the Article applies.
23. The Commissioner considers that the lawful basis most applicable in determining whether to disclose personal data in response to a request under the FOIA or EIR is basis 6(1)(f), which states:

“Processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child¹”
24. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under EIR it is necessary to consider the following three-part test.
 - i) Legitimate interest test: Whether a legitimate interest is being pursued in the request for information
 - ii) Necessity test: Whether disclosure of the information is necessary to meet the legitimate interest in question

¹ Article 6(1) goes on to state that:- “Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”. However, regulation 13(6) EIR (as amended by Schedule 19 Paragraph 307(7) DPA) provides that:- “In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”

- iii) Balancing test: Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
25. The Commissioner considers that the test of "necessity" under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

26. In considering any legitimate interest(s) in disclosing the requested information under the EIR, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.
27. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
28. The information in this case constitutes personal data as it is about reports made by residents to the Council about anti-social behaviour in a specific area over a specific period of time.
29. The Commissioner is aware of the complainant's legitimate interest in ensuring that the Council is open and transparent and have collated the reports of anti-social behaviour and taken appropriate actions from those reports. However, he does not consider that there is any wider public interest in the disclosure of the specific information which would identify third parties associated with the reports. The Commissioner is of the view that the disclosure of this type of information would not provide the complainant with any greater insight into the particular actions taken further to that already disclosed and that available on the Council's own website.
30. Some of the requested information is the personal data of the complainant and is therefore exempt under regulation 5(3) of the EIR.
31. The Commissioner has not identified any legitimate interest, other than the complainant's personal interest, in the disclosure of the withheld information. The Commissioner considers the Council has shown accountability by its previous disclosure of information to the complainant and publishing some information on its website.

32. On consideration of the above, the Commissioner finds that, in this case, it is not necessary for the Council to disclose the requested information in order for it to meet the legitimate interests of the public.
33. As there is no legitimate interest in disclosing the requested information it is not necessary for the Commissioner to consider the necessity test or the balancing test.
34. The Commissioner has therefore decided that the Council was entitled to withhold the information under regulation 13(1), by way of regulation 13(2A)(a).

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: 0300 1234504

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

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