Environmental Information Regulations 2004 (EIR)

Decision notice

Date: **29 September 2021**

Public Authority: **Cambridgeshire County Council**
Address: **Scott House,**
5 George Street,
Huntingdon,
PE29 3AD

Decision (including any steps ordered)

1. The complainant requested information from Cambridgeshire County Council ("the Council") about parking restrictions. The Council handled the request under the EIR and provided some information. It advised the complainant that some of the information he had requested was not held, and the remainder was exempt from disclosure under regulation 13(1) of the EIR: personal data.

2. The Commissioner's decision is that the requested information fell within the definition of environmental information at regulation 2(1)(c) of the EIR. She has further determined that some of the requested information is not held by the Council, and that the remainder comprises the personal data of third parties. Since there is no lawful basis to disclose the personal data, the Council correctly stated that it was exempt under regulation 13(1).

3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 18 March 2020, the complainant wrote to the Council. He explained that his request related to the Council's decision not to install double-yellow lines along the whole of a particular street in Cambridge, and requested:

a) *"Copies of all and any objection(s) including those by* [names redacted] *aforesaid.*

b) *Internal notes and emails (other than those to and from* [redacted]*) made by Officers relating to the reasons for the changes made to the original plan to that as advertised and circulated to residents.*

c) *Notes of all and any meeting(s) and/or emails between Councillor* [name redacted] *and Officers of the Council relating to the changes to the plan as advertised, and/or any other involvement.*

d) *Notes made by* [name of council officer redacted] *in relation to all and any site meeting with the applicant.*

e) *Notes of the Officers meeting(s) relating to the decision to abandon the installation of double yellow lines, including the prohibition in the easternmost area as referred to herein, pursuant to the advertised/circulated plan."*

5. On 30 April 2020 the Council responded. It explained that it considered that the request fell to be considered under the EIR. Its response was as follows:

   a) The Council confirmed that some objections were received, and that these focused on *"the impact of visitors' parking"*. However, it considered that the objections were exempt from disclosure under regulation 13 of the EIR – personal data. The Council stated it could neither confirm nor deny whether any objection had been received from the named persons (regulation 13(5) of the EIR).

   b) It provided some information relating to this part of the request, with some information redacted under regulation 13(1).

   c) It provided some emails relating to this part of the request, but no *"notes"*, with personal details redacted under regulation 13(1).

   d) It stated that this information was not held.

   e) It stated that this information was not held.

6. The complainant requested an internal review on 25 May 2020. He disputed that the matter fell to be considered under the EIR.

7. On 18 June 2020 the Council wrote and confirmed that it considered the request to be for environmental information, and that it considered it had therefore handled the matter correctly under the EIR. It invited him to clarify which information he considered should be disclosed.

8. On 1 July 2020 the complainant wrote to the Council, saying that he considered it should disclose the following information:

    - *"Copies of the alleged objections with the identities removed*;
    - *the number of objectors*;
    - *do they reside in* [name of street redacted] *if so, how many*;
    - *how many objections were there from properties in the easternmost section (house numbers* [redacted]*)*;
    - *how many written objections were there in total."*

9. On 3 July 2020 he wrote again, and questioned the Council's position that no "notes" were held, with regard to points c), d) and e) of his original request.

10. He also refined point c) by requesting specifically: *"the meeting notes for each action taken by the relevant department and Councillor* [name redacted]*"*, which he thought would be held.

11. He also made a new request: *"There must be staff procedures for all and any issues involving expenditure and a copy of such is required"*.

12. On 12 August 2020 a further response was provided by the Council. The Council confirmed that five written objections had been received. It stated that it could not provide copies, since the content would render the objectors identifiable; however, it confirmed that the objections related to *"the effect of parking restrictions on visitor parking"*.

13. Its position was that the remainder of the information requested on 1 July 2020; that is, falling within the scope of the first four bullet points set out at paragraph 8 above, was exempt from disclosure under regulation 13, including the written objections themselves.

14. With regard to the outstanding parts of his original request relating to minutes and notes, also referred to on 3 July 2020, the Council provided the complainant with a link to some meeting minutes. It did not alter its position that the notes he had requested were not held.

15. With regard to the new request on 3 July 2020 for *"staff procedures"*, it provided links to general information about the operation of the Council.

16. On 17 August 2020, the complainant asked the Council to confirm whether the objectors' main residence was in the relevant street.

17. On 24 August 2020, the Council confirmed that information about residents was personal information, and was being withheld under regulation 13(1).

Scope of the case

18. The complainant contacted the Commissioner on 14 October 2020 to complain about the way his request for information had been handled.

19. This notice first covers whether the request fell to be considered under the EIR.

20. The notice also covers whether the Council holds any *"notes"* of the type requested at points c), d) and e) of the original request of 18 March 2020, including *"meeting notes for each action taken by the relevant department and Councillor* [name redacted]" as referred to on 3 July 2020, and whether it holds any *"staff procedures"* of the type requested on 3 July 2020.

21. The notice also covers whether the information referred to at paragraph 8 above, and which was not disclosed, is exempt from disclosure under regulation 13(1) of the EIR.

Reasons for decision

Regulation 2(1) of the EIR - is the information environmental?

22. Regulation 2(1) of the EIR provides the following definition of environmental information:

> *"…any information in written, visual, aural, electronic or any other material form 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) and (b) as well as measures or activities designed to protect those elements…"

23. It is important to ensure that requests for information are handled under the correct access regime. This is particularly important when refusing to provide information, since the reasons why information can be withheld under FOIA (the exemptions) are different from the reasons why information can be withheld under the EIR (the exceptions). In addition, there are some procedural differences affecting how requests should be handled.

24. The Commissioner has produced guidance[1] to assist public authorities and applicants in identifying environmental information. The Commissioner's well-established view is that public authorities should adopt a broad interpretation of environmental information, in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.

25. The Commissioner notes that the requested information comprises information about changes to parking restrictions; specifically, the reversal of a decision to place double-yellow lines along the whole of a certain street.

26. The Commissioner is satisfied that, while it may be aimed at protecting the safety of road-users, this type of parking restriction is a measure which is also likely to affect the elements of the environment. In her view, information on the Council's decisions relating to the changes to car-parking restrictions in this case, if held, would be information on a measure likely to affect the elements of the environment.

27. This falls within the definition at regulation 2(1)(c), and the Commissioner is satisfied that the request fell to be considered under the EIR. She is therefore satisfied that the Council handled the request under the correct regime.

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1 https://ico.org.uk/media/fororganisations/documents/1146/eir_what_is_environmental_information.pdf

Regulation 12(4)(a) of the EIR - information not held

28. The Commissioner has first considered whether the Council holds any notes of the type requested at points c), d) and e) of the original request, including *"meeting notes for each action taken by the relevant department and Councillor* [name redacted]" as referred to on 3 July 2020, and any relevant *"staff procedures"* as requested on 3 July 2020.

29. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information to the extent that it does not hold that information when the applicant's request is received.

30. In cases where there is a dispute over whether information is held, the Commissioner applies the civil test of the balance of probabilities in making her determination. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held, in cases which it has considered in the past.

31. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is 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 held.

The complainant's view

32. The complainant explained that an applicant had applied to the Council for double yellow lines to be introduced on part of a particular street, and that this was agreed to. He explained that the Council subsequently decided to introduce double yellow lines along the entirety of the street, and provided its reasons, which, in his view, were entirely valid and should have been acted upon.

33. However, following the period during which objections could be raised, the Council changed its proposed course of action, and ultimately decided to install double yellow lines on only part of the street.

34. The complainant believes that it is unlikely that *"no record"* exists of the reasons for the previously agreed course of action being changed, and commented that he wished to establish if a *"statutory authority"* existed which allowed an individual councillor to cause the Council to deviate from an agreed course of action.

The Council's view

35. The Council explained that it was aware that the complainant was expecting it to hold notes of meetings that may potentially have taken

place between the Council and the relevant councillor, within the Council, and with the original applicant.

36. With regard to notes of any meetings or discussions with the relevant councillor (part c) of the request) and/or notes of any meetings within the Council (part e) of the request, the Council has explained the searches and enquiries that it carried out for relevant information.

37. It explained that it: *"contacted the relevant council officers who have confirmed a verbal discussion took place regarding the decision in question and this decision was explained in writing to the local councillor… The council officer has confirmed there are no other meeting notes relating to the decision as no physical meeting took place."*

38. The Council also explained that it had *"provided links to a committee meeting where the proposed scheme was discussed. Decisions between the relevant council staff and the councillor are recorded in emails which the complainant has received. The council has contacted the relevant officers who have confirmed that further meeting notes for each action are not held because no physical meeting took place"*.

39. The Commissioner's understanding of this is that a *"verbal discussion"* took place between council officers, but was not an in-person, physical meeting and that, moreover, no notes were written up following the discussion. The discussion led to the sending of some emails, which the Council provided, but not to any recorded notes.

40. The Commissioner also understands from the Council's explanations that no meeting took place with the relevant councillor, but that its decision was relayed to her in emails, which have also been provided.

41. With regard to whether the Council holds notes of the meeting between the applicant and the named council officer (part d) of the request) the Council explained that it had made enquiries of the relevant officer. It explained that he: *"met the* [applicant] *in person on site to discuss the local highways improvement proposal. The council officer has confirmed a verbal discussion took place and no notes were taken of the meeting, neither hand-written nor typed up later. Discussions were continued via email."* It explained that the relevant emails have been provided.

42. Finally, the Council provided arguments in support of its position that it holds no *"staff procedures"* other than those on its website, to which it had provided links. It stated:

> *"In its original response, the council provided links to the Local Highways Improvement process as on the council's website and explained that this outlined the procedure for staff to follow. The council also provided links to the council constitution governing wider*

staff conduct in case this was relevant… The council has contacted the relevant officers who are responsible for the scheme and they have confirmed there is no other written staff procedure relevant to this scheme. Searches of the council's intranet and website do not produce any further results."

The Commissioner's decision

43. The Commissioner acknowledges that it was entirely reasonable for the complainant to expect the Council to hold notes from the on-site meeting with the applicant, and potentially from further meetings, internally and with the relevant councillor. It is also reasonable for him to expect the Council to hold written "staff procedures", covering the scenario where the Council adopts a change in strategy.

44. However, it is not for the Commissioner to comment on whether information *should* be held. Her remit is only to establish whether, on the balance of probabilities, information falling within the scope of the request *is* held.

45. She is satisfied that the Council carried out adequate and appropriately-targeted searches for any recorded notes by making enquiries with the relevant council officers, who were able to confirm that no such notes had ever existed. The Council's position, supported by evidence from the relevant officers, is simply, therefore, that no notes of the type requested were ever held.

46. With regard to any further "staff procedures", the Commissioner is satisfied that the Council carried out appropriate searches and enquiries, which would have been likely to locate these if they were held.

47. Her decision is that, on the balance of probabilities, the Council was correct to state that it did not hold any further recorded information falling within the relevant parts of the request, and she does not require the Council to take any steps in respect of the relevant requests.

Regulation 13(1) of the EIR – personal data

48. This part of the decision notice considers the information about the written objections, which has been withheld by the Council. The requested information which the Council stated was being withheld under regulation 13(1) comprises:

- *"Copies of the alleged objections with the identities removed*;
- *the number of objectors*;
- *do they reside in* [name of street redacted] *if so, how many*;

- *how many objections were there from properties in the easternmost section (house numbers* [redacted]*).”*

49. The Commissioner notes that, while the Council disclosed that five written objections had been received in total, this is not necessarily the same information as *“the number of objectors”* and so she has considered all four bullet points, above.

50. The Commissioner has reviewed the withheld information. She notes that the objections were made by email and that it is possible to deduce the information requested in the other bullet points, from the emails.

51. Regulation 13(1) 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.

52. In this case, the relevant condition is contained in regulation 13(2A)(a)[2]. 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”).

53. 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.

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

Is the information personal data?

55. Section 3(2) of the DPA defines personal data as:

> “*any information relating to an identified or identifiable living individual*”.

56. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

[2] As amended by Schedule 19 Paragraph 307(3) DPA.

57. 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 or an online identifier; or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

58. 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.

59. The Commissioner notes that the purpose of submitting a written objection is to provide a personal opinion. She considers that all parts of the information being requested relate to the objectors as individuals, including that which concerns their addresses, and whether or not they live in the relevant street.

60. The Commissioner has considered whether individuals are identifiable from the withheld information, noting that the complainant was content for the objectors' names to be removed.

61. Even with names removed, the Commissioner considers that the cohort of objectors is sufficiently small that, when combined with the framing of the request, and combined with the contents of the opinions, individuals are likely to be identifiable, particularly by others in the local community.

62. In the circumstances of this case, the Commissioner is satisfied that the information relates to the objectors. She is satisfied that all parts of the information both relate to and identify these individuals. The information therefore falls within the definition of personal data at section 3(2) of the DPA.

63. 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. The most relevant DP principle in this case is set out at Article 5(1)(a) of the GDPR and is known as principle (a).

Would disclosure contravene principle (a)?

64. 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".*

65. 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.

66. 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

67. 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.

68. The Commissioner considers that the most applicable lawful basis is Article 6(1)(f):

> "*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 child*"[3].

69. In considering the application of this lawful basis in the context of a request for information under the EIR, it is, therefore, necessary to consider the following three-part test:-

    i) **Legitimate interest test**: Whether a legitimate interest is being pursued in the request for information;

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[3] 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*".

ii) **Necessity test**: Whether disclosure of the information is necessary to meet the legitimate interest in question;

iii) **Balancing test**: Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

70. The Commissioner considers that the test of necessity under stage (ii) must be met before the balancing test under stage (iii) is applied.

(i) Legitimate interests

71. In considering any legitimate interest(s) in the disclosure of 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.

72. 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.

73. In this case, the complainant considers that the Council's previous decision – to install double yellow lines along the whole of the street – was arrived at on the basis of both persuasive evidence and expertise. He was, therefore, puzzled by the Council overturning that decision.

74. The complainant's concerns pertain to the contents of the objections in this case, and are also of a wider nature: whether the Council was following due process. With regard to the latter, he was concerned that a particular councillor may have persuaded the Council to change its mind, possibly acting on behalf of a friend who resides in the affected street. He also doubted whether the Council followed any statutory authority in the manner of changing its decision.

75. His request therefore sought to uncover the contents of the objections, including whether the objectors lived in the street; the extent to which the councillor may have influenced the decision; and under what statutory power the Council was acting. He considers that the withheld information would shed light on some or all of these matters, and would open the Council up to scrutiny.

76. However, having reviewed the contents of the withheld information, the Commissioner is satisfied that it sheds no light on the complainant's wider concerns (about the role of the councillor, and any statutory authority). It pertains only to the personal concerns, and identity and location, of the objectors themselves.

77. The Commissioner therefore considers that a legitimate interest in the disclosure of the information exists only in exploring some of the general reasoning behind the Council's change of decision relating to the contents of the objections and the location of the objectors. There can be no legitimate interest in shedding light on the complainant's wider concerns, since the withheld information reveals nothing about them.

78. The Commissioner is, however, satisfied that there is a legitimate interest in the disclosure of the information, in understanding the Council's general reasoning to some extent.

(ii) Is disclosure necessary to meet the legitimate interest?

79. "Necessary" means more than desirable, but less than indispensable or of absolute necessity. Accordingly, the test is one of reasonable necessity, and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the EIR must therefore be the least intrusive means of achieving the legitimate aim in question.

80. The Commissioner notes that, while the Council provided a link to some meeting minutes, these appear only to discuss local highway matters in a general sense and it is not possible to gauge how the specific decision was arrived at. Nor indeed do the minutes provide any information about the objections in this case.

81. However, the Council has argued that it met the legitimate interest by providing information about the number of written objections, and the fact that the objections related to *"the impact of visitors' parking"*.

82. However, the Council did not provide sufficient information for the complainant to learn whether the objectors live in the relevant street, nor their individual concerns.

83. The Commissioner considers that this may potentially have had some bearing on the Council's reasoning, and, to that extent, she is therefore satisfied that disclosure under the EIR would be necessary to meet the legitimate interest in the disclosure of the information.

84. However, it is necessary for her to balance the interests, rights and freedoms of the data subjects, in order to determine whether disclosure would be lawful.

(iii) Balance between legitimate interests and the data subjects' interests or fundamental rights and freedoms

85. To meet the requirements of Article 6(1)(f), it is necessary to balance the legitimate interests in disclosure against the data subjects' interests

or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure.

86. For example, if the data subjects would not reasonably expect that the information would be disclosed to the public under the EIR in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.

87. In considering this balancing test, the Commissioner may take into account the following factors:

- the potential harm or distress that disclosure may cause;
- whether the information is already in the public domain;
- whether the information is already known to some individuals;
- whether the individuals expressed concern to the disclosure; and
- the reasonable expectations of the individuals.

88. In the Commissioner's view, the key issue here is whether the individuals concerned have 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 as individuals (rather than in any professional capacity), and the purpose for which they provided their personal data.

89. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.

90. The Council has advised the Commissioner that: *"Objectors are not informed their responses would be made public. The local authority considers the data subjects would therefore not reasonably expect that the information would be disclosed to the world at large."*

91. The Commissioner accepts this, and notes that the process for submitting an objection is not part of a public forum (such as lodging an objection on a planning application). She accepts that the objectors would not reasonably expect their personal comments, which in some cases reveal details of concerns relating to family and other personal circumstances, as well as, indirectly, information about their address, to be published. These matters were expected to remain private.

92. The Council also argued that: *"The key consequences of disclosure are unnecessary loss of personal privacy for residents and friction between neighbours which may result in unnecessary distress."*

93. The Commissioner has already set out that, while she identified disclosure as being necessary to meet a legitimate interest in this case, it was only insofar as the objections were relevant to the Council's general reasoning. The withheld information shed no light on the complainant's wider concerns, and the complainant had already been advised that the objections, in a general sense, related to concerns over parking.

94. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest in the disclosure of the contents of the written objections to outweigh the data subjects' fundamental rights and freedoms.

95. The Commissioner therefore considers that there is no Article 6 basis for processing, and so the disclosure of the information would not be lawful.

96. Given the above conclusion that disclosure would be unlawful, the Commissioner does not need to go on separately to consider whether disclosure would be fair or transparent.

The Commissioner's decision

97. The Commissioner has therefore decided that the Council was entitled to withhold the information under regulation 13(1) of the EIR, by way of regulation 13(2A)(a). She does not require the Council to take any steps.

Right of appeal

98. 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

99. 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.

100. 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 .....

Ben Tomes
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