

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 31 October 2023

Public Authority: Calderdale Council

Address: Town Hall
Crossley Street
Halifax
West Yorkshire
HX1 1UJ

Decision (including any steps ordered)

1. The complainant requested information from Calderdale Council ("the Council") relating to a planning enforcement matter.
2. The Commissioner's decision is that the Council is entitled to rely on regulation 13(1) (personal data) to withhold some information within the scope of the request.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 15 May 2023, the complainant wrote to the Council and requested information in the following terms:

“With reference to the below enforcement matter [21/60049/ENF] I would like to see all correspondence including notes made of telephone conversations between members of the planning team, including [name redacted] and [name redacted] and [name of owner of property subject to enforcement matter redacted] of [address of property subject to enforcement matter redacted] between 21st April 2021 and 13th May 2023.”

5. The Council provided the complainant with a copy of a planning enforcement report. However, the Council redacted some information within that as it considers the information to be third party personal data. The Council also withheld some emails on the same basis.

Reasons for decision

6. Whilst the Council has handled the request under FOIA, as the complainant has requested information relating to a planning enforcement matter, the Commissioner considers the requested information to be environmental and therefore, the Council should have handled the request under the EIR.
7. The Commissioner has therefore considered whether the Council is entitled to rely on regulation 13(1) of the EIR to refuse to provide the withheld information.
8. 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.
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 UK General Data Protection Regulation (“UK GDPR”).

Does the withheld information constitute personal data?

10. Section 3(2) of the Data Protection Act 2018 defines personal data as:

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

11. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
12. In this case, the Council has provided the complainant with a copy of a planning enforcement report relating to the property that was the subject of the planning enforcement matter. However, the Council has withheld from that report the address of the property and the name of the owner of that property. The Commissioner is satisfied that this information constitutes personal data as it relates to and identifies the property owner. Therefore, he consider that it falls within the definition of ‘personal data’ in section 3(2) of the DPA.
13. The Council has also withheld some emails between the Council’s enforcement planning team and the owner of the property that was the subject of the planning enforcement matter. The Commissioner has viewed the withheld emails and is satisfied that they relate to and identify the property owner. Therefore, the Commissioner considers the emails fall within the definition of ‘personal data’ in section 3(2) of the DPA.
14. The Council has also withheld some information from the planning enforcement report relating to a third party. The Commissioner has viewed this information and is satisfied that it constitutes personal data as it relates to and would identify the third party. The information therefore falls within the definition of ‘personal data’ in section 3(2) of the DPA.

Would disclosure of the withheld information breach principle (a)?

15. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states:

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

16. 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.
17. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.

18. The Commissioner accepts that there is a legitimate interest in ensuring that the Council's planning enforcement processes are open and transparent. He also accepts that disclosure of the withheld information is, to some extent, necessary to meet that legitimate interest.
19. The Commissioner acknowledges that the Council has stated in its submissions that it should have disclosed the address of the property that was the subject of the planning enforcement matter and the name of the owner of that property as this information is already known to the complainant. The Commissioner also acknowledges that part of the property address has been disclosed to the complainant.
20. However, when disclosing information under FOIA, a public authority is disclosing information to the world at large. The information is not just being disclosed to the requester. Therefore, whilst the address of the property that was the subject of the planning enforcement matter and the owner of that property is already known to the complainant, the information is not known to the world at large.
21. The Commissioner considers that the owner of the property that was the subject of the planning enforcement matter has a strong and reasonable expectation that their name and address would remain confidential given that the Council concluded in its planning enforcement report that no breach of planning control had occurred. He also considers that the owner of the property would have a strong and reasonable expectation that emails between themselves and the Council's planning enforcement team would remain confidential.
22. The Commissioner also considers that the third party whose personal data is contained within the planning enforcement report would have a strong and reasonable expectation that their personal data would remain confidential.
23. Therefore, the Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of both the owner of the property that was the subject of the planning enforcement matter and the third party whose personal data is contained within the planning enforcement report. Therefore, he considers that there is no legal basis for the Council to disclose the withheld information and to do so would be in breach of principle (a).
24. The Commissioner's decision is that the Council is entitled to rely on regulation 13(1) of the EIR to refuse to provide the withheld information.

Right of appeal

25. 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

26. 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.
27. 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
Group Manager
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Wycliffe House
Water Lane
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Cheshire
SK9 5AF