

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

Decision notice

Date: 7 November 2023

Public Authority The Governing Body of the University of Exeter

Address: Northcote House
The Queen's Drive
Exeter
EX4 4QJ

Decision (including any steps ordered)

1. The complainant has requested information relating to Liveable Exeter Place Board. The University of Exeter ('the University') disclosed information in response to the request, with redactions made under section 40(2) (personal information).
2. The Commissioner's decision is that some of the redacted information can be withheld under regulation 13 of the EIR but other information must be disclosed. The Commissioner also considers the University breached regulation 14(3) of the EIR.
3. The Commissioner requires the University to take the following steps to ensure compliance with the legislation:
 - Disclose the names of the organisations represented in the attendee lists;
 - Disclose the personal data of all members of the Liveable Exeter Place Board, MPs and all senior officials at director level or above or an appropriate equivalent.

4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 17 December 2022 the complainant wrote to the University and requested:

“Please supply copies of all the recorded information you hold concerning Liveable Exeter Place Board meetings held during the past 12 months including but not limited to its agendas, attendance records, minutes, reports or other documents circulated in support of its meetings.”

6. The University responded on 19 January 2023. It disclosed information in response to the request, with redactions made under section 40(2).
7. The complainant requested an internal review on 27 January 2023. They queried whether the request had been handled under the correct access regime and also the amount of information that had been redacted.
8. On 28 February 2023 the University provided the outcome to its internal review. It upheld its previous position, explaining that both section 40(2) and regulation 13 (personal data) of the Environmental Information Regulations 2004 (‘the EIR’) applied.
9. The scope of the Commissioner’s investigation is to consider whether the University has handled the request under the correct access regime. He will also decide whether the redacted information has been withheld appropriately.
10. The Commissioner notes that the University only provided its submission and a copy of the withheld information upon receipt of an information notice from the Commissioner.

Reasons for decision

Is the requested information environmental?

11. Regulation 2(1) of the EIR defines environmental information as being information 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)...as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
12. The request relates to Liveable Exeter, a project delivering 12,000 new homes on existing brownfield sites. The Commissioner considers this redevelopment project would fall under the definition of environmental information as outlined in regulation 2(1)(c) of the EIR.
13. Therefore, the request should have been handled under the EIR. Because the University issued its refusal under FOIA and not the EIR it breached regulation 14(3) of the EIR, which states that a public authority must state, no later than 20 working days after received the request, what exceptions it is relying upon.

Regulation 13 – personal data

14. Personal data must not be disclosed under the EIR if to do so would breach any of the data protection principles.
15. Regulation 13(1) specifically states that information is exempt from disclosure if it's the personal data of a third party and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.
16. In this case the relevant condition is contained in regulation 13(2A)(a), where disclosure to the world at large 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').

Is the withheld information personal data?

17. First, for regulation 13 to apply the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it's not personal data then regulation 13 of the EIR cannot apply.
18. Personal data must relate to an identified or identifiable living individual.
19. The Commissioner has seen all of the information that's been redacted; it's the names of individuals redacted from the agendas, attendance records, minutes, reports or other documents circulated by, or to, the Liveable Exeter Place Board.
20. However, in the attendee lists for meeting minutes, the University has also withheld the names of the organisations that these individuals represent. This isn't specific enough to identify any one individual and therefore, this information isn't personal data and must be disclosed.
21. An individual's name is clearly their personal data so the Commissioner can move on to establish whether disclosing the information would breach any of the data protection principles.
22. The most relevant data protection principle in this case is principle (a) which states that "Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject"¹.

¹ [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\) \(Text with EEA relevance\) \(legislation.gov.uk\)](https://legislation.gov.uk/eu/2016/679)

Would disclosure contravene principle (a)?

23. Personal data is processed when it is disclosed in response to the request. This means that a public authority can only disclose personal data in response to an EIR request if to do so would be lawful, fair and transparent.
24. In order to be lawful, one of the lawful bases listed in Article 6(1)² of the UK General Data Protection Regulation (UK GDPR) must apply to the processing.

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

25. The Commissioner considers that the lawful basis most applicable 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.”

26. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information made under the 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;

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

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

² [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\) \(Text with EEA relevance\) \(legislation.gov.uk\)](https://legislation.gov.uk/eur/2016/679)

Legitimate interest test

27. The Commissioner must first consider the legitimate interest in disclosing the personal data to the public and what purpose this serves. In considering any legitimate interest(s) in the disclosure of the requested information under the EIR, the Commissioner recognises that a wide range of interests may represent legitimate interests; they can be the requester's own interests as well as wider societal benefits. These interests can include the broad principles of accountability and transparency that underpin the EIR or may represent the private concerns of the requestor.
28. It's important to remember that disclosure under the EIR is effectively disclosure to the world at large. If the requester is pursuing a purely private concern which is unrelated to any broader public interest, then disclosure is unlikely to be proportionate. Legitimate interests may be compelling or trivial, but trivial interests may be more easily overridden by the fundamental rights and freedoms of the data subject during the test under stage (iii).

29. During this investigation, the complainant explained:

"The membership of Liveable Exeter Place Board is in the public domain at <https://www.liveableexeter.co.uk/updates/the-liveable-exeter-place-board/> and elsewhere. Its membership is also presented in one the documents included in the disclosure, Liveable Exeter Terms of Reference June 22_FINAL.pdf (also attached). Surely the names of the board's members should therefore not be redacted in the rest of the disclosure?

The second is that the names of both elected representatives and senior officers of public authorities have been redacted from the disclosure documents. Surely the legitimate interest basis for disclosure outweighs the privacy rights of such individuals, who should not reasonably expect their names to be redacted in documents disclosed under EIR/FOIA?

The third is that the role of Liveable Exeter Place Board relates to public policy-making across a range of areas (many of which fall under EIR) and so those producing and presenting work to the board in fulfilment of its public functions should also not reasonably expect their names to be redacted in documents disclosed under EIR/FOIA as the legitimate interest basis for disclosure also outweighs their privacy rights (with the possible exception of third party private sector contributors)."

30. The Commissioner is satisfied that there's both a private and broader legitimate interest being pursued.

Necessity test

31. The Commissioner must also consider if disclosure is necessary for the purpose that this legitimate interest represents or if there is an alternative method of doing so.
32. 'Necessary' means more than desirable but less than indispensable or absolute necessity. The necessity test is a means of considering whether disclosure under the EIR is necessary to meet the legitimate interest identified, or whether there is another way to do so that would interfere less with the privacy of individuals.
33. The Commissioner understands that the specific information being withheld, the attendee lists for the meetings and the agendas, have not otherwise been made available to the public. Therefore, there are no less intrusive means of achieving the legitimate aims identified in stage (i).

Balancing test

34. Since the Commissioner is satisfied that disclosure is necessary for the purpose that this legitimate interest represents, he will now go onto consider whether the identified interests in disclosure outweigh the interests or fundamental rights and freedoms of the data subject(s).
35. For example, if the data subject(s) would not reasonably expect that the information would be disclosed to the public under the EIR, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
36. The Commissioner asked the University to address the complainant's specific concerns and why the balancing test fell in favour of withholding personal data for certain individuals. The University didn't address this matter.
37. So, in conducting the balancing test himself, the Commissioner has considered the following:
 - 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 individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
38. The balancing test should take into account whether the data subjects concerned have a reasonable expectation that their information would

not be disclosed. This expectation may be influenced by a number of factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose which this personal information serves.

39. It's also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
40. The University has explained:

"Liveable Exeter is an Exeter City Council process, which at times university staff attend. The University of Exeter receives the minutes whether they attend or not.

In this instance, the names/initials within the document belonged to a third party whom we contacted to ask for consent for us to release. We received no response and therefore redacted the names and initials from the document. In this instance, we also removed the chairperson's name as they were also not an employee or representative of the University."

41. Despite whether Liveable University is a council process, and not a University process, this information is still held by the University for the purposes of the EIR. Whilst the University was correct to seek views on disclosure – it was incorrect to assume that just because no response was given means that all personal data could be withheld.
42. The University has explained that it believes the rights and freedoms of the data subject(s) would be compromised if the personal data was disclosed and 'This is evidenced in the aggressive nature of the local media site that the requestor runs towards the University and the misuse of data we provided previously.'
43. The University has pointed the Commissioner to the website in question. Whilst he acknowledges the article scrutinises the University, he doesn't consider it particularly aggressive towards any individual.
44. The Commissioner has turned to consider the complainant's arguments at paragraph 36.
45. The Commissioner acknowledges that the members of the Liveable Exeter Place Board are already in the public domain and the information being withheld is the attendees at the Liveable Exeter Place Board meetings. He therefore doesn't consider that any of the board members would expect that their attendance at these meetings would be withheld. It's common knowledge that they are part of the board and therefore a reasonable assumption that they would attend the board meetings.

46. Since it's not a reasonable expectation for the individuals to have for their personal data to be redacted from the attendee lists, the Commissioner considers the legitimate interest in this request outweighs the rights and freedoms of the members of the Liveable Exeter Place Board and therefore this information must be disclosed.
47. Turning to the complainant's concerns about elected representatives and senior officers of the University, again as senior elected representatives of either the University, another public authority (such as the Police, the Met Office, Exeter Cathedral or Network Rail) or constituents, the Commissioner doesn't consider it's a reasonable expectation for such individuals to have, that their attendance at the meetings in question would be withheld. By virtue of their role, they are a representative, either of a body or a group of people, and must be comfortable with a certain level of transparency and accountability. Again, this information must be disclosed.
48. For clarity, the Commissioner is asking the University to disclose the names of those who operate at director level or above or an appropriate equivalent. This includes but isn't limited to, the Vice-Chancellor and director of the University, any Chief Constable of the Police and any director of another publicly funded body. It doesn't include the equivalent of any private company.
49. The Commissioner would like to draw the University's attention to his guidance on requests for personal data about public authority employees.³ This guidance makes it clear that a public authority might 'receive requests that involve disclosing the names of employees or representatives of other organisations' and disclosure must still be considered.
50. This guidance will help the University decide whether an individual is at director level or above or an appropriate equivalent. The University should take into account the individual's seniority, salary and whether they are in the public facing role.
51. There appears to crossover between the aforementioned individuals and members of the Liveable Exeter Place Board. There are, however, attendees of the meeting who aren't in such senior positions and whose personal data is not in the public domain. They have attended the meetings as representatives of organisations such as Homes England, the Police and the University itself. They are more junior officials and

³ [Requests for personal data about public authority employees \(ico.org.uk\)](https://ico.org.uk)

are there to provide secretariat or to represent someone much more senior.

52. The Commissioner considers that the University will meet the legitimate interest of the request by disclosing that a representative of these organisations was in attendance at the meetings (as the Commissioner has decided that the name of the organisation isn't personal data and therefore must be disclosed). However, to disclose of the identity of such a junior individual would be against the reasonable expectations of those individuals. Therefore, this information can be withheld. The Commissioner considers this addresses the complainant's final complaint as outlined in paragraph 28.
53. In respect of this information, the Commissioner therefore considers that there is no Article 6 basis for processing and so disclosure would not be lawful. The Commissioner hasn't gone on to separately consider whether disclosure would be fair or transparent, since he's found that regulation 13 is engaged.

Right of appeal

54. 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

55. 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.
56. 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

Alice Gradwell
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