

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 10 November 2023

Public Authority: Devon County Council
Address: County Hall
Topsham Road
Exeter
Devon
EX2 4QD

Decision (including any steps ordered)

1. The complainant has requested information held by Devon County Council (the council) about a public footpath.
2. The council initially refused the request under section 41(1) – information provided in confidence - of the Freedom of Information Act 2000 (FOIA). At the internal review stage, the council provided the complainant with some information, and confirmed that it was now withholding the remaining information under section 40(1) – personal data of the requester, and section 40(2) – personal data of third parties.
3. The council subsequently provided the complainant with copies of their personal data in response to a subject access request. During the Commissioner's investigation the council advised that it was now relying on the exception at regulation 13(1) – third party personal information – of the EIR, as its basis for refusing to provide the remaining withheld information.
4. The Commissioner considers the EIR to be the correct information access regime, and he is satisfied that the council is entitled to rely on regulation 13(1), of the EIR as its basis for refusing to provide the remaining withheld information.

5. The Commissioner considers that the council has, on the balance of probabilities, identified all of the information held that falls within the scope of the request. However, as the council failed to release information to the complainant within the required 20 working days, and also failed to issue a refusal notice within the same statutory time period, the Commissioner has found a breach of regulation 5(2) and regulation 14(2) of the EIR, respectively.
6. The Commissioner does not require any further steps to be taken as a result of this decision notice.

Request and response

7. On 2 February 2023, the complainant wrote to the council and requested information in the following terms:

“I would like a copy of all correspondence (including, but not restricted to, email and letter) relating to Bere Ferrers Footpath 2 since 1st October 2022.”
8. On 20 April 2023, the council issued a refusal notice, advising the complainant that it was withholding the requested information under section 41 of FOIA.
9. On 26 April 2023, the complainant requested an internal review, and on 1 June 2023, the council provided its response.
10. The council disclosed some information to the complainant and advised that it considered the remaining information to be exempt from disclosure under section 40(1) and section 40(2) of FOIA. The council also confirmed that it would be able to consider the release of some of the withheld information under the subject access provisions of the UK GDPR and Data Protection Act 2018 (the DPA 2018), upon the receipt of evidence of the complainant’s identity.
11. On 6 July 2023, the complainant contacted the council, raising concerns about its decision to redact some of the information contained within pages 12, 15, 18, 29, 30 and 76 of the documents that had been released.
12. On 2 August 2023, the council advised that it was satisfied that it had now released all the information that the complainant was entitled to, both under FOIA, and the DPA 2018, and that the remaining withheld information was subject to the exemption at section 40(2) of FOIA.

Scope of the case

13. The complainant has raised concerns with the Commissioner about the council's decision to redact information contained within pages 12, 29, 30 and 76 of the bundle of documents released in response to their request of 2 February 2023. They have also complained that the council does not appear to have considered the disclosure of information contained within one particular document that it holds, a 'Form 2', which they believe falls within the scope of their request.
14. The complainant has also raised concerns about the council's general handling of their request, and the timeliness of its responses.
15. The council has confirmed to the Commissioner that it has now provided the complainant with part of the withheld information (the complainant's personal information) under the subject access provisions of the UK GDPR and the DPA 2018.
16. The council has also advised the Commissioner that it considers that it should have handled the request under the EIR. It said that it is now relying upon regulation 13 of the EIR as its basis for withholding the remaining third party information that is relevant to the request.
17. In the circumstances of this case, the Commissioner sees no value in considering any part of the withheld information that has now been provided to the complainant as a result of a subject access request.
18. The Commissioner will therefore make a decision on the following:
 - whether the EIR is the correct information access regime.
 - whether the council is entitled to rely on regulation 13 of the EIR as its basis for withholding the remaining information (after the exclusion of any personal information relating to the complainant) contained within pages 12, 29, 30 and 76 of the bundle of documents released in response to the request.
 - if Form 2 falls within the scope of the request, and if so, whether it should be released.
 - certain procedural matters, as requested by the complainant.

Reasons for decision

The applicable access regime

19. The Commissioner considers that the requested information, which concerns rights of access and the route of a public footpath, is environmental information as defined by [regulation 2\(1\)\(a\) of the EIR](#). The Commissioner therefore considers the EIR to be the correct information access regime in this case.

Regulation 5(1) – duty to provide environmental information upon request

20. Regulation 5(1) of the EIR states that “a public authority that holds environmental information shall make it available on request.” This is subject to any exceptions that might apply.
21. The complainant believes that the council may have failed to identify all the information held that is relevant to their request. Specifically, they are concerned about one particular document, referred to as ‘Form 2’.
22. The council has confirmed that a ‘Form 2’ is a document that forms part of a legal process provisioned under section 130 of the Highways Act 1980; it is issued by the council to a relevant party when it receives notification of a reported obstruction on a public highway.
23. In this case, the council has confirmed that the particular ‘Form 2’ referred to by the complainant does not fall within the scope of their request; this is because it was not held at the time that their request was received.
24. The Commissioner is satisfied on the basis of this statement from the Council that the ‘Form 2’ was not held at the time that the request was received, and so it did not fall within the scope of the request.

Regulation 13 – third party personal data

25. 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.
26. The Commissioner has determined that the withheld information (that is not the personal data of the complainant, the exclusion of which is covered above) relates to individuals who can be identified from that data, and that such information therefore falls within the definition of ‘personal data’ set out within the DPA 2018.

27. The Commissioner has considered whether the redaction of names of some individuals would prevent identification, and allow for the release of some additional information; however, he is satisfied that, given the matters to which the request relates, such individuals would still be identifiable, at the very least by the complainant.
28. 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 considers principle (a) to be of most relevance in this case. This states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
29. 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.
30. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider if 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.
31. Whilst the Commissioner considers that the requester primarily has a private interest in the disclosure of the requested information, he accepts that there is a wider legitimate interest in the public (and in particular the local community) being informed about any issues that have arisen over access to a public footpath.
32. However, the Commissioner considers that the information which the council has released on the matter, in particular in response to this request, goes some way in meeting any legitimate interest in this instance.
33. The Commissioner considers that the disclosure of the withheld information to the 'world at large' in response to an EIR request would not have been within the reasonable expectations of the individuals, and the loss of privacy may cause unwarranted distress.
34. Therefore, it is the Commissioner's view that there is insufficient legitimate interest in this case to outweigh the relevant individuals' fundamental rights and freedoms, and that disclosure of personal information would therefore not be lawful in this instance.
35. As a result, the Commissioner has determined that disclosing the personal data of third parties in response to the complainant's request would contravene principle (a).

36. The Commissioner therefore concludes that the council is entitled to rely on regulation 13(1) of the EIR as its basis for withholding the information.

Procedural matters

37. As the council failed to release part of the requested information within 20 working days, and also failed to issue a refusal notice within the same statutory time period, the Commissioner has found a breach of regulation 5(2), and regulation 14(2) of the EIR, respectively.

Right of appeal

38. 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

39. 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.
40. 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

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