

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

Date: 20 March 2024

Public Authority: Newport City Council
Address: Civic Centre
Godfrey Road
Newport
NP20 4UR

Decision (including any steps ordered)

1. The complainant requested information about a specific property. Newport City Council (the Council) disclosed the information held relevant to the request, subject to some information being redacted under regulation 13 (personal data) of the EIR. The complainant considered that additional information was held relevant to the request. During the course of the Commissioner's investigation, the Council disclosed some of the information it had originally redacted under regulation 13 of the EIR. It also introduced reliance on section 38 (health and safety) of the FOIA in relation to other information.
2. The Commissioner's decision is that, on the balance of probabilities the Council does not hold any additional information relevant to the request, other than the redacted documents it has disclosed. The Commissioner has also determined that the Council correctly relied on regulation 13 of the EIR in respect of the remaining information held relevant to the request. The Commissioner does not require any steps to be taken.

Request and response

3. On 5 June 2023, the complainant wrote to Council and requested information in the following terms:

"All recorded information and not limited to official documents covering, for example and including, drafts, emails, notes, recordings of telephone conversations, photographs, meeting notes and correspondence in relation to [address of property redacted] since April 2022".

4. The Council responded on 6 July 2023. It provided some information and stated other information was exempt under regulation 13 of the EIR.
5. On 9 July 2023 the complainant requested an internal review of the handling of the request. They suggested that the Council had not supplied all of the information requested and as an example referred to a meeting they had with Council representatives earlier in the year to discuss the property in question. The complainant also pointed out that their request was not limited to planning matters relating to the property in question but all information. Again, as an example, the complainant referred to an absence of any information "relating to the important public funded aspect and the decisions and timings leading to the involvement of Connect Enterprises Ltd".
6. The Council provided the outcome of its internal review on 7 August 2023. It provided some additional information relevant to the request but maintained that the other information held was exempt under regulation 13 of the EIR. The Council also confirmed that it did not hold any information relating to Connect Enterprises as it did not "have a direct contract with them". It also confirmed that it did not record telephone calls.

Scope of the case

7. The complainant contacted the Commissioner on 21 September 2023 to complain about the way their request for information had been handled.
8. During the course of the Commissioner's investigation, the Council disclosed some of the information that it had originally redacted from the documents it had disclosed. In addition, the Council introduced its reliance on section 38 of the FOIA in respect of some of the remaining withheld information. This information relates to the residents of the property and their care arrangements. The complainant confirmed to the Commissioner that they were not interested in this category of information and their request was primarily aimed at discovering whether the Council has any relationship, contractual or otherwise with Connect Enterprises. As such the Commissioner has not considered the Council's application of section 38 to the information in question.
9. In light of the above, the scope of the Commissioner's investigation into this complaint is to determine whether the Council holds any additional information relevant to the request. He has also considered whether the

Council has correctly applied regulation 13 of the EIR to redact information from the documents it has disclosed.

Reasons for decision

Regulation 5(1) of the EIR– duty to make environmental information available on request

10. 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 may apply.
11. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. The Commissioner will also consider the actions taken by the authority to check that the information is not held, and any other reasons offered by the public authority to explain why the information is not held.
12. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.
13. The Council confirmed to the Commissioner that the subject of the request was "planning, ownership and change of use issues" relating to the property in question. It interpreted this to include information relating to Connect Enterprises and the ongoing planning enforcement investigation at the property. The Council also advised that no planning application or Certificate of Lawfulness had been submitted.
14. The Council confirmed that information relevant to the request was only held within electronic records as the planning and enforcement team work in a paperless office. Searches within the planning enforcement department focused on email records, information held within the Council's document management system - Information@work which stores all documents relating to planning enforcement work, and records held within Uniform, which is the database used for planning enforcement cases.
15. The Council advised the Commissioner that all planning and enforcement officers carried out searches to identify information held relevant to the request, held on networked resources and email systems. The search term used for the search was 'Jessop'. Other than the redacted documents which have been disclosed by the Council, no additional information relevant to the request was identified as a result of the searches undertaken.

16. The complainant has indicated that they are particularly interested in receiving information about whether the Council has any relationship with Connect Enterprises. The complainant referred to a statement in one of the original redacted emails which the Council disclosed, which they felt indicated that the Council did have a contract with Connect Enterprises.
17. The Commissioner asked the Council to explain the nature of any relationship with Connect Enterprises. The Council explained that it has a contract in place with Prime Care, an approved provider of domiciliary care and supported living services for services in Newport. This includes the care and support for one individual living at the property in question. Prime Care is registered with the Care Inspectorate for Wales and is accredited by the Council. The Council confirmed that there is no contract in place between its Social Services department and Connect Enterprises. In addition, the Council explained that Connect Enterprises is not on its approved list of contractors and there has been no formal requests to assign/sub-contract services out to Connect Enterprises.
18. The Commissioner has considered the original redacted email which the complainant referred to as demonstrating that the Council does have a contract in place with Connect Enterprises. The Commissioner accepts that, as a result of the way that the Council originally redacted information from this document, it did suggest that the Council had a contract with Connect Enterprises. However, on viewing an un-redacted version of this email, the Commissioner is satisfied that the reference to a contract with the Council actually represents a comment made by a third party, rather than it being a statement made by a Council officer that a contract was in place with Connect Enterprises.
19. In light of the Council's representations relating to Connect Enterprises, and in particular that Connect Enterprises is not on the Council's list of approved contractors and that it does not have a contract with the organisation, the Commissioner considers it reasonable that the Council would not hold any information relating to Connect Enterprises.
20. Based on the evidence available to him, the Commissioner is satisfied that the Council has carried out adequate searches, which would have been likely to locate information falling within the scope of the request. Based on the searches undertaken and the other explanations provided, as referred to above, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any additional information falling within the scope of the request other than that which it has disclosed.

Regulation 13 – third party personal data

21. 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) of the Data Protection Act 2018 (DPA) is satisfied.
22. The Commissioner has viewed unredacted copies of the documents the Council has disclosed. A number of redactions have been made as the information is out of scope as it relates to other properties. The Commissioner can confirm that this is the case.
23. In respect of information which is held relevant to the request, the Council has withheld the names and/or contact details of a number of individuals including a member of the public who sent an email raising concerns about planning permission, the names of the residents of the property, the names of individuals working at Prime Care Services, the personal mobile telephone number of a councillor and the email addresses of junior members of staff.
24. The Commissioner is satisfied that this information clearly relate to third parties. He is satisfied that the information both relates to, and identifies the third party concerned. This information therefore falls within the definition of "personal data" in section 3(2) of the DPA.
25. Turning to the conditions that must be satisfied for regulation 13(1)(a) of the EIR to apply, the Commissioner considers that regulation 13(2A)(a) is relevant here. This applies where the disclosure of the information to any member of the public would contravene any of the data protection principles relating to the processing of personal data, as set out in Article 5 of the UK General Data Protection Regulation (UK GDPR). The Commissioner has considered whether disclosure would breach principle (a) of Article 5(1), which states that personal data shall be:
 - (a) processed lawfully, fairly and in a transparent manner in relation to individuals ('lawfulness, fairness and transparency').
26. Disclosure under the EIR is effectively an unlimited disclosure to the world at large, without conditions.
27. In this case, the Commissioner is satisfied that the individuals concerned would have had a reasonable expectation that their personal data would not be disclosed to the wider world in response to an EIR request. The Commissioner also considers that disclosing their personal data would be an invasion of their privacy.

28. The Commissioner notes that the Council has disclosed the substance of the emails in question and the only information that the Council has withheld is the names and/or contact details of certain individuals. The Commissioner considers that this meets any legitimate interest in transparency of decision making without undue interference into the privacy rights of individuals.
29. The Commissioner struggles to see any compelling wider legitimate interest that would necessitate publishing the personal data concerned. He is not persuaded that any legitimate interest in accessing the information would override the interests or fundamental rights and freedoms of the data subject in this case.
30. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest in disclosure to outweigh the data subjects' fundamental rights and freedoms. Furthermore, it is not necessary for the information to be disclosed to the world at large, to enable the complainant to pursue any concerns they might have about the property in question.
31. The Commissioner therefore considers that disclosing the withheld information would contravene principle (a) of Article 5(1) of the UK GDPR, as it would not be lawful. In light of this, the Commissioner's decision is that the Council was entitled to withhold the information under regulation 13(1) of the EIR.

Right of appeal

32. 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

33. 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.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Joanne Edwards
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF