

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 27 March 2024

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

Decision (including any steps ordered)

1. The complainant requested information from Devon County Council ("the Council") regarding a public footpath, specifically confirmation of whether the landowners bore a consultation fee for a diversion proposal and a copy of a form sent to the landowners regarding an obstruction. The Council has withheld the information on the grounds that it is personal data under regulation 13 of the EIR.
2. The Commissioner's decision is that the Council is entitled to rely on regulation 13 of the EIR to withhold the requested information.
3. The Commissioner does not require further steps.

Request and response

4. On 18 September 2023, the complainant wrote to the Council and requested information in the following terms (numbering added for ease of reference):
 1. "Firstly, I would like to know the costs, paid by the council after the beginning of February 2023, to remove trees on the part of Bere Ferrers footpath 2 on the land owned by [landowners' names redacted]."

2. "Secondly, I would like to know if the £500 informal consultation fee for a Diversion Proposal was borne by the Council or by [landowners' names redacted]."
5. In addition, on 21 September 2023, the complainant made the following further request (numbering added for ease of reference):
 3. "I require: a copy of Form 2 that was sent (to [landowners' names redacted]) as a response to Form 1 that I served on Devon County Council in January 2023."
6. The Council responded on 11 October 2023. It:
 - Referred the complainant to a response to a previous request, for the information requested in part 1 of the request.
 - Refused to provide the information requested in part 2 of the request, citing regulation 13 of the EIR (personal data) as its basis for doing so.
 - Stated, "as this matter has been raised by yourself in a complaint relating to another of your cases, we will now need to respond to this through the internal review process", with respect to part 3 of the request.
7. On 11 October 2023 the complainant requested an internal review. They:
 - Stated that the information previously provided with respect to part 1 of the request was no longer up-to-date, as further work had since been carried out.
 - Suggested that the information requested in part 2 of the request could be disclosed without the name of the applicant.
 - Queried the Council's basis for refusing to provide the information requested in part 3 of the request.
8. Following an internal review the Council wrote to the complainant on 20 October 2023. It:
 - Provided updated information with respect to part 1 of the request.
 - Maintained its position with respect to part 2 of the request.
 - Revised its position with respect to part 3 of the request to also refuse to provide this information under regulation 13 of the EIR (personal data).

Scope of the case

9. This notice considers whether the Council is entitled to withhold the information held in relation to parts 2 and 3 of the request) under regulation 13 of the EIR.

Reasons for decision

Regulation 13 - personal data

10. Regulation 13(1) 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.
11. In this case the relevant condition is contained in regulation 13(2A)(a)¹. 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').
12. Section 3(2) of the Data Protection Act 2018 defines personal data as:
- "any information relating to an identified or identifiable living individual."
13. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
14. In this case the information that has been withheld under regulation 13 comprises information relating to whether the Council or the landowners named in the request bore a £500 fee consultation fee regarding a diversion proposal and "Form 2".
15. The Council has explained Form 2 is part of a legal process provisioned under Section 130 of the Highways Act 1980. The complainant reported an obstruction on a public highway using Form 1, providing details of the obstruction and names of those they believe to be responsible for the obstruction. Form 2 is then served on the person listed as responsible for the obstruction (in this case the landowners named in the request).
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¹ As amended by Schedule 19 Paragraph 307(3) DPA 2018.

Under this legal process, the complainant received a Form 3 as the person reporting the obstruction, informing them of the action being taken by the Local Authority.

16. With respect to whether the £500 informal consultation fee for a diversion proposal was borne by the Council or the landowners, the Council argues that information held in relation to this is the personal data of the landowners named in the request.
17. With respect to Form 2, the Council argues that the content of this form is the personal data of the landowners named in the request, to whom Form 2 was sent, and that it also contains a small amount of personal data of Council staff.
18. The Commissioner is satisfied that information held with respect to whether the £500 informal consultation fee for a diversion proposal was borne by the Council or the landowners is the personal data of the landowners. This information (whether they bore the fee or not) both relates to and identifies the landowners.
19. The Commissioner is also satisfied that all of the information contained within Form 2 is personal data. A small amount of this information is the personal data of a Council staff member, specifically their name, job title, contact details and signature. The remaining information is the personal data of the landowners named in the request to whom it was sent, the landowners are identified in the wording of the request and the contents of the form relates to them as it is a notice served upon them.
20. As the Commissioner is satisfied that all of the withheld information is personal data, 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."
21. 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.
22. 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.
23. The Commissioner considers that the complainant is pursuing a legitimate interest in transparency regarding how the Council is acting in

respect to a dispute relating to the public footpath. He will therefore next consider the question of necessity.

24. "Necessary" means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity which involves the consideration of alternative measures, and therefore disclosure would not be necessary if the legitimate aim could be achieved by something less. Disclosure under the EIR must therefore be the least intrusive means of achieving the legitimate aim in question.
25. The Commissioner considers that disclosure of information held with respect to whether the £500 informal consultation fee for a diversion proposal was borne by the Council or the landowners, is necessary to meet the complainant's legitimate interests. He will therefore go on to consider the balancing test with respect to this information below.
26. However, the Commissioner does not consider that the disclosure of the Form 2 under the EIR is necessary to meet these legitimate interests. The Council argues that it has already met the interest in transparency regarding this matter by sending Form 3 to the complainant under the process outlined in paragraph 15 of this notice.
27. Having viewed both Form 2 and Form 3, the Commissioner is satisfied that the Council has already met the complainant's legitimate interests in transparency through the issuing of Form 3. The Commissioner is satisfied that, as stated in the Council's explanation of the process it has followed under the Highways Act, which the Commissioner has reproduced in paragraph 15 of this notice, Form 3 serves to inform the complainant of the action it has taken as a result of the Form 1 that they submitted.
28. As this alternative, less intrusive means of providing transparency to the complainant is available and has already been employed by the Council, the Commissioner considers that disclosure of Form 2 to the world at large under the EIR is not necessary.
29. As disclosure of Form 2 under the EIR is not necessary to meet the legitimate interests, there is therefore no legal basis for the Council to disclose this information and to do so would be in breach of principle (a). The Commissioner's decision is therefore that the Council is entitled to rely on regulation 13 of the EIR to withhold Form 2.
30. The Commissioner will now consider the balancing test with respect to the information held regarding whether the £500 informal consultation fee for a diversion proposal was borne by the Council or the landowners. The Commissioner must balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms.

31. The Council argues that the landowners would not reasonably expect information relating to their personal finances (whether they bore the fee or not) to be disclosed to the world at large under the EIR.
32. In this case, the Commissioner is satisfied that the individuals concerned would have the reasonable expectation that their personal data would not be disclosed to the wider world in response to an EIR request. The Commissioner is also satisfied that disclosing details about the landowner's private finances, when that is not expected, would be seen as intrusive, and would be likely to cause them distress.
33. In addition although the Commissioner accepts the complainant is pursuing a legitimate interest, he considers this interest to be primarily a private interest relating to a neighbour dispute as opposed to any wider public interest.
34. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that disclosing the information in question would contravene a data protection principle as it would not be lawful. Therefore, he has decided that the data is exempt under regulation 13(1) by virtue of 13(2A)(a).
35. It follows that the Council is entitled to withhold this information.
36. The Commissioner's decision is therefore that the Council is entitled to withhold all of the withheld information under regulation 13 of the EIR.

Right of appeal

37. 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

38. 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.
39. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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