

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

**Date:** 21 August 2024

**Public Authority:** Sheriff Hutton Parish Council  
**Address:** sheriffhuttonparishcouncil@gmail.com

**Decision (including any steps ordered)**

---

1. The complainant has requested from Sheriff Hutton Parish Council ('the Parish Council') all information and correspondence it held relating to a variation to planning application that he had submitted to North Yorkshire Council. The Parish Council disclosed most of the requested information, but it withheld individual councillors' names and email addresses. It also withheld correspondence on the application it had received from a member of the public. It cited section 41 (Information provided in confidence) of FOIA for these redactions.
2. During the Commissioner's investigation, the Parish Council reconsidered the request under the EIR and confirmed it was relying on regulation 13(1) (Personal data) to withhold the information, which it considered to be the personal data of third parties.
3. The Commissioner's decision is that the Parish Council was entitled to rely on regulation 13(1) to refuse to disclose the withheld information.
4. The Commissioner does not require further steps as a result of this decision.

**Request and response**

---

5. On 2 March 2024, the complainant wrote to the Parish Council and requested information in the following terms:

"I am making a request under the Freedom of Information Act for all information and correspondence relating to your decision on Planning

Application [reference redacted] (Variation of condition 02 of planning approval [reference and address redacted])."

6. The Parish Council responded on 12 March 2024. It disclosed a clearly redacted copy of its internal correspondence regarding the planning decision, although it did not explain what information had been redacted or why.
7. The complainant requested an internal review on the same day. He asked for an unredacted copy of the information (save for contact information) and a copy of any correspondence it had received from a named individual, which he believed had been taken into account in its deliberations.
8. The Parish Council provided the outcome of the internal review on 23 March 2024. It said that the remaining information was being withheld under section 41 (Information provided in confidence) of FOIA.

### **Scope of the case**

---

9. The complainant contacted the Commissioner on 5 April 2024 to complain about the way his request for information had been handled. He argued that:

"The subject of the correspondence would ordinarily have been discussed in a public meeting and I see no reason why the information should be redacted...the source of the information I requested (namely the original correspondence between councillors) is the Parish Council themselves and not any other person or authority."

10. During the Commissioner's investigation, the Parish Council reconsidered the request under the EIR. It withdrew its reliance on section 41 of FOIA and cited instead regulation 13 of the EIR to withhold the remaining information.
11. The analysis below considers the application of regulation 13 to the withheld information.

## Reasons for decision

---

### Is the requested information environmental?

12. If information falls within the definition of "environmental information" at regulation 2(1) of the EIR, any request for it must be considered under the EIR.
13. Regulation 2(1)(c) of the EIR applies to information on:

"...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) and (b) as well as measures or activities designed to protect those elements...".
14. As the requested information relates to comments on the variation of a planning application, the Commissioner considers that the requested information is information on measures (regulation 2(1)(c)) as they affect the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

### Regulation 13 – Personal data

15. The withheld information comprises the names and email addresses of individual parish councillors, in emails discussing the application variation. Correspondence about the application received from a member of the public by the Parish Council, is also being withheld.
16. The Commissioner understands that the application variation was made to, and determined by, North Yorkshire Council, and that the Parish Council was simply a consultee. It provided its comments to North Yorkshire Council in that capacity.
17. The Parish Council has disclosed the other information the complainant asked for, and this has allowed him sight of its discussions about the application and the comments it submitted to North Yorkshire Council. It refused to identify the parish councillors who had made particular, critical comments or reveal the identity and comments made by the member of the public, on the grounds that this was their personal data and its disclosure could contribute to bad feeling in a very small community.
18. Under regulation 13(1) of the EIR, information is exempt from disclosure if it is the personal data of someone other than the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.

19. In this case the relevant condition is contained in regulation 13(2A)(a)<sup>1</sup>. This applies where disclosing 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').
20. First, the Commissioner must determine whether the withheld information is personal information as defined by the Data Protection Act 2018. If it is not personal information, then regulation 13(1) of the EIR cannot apply.
21. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

### **Is the information personal data?**

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

"any information relating to an identified or identifiable living individual."

23. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
24. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
25. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
26. The withheld information in this case comprises the names and contact details of particular councillors and correspondence about the application from a named member of the public.
27. The Commissioner considers that the withheld information clearly relates to, and identifies, these individuals and is therefore satisfied that it constitutes their personal information.

---

<sup>1</sup> As amended by Schedule 19 Paragraph 307(3) DPA 2018

28. However, the fact that information constitutes third party personal data does not automatically exclude it from disclosure under the EIR. The public authority is required to determine whether disclosure would contravene any of the DP principles.
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. The Commissioner's view is that public authorities should consider lawfulness first. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

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

31. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that "processing shall be lawful only if and to the extent that at least one of the" lawful bases for processing listed in the Article applies.
32. The Commissioner considers that the lawful basis most applicable is Article 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, in particular where the data subject is a child".<sup>2</sup>
33. Accordingly, in considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information 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;

---

<sup>2</sup> Article 6(1) goes on to state that:  
"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

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

34. The Commissioner further considers that these tests should be considered in sequential order, ie if the legitimate interest is not met then there is no need to go on to consider the necessity test, and so on.

### **Legitimate interest**

35. 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 be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

36. The Parish Council did not identify any legitimate interest in disclosure.

37. The Commissioner recognises that the withheld information relates to a planning application made by the complainant. He considers that the complainant was pursuing a personal interest in knowing the Parish Council's views on his planning application variation, when making the request.

### **Is disclosure necessary?**

38. Having identified a legitimate interest, albeit of a limited personal nature, the next step is to consider whether disclosure of the personal data in question is actually necessary to meet that legitimate interest. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the EIR must therefore be the least intrusive means of achieving the legitimate aim in question.

39. The Parish Council's comments, and those of other respondents, are not published on North Yorkshire Council's planning portal. However, the Parish Council has disclosed any non-personal information the complainant asked for, which has given him sight of its discussions about the application and of the comments it subsequently submitted to North Yorkshire Council.

40. The Commissioner notes that the application variation had already been approved by North Yorkshire Council by the time the Parish Council responded to the request. Had the application variation been rejected, the Commissioner considers that the complainant might have had a more compelling personal interest in knowing who had said what about the matter. As it is, he is not disadvantaged by not having access to this information as the information had no bearing on the decision, which had already been made. The Commissioner considers that the information that has already been disclosed is sufficient to meet the legitimate interests of the complainant, as identified above.
41. Furthermore, the Commissioner is not persuaded that it is necessary for the Parish Council to disclose the withheld information as he does not consider that its disclosure would assist the wider public's understanding of the handling of the application variation in any way. The possibility that disclosure might contribute to bad feeling in a small community further adds to it being disproportionate, given the very limited and personal benefit that would flow from it.
42. In light of the above, the Commissioner finds that the necessity test is not met, and therefore the Parish Council is not able to rely on Article 6(1)(f) as a lawful basis for processing the personal data in question. It follows that disclosure of this information would not be lawful, and would contravene principle (a).
43. The Commissioner's decision is therefore that the Parish Council was entitled to apply regulation 13(1), by way of regulation 13(2A)(a), to withhold the personal data.

## **Right of appeal**

---

44. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

45. 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.
46. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Samantha Bracegirdle**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**