

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

Date: 4 October 2024

Public Authority: Knutsford Town Council
Address: Knutsford Council Offices
Toft Road
Knutsford
WA16 6TAX

Decision (including any steps ordered)

1. The complainant requested information relating to public rights of way at a woodland. Knutsford Town Council (the "Council") initially handled the request under the FOIA, disclosing some information and withholding personal information under section 40. During the Commissioner's investigation the Council reconsidered the request under the EIR and issued a new response which disclosed further information and applied regulation 13 to withhold personal information.
2. The Commissioner's decision is that the Council is entitled to rely on regulation 13 of the EIR to withhold the personal information but that it provided some of the requested information outside the time for compliance, failed to issue a refusal notice under the EIR in time and failed to carry out an internal review, breaching regulations 5(2), 14 and 11(4).
3. The Commissioner does not require further steps.

Request and response

4. On 12 January 2024, the complainant wrote to Knutsford Town Council (the "Council") and requested the following information (Commissioner's numbering):

"1 A copy of the sales particulars for the Woodland referred to in your letter.

2 A copy of the Council's social media policy for employees

3 A copy of the metadata confirming the author of the statement and when it was created

4 Copies of any documents (including meeting notes, emails and instant messages) evidencing input into the content of the statement to the author by others.

5 Copies of communication (including emails, telephone and instant messages) between the Council (including any members or employees) and Cheshire East Council concerning the Woodland, its sale and purchase, the rights of way over it and any application for new rights of way in the period 1 June 2023 to the date of this letter.

6 Copies of communication (including emails, telephone and instant messages) between the Council (including any members or employees) and any third parties concerning the Woodland, its sale and purchase, the rights of way over it and any application for new rights of way in the period 1 June 2023 to the date of this letter.

7 Copies of any documents evidencing that the following documents have been brought to the attention of Mr Keppel-Green as Town Clerk:

- (i) The Council's social media policy for employees referred to in your letter;
- (ii) The Council's Communication and Community Engagement Policy; and
- (iii) The Council's Member Officer Protocol

5. The Council responded on 9 February 2024. It disclosed some information and confirmed that some information was not held. It also confirmed that it was relying on the exemption for information accessible via other means (section 21) to withhold some of the requested information.

6. On 30 April 2024 the Council sent a further response which confirmed that redactions made to the previously disclosed information were made for personal information in accordance with section 40 of the FOIA.

Scope of the case

7. On 4 June 2024 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. In view of the nature of the request, which relates to the use of land, it occurred to the Commissioner that the request identified environmental information. It followed that the request should have been handled under the EIR rather than the FOIA. The Commissioner advised the Council to issue a new response to the complainant under the EIR. The Commissioner also directed the Council to consider whether any of the withheld information might, on review, be disclosed to the complainant.
9. On 20 September 2024 the Council issued a new response to the complainant under the EIR. In this response the Council disclosed further information and confirmed that some redactions had been made to exclude personal information. The Council confirmed that, in doing this, it was relying on the exception in regulation 13.
10. The Council confirmed to the Commissioner that the redactions made were confined to names and contact details of third parties. In view of the further disclosures made and the unlikelihood of him ordering disclosure of third party personal data, the Commissioner invited the complainant to withdraw their complaint. The complainant declined to do this so the Commissioner has set out his conclusions about the Council's handling of the request in this notice.

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. In this case the request relates to public rights of way and the use of land. The Commissioner is, therefore, satisfied that the requested information is likely to be information on measures as defined in regulation 2(1)(c). For procedural reasons, he has, therefore, assessed this case under the EIR.

Regulation 13 - personal information

13. The Council withheld names and contact details from the information disclosed in response to parts 5 and 6 of the request (see paragraph 6 above).
14. Regulation 13 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.
15. In this case the relevant condition is contained in regulation 13(2A). 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').

16. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then regulation 13(2A) of the EIR cannot apply.
17. 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.
18. Section 3(2) of the DPA defines personal data as: "any information relating to an identified or identifiable living individual". The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
19. 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.
20. 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.
21. In this case, the withheld information consists of names and contact details of third parties. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
22. 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."
23. 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.
24. 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.

25. In considering any legitimate interest(s) in the disclosure of the requested information under the EIR, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.
26. Further, 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. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
27. The complainant has confirmed that they are the owner of the woodland identified in the request and that they are involved in a dispute regarding public rights of way through the land. The complainant has expressed concerns about the Council's involvement in this matter.
28. The complainant has stated that the withheld information relates to concerns about access to and trespass on their property and they, therefore, have a legitimate interest in having access to material relevant to their legal position in any such proceedings. They also consider that, in view of their concerns about the Council's position in this matter, there is a strong public interest in transparency as the Council and other public authorities should be seen to be fulfilling their duties impartially as well as with honesty and integrity.
29. 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.
30. The Commissioner considers that the complainant is pursuing a legitimate interest in transparency regarding how the Council is acting in respect of a dispute relating to public rights of way. He will, therefore, next consider the question of necessity.
31. "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.
32. In this case the Commissioner does not consider that the disclosure of the redacted personal information under the EIR is necessary to meet these legitimate interests. The Council's position is that it has already

met the interest in transparency regarding this matter by disclosing the majority of the requested information to the complainant.

33. 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 the names and contact details of third party individuals to the world at large under the EIR is not necessary and would not add anything to the substance of the complainant's stated concerns.
34. The Commissioner is mindful that the complainant's legal representative, who submitted the request and subsequent complaint on their behalf, would be aware of other remedies available to their client in this matter. The Commissioner's view, as set out in his guidance, is that, in general terms, the public interest in the disclosure of information under the EIR relates to the broader public interest rather than to individual interests, excepting cases where these overlap. He is not persuaded that there is such an overlap here.
35. In this case, as disclosure of the information 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 the redacted names and contact details.

Procedural matters

Time for compliance and refusal notice: Regulation 5 and regulation 14

36. Regulation 5(2) of the EIR states:

"Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."
37. As noted above, the complainant submitted their request on 12 January 2024. During the Commissioner's investigation, the Council disclosed further information and confirmed it was relying on regulation 13 to withhold names and contact details.
38. In failing to address these elements of the request within the statutory time limit, the Council breached regulation 5(2).

39. In addition, as set out above, in the circumstances of this case the Commissioner has found that although the Council originally considered this request under FOIA, it is the EIR that actually apply to the requested information.
40. Therefore, where the procedural requirements of the two pieces of legislation differ, it is inevitable that the Council will have failed to comply with the provisions of the EIR.
41. In these circumstances the Commissioner believes that it is also appropriate to find that the Council breached regulation 14(1) of EIR which requires a public authority that refuses a request for information to specify, within 20 working days, the exceptions upon which it is relying. This is because the Council failed to issue a refusal notice under the EIR within the time limit set.

Regulation 11 – internal review

42. Regulation 11 of the EIR sets out authorities' obligations in relation to complaints about the handling of requests for information, namely, internal reviews.
43. Under regulation 11(4), authorities should send the outcome of their internal review no later than 40 working days after a complainant has been received.
44. In this case the complainant asked the Council to carry out a review on 22 February 2024 but the Council failed to provide a review response.
45. The Commissioner has, therefore, found that the Council breached regulation 11(4).

Right of appeal

46. 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

47. 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.
48. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Christopher Williams
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