

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

Date: 21 October 2024

Public Authority: High Peak Borough Council
Address: Town Hall
Market Place
Buxton
Derbyshire
SK17 6EL

Decision (including any steps ordered)

1. The complainant requested information from High Peak Borough Council ("the council") relating to a public consultation on its Local Development Plan. The council initially refused the request under Regulation 12(4)(d) of the EIR (material still in the course of completion). It subsequently withdrew its reliance upon this exception and published copies of the consultation responses. The complainant, however, disputes the council's application of Regulation 13(1) of the EIR to redact the names and postcodes of some of the respondents.
2. The Commissioner's decision is that the council was correct to apply Regulation 13(1) to withhold post code information in relation to the respondents to the consultation, however he considers that it was not correct to apply it to withhold the names of the respondents.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation:

- To disclose the redacted names of the individuals who submitted consultation responses to the council.
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 30 July 2023, the complainant wrote to the council and requested information in relation to the council's local development plan ("the LDP") as follows:

"You may view my next questions as a FOI request if needed.

- **Relating to Glossop:**

1. What stage is the current LDP Early Engagement consultation at?
 2. Where online can I view all the responses to the LDP Early Engagement consultation?
 3. Have any interim reports/summaries/policy documents been prepared?"
6. The council responded on 9 October 2023. It provided responded to parts 1 and 3 of the request, however it refused to disclose the responses to the LDP early Engagement Consultation on the basis that Regulation 12(4)(d) of the EIR applied (material in the course of completion).
7. On 15 October 2023, the complainant requested that the council carry out an internal review of its decision. The complainant said that they wanted to receive all of the LDP Early Engagement consultation responses in their 'raw' form.
8. Following an internal review the council wrote to the complainant on 30 November 2023. It maintained its position that the consultation responses were exempt under Regulation 12(4)(d) of the EIR. However, it said that it intended to upload the anonymised consultation responses to its website within the next 8 weeks. It did not, however, do so.

Scope of the case

9. The complainant contacted the Commissioner on 29 April 2024 to complain about the way their request for information had been handled.
10. During the course of the Commissioner's investigation, on 24 September 2024, the council published copies of the consultation responses on its website. The documents included the names of most of the individual responders and their organisations, however it did not include their contact details (emails addresses, addresses, post codes and telephone numbers).
11. The Commissioner therefore asked the complainant whether they were now satisfied with the council's disclosure. The complainant argued, however, that the council was not correct to apply Regulation 13 to redact the post codes of respondents, nor the remaining redacted names.
12. The following analysis therefore considers whether the council was correct to apply Regulation 13(1) to redact postcode data and the remaining names from the consultation responses.

Reasons for decision

Regulation 13(1) – personal data of third parties.

13. The complainant requested the consultation documents in their "raw form." The complainant confirmed to the Commissioner that the request was for copies of the consultation responses in an unredacted state. The council, however, has published responses which do not include the contact details of the responders, including their post codes and a few of the names of the individuals who submitted responses. The complainant confirmed to the Commissioner that they wished the names and postcodes of the individuals who submitted responses.
14. 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.
15. In this case the relevant condition is contained in Regulation 13(2A)(a)1. 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').

16. In context with the other information which was disclosed, postcodes will be personal data relating to third parties who responded to the LDP consultation. They provide a degree of biographical information about the submitter; details about their home or work address.
17. The Commissioner is therefore satisfied that the withheld information is personal data belonging to members of the public and to representatives who responded to the consultation on behalf of their organisations.
18. The Commissioner must therefore establish whether disclosure of that data would breach any of the DP principles.

Would a disclosure of that data breach any of the DP principles?

19. 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."
20. In the case of an FOIA 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.
21. When considering whether the disclosure of personal information would be lawful, 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.

Legitimate interests

22. The Commissioner has determined that the complainant, and the wider public, have a legitimate interest in understanding the responses which were received by the council in relation to the LDP.
 - The complainant has a legitimate interest in understanding the information available to the council in its decision making as this will have an effect upon them and their property.
 - A disclosure of the information would demonstrate whether the council has taken non-local consultation responses into account in its decision making. The complainant argues that post codes should be disclosed as only local representations should be taken into account in the LDP.

Is a disclosure of the withheld information 'necessary' to meet the legitimate interests identified

23. '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.
24. The Commissioner notes that it is also important to acknowledge that Regulation 13 of the EIR is different from other exceptions in that its consideration does not begin with an expectation of disclosure. As Regulation 13 is the point at which the EIR and DPA interact, the expectation is that personal data will not be disclosed unless it can be demonstrated that disclosure is in accordance with the DPA.
25. The disclosure of post codes with that material would shed light on whether the consultation responders were local to the area. The complainant argues that only the views of those living in the area should be taken into account; if some individuals who submitted response are not local to the area, the complainant and other interested parties can raise this as an issue with the council. The Commissioner is not aware of whether this is a relevant issue for the council in its decision making, however.
26. Nevertheless, the Commissioner therefore considers that it is necessary for this information to be disclosed in order to better understand the sorts of representations which were made, and where the interested parties who responded are situated.
27. The information would not be accessible other than by making a request for information under the EIR, and the Commissioner therefore accepts that disclosure under the legislation would be necessary to meet the legitimate interest in disclosure. The Commissioner is also satisfied in this case that there are no less intrusive means of achieving the legitimate aims identified.
28. The Commissioner must therefore balance the legitimate interests which have been identified against the rights and freedoms of the individuals concerned.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

29. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In

doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the EIR in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.

30. In considering this balancing test, the Commissioner has taken into account the following factors:

- the potential harm or distress that disclosure may cause;
- whether the information is already in the public domain;
- whether the information is already known to some individuals;
- whether the individual expressed concern to the disclosure; and
- the reasonable expectations of the individual.

31. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as private individuals, and the purpose for which they provided their personal data.

32. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.

33. The complainant highlighted to the Commissioner that the council's consultation form contained the following privacy notice about the information which would be published following the submission of a consultation response:

"PLEASE NOTE that responses must be attributable to named individuals or organisations. They will be held by the Council and will be available to view publicly and cannot be treated as confidential. Your contact details will not be published, but your name and organisation (if relevant) will."

34. Individuals responding to the consultation would therefore understand that their names and organisation details may be disclosed if they submitted a consultation form to the council. They would, however, only have expect these details to be disclosed, not their personal addresses or post codes.

(i) The redacted names of responders

35. The Commissioner notes that some of the names of individuals who submitted consultation responses have been redacted. Given the above notification, the Commissioner considers that those individuals would have expected their names may be disclosed when submitting the form.
36. As the individuals were told, and would therefore reasonably expect their names to be disclosed, a disclosure would be lawful for the purposes of principle (a).
37. The Commissioner has therefore decided that the council was not correct to withhold or redact these names from disclosure under Regulation 13(1) of the EIR. He therefore requires the disclosure of the redacted names of the responders to the complainant.

(ii) post code information

38. The Commissioner notes the complainant's argument that post code data is relevant in determining whether the responder is eligible to be included within its considerations as regards local greenspace. The Commissioner is not aware of whether this is a relevant consideration as regards the development of LDP's.
39. On the counter side, the privacy notification outlined above specifically provides that only the name and the name of the business organisation will be published.
40. It may generally be quite easy to find the postcode of a business, but for members of the public, a disclosure of their post codes would fall outside of their reasonable expectations.
41. A disclosure of the post codes of either business or private responders would specifically violate the terms of the privacy notification which they were provided with prior to them submitting their responses.
42. In relation to private responders, such a disclosure may cause a degree of distress. LDP's can often be an emotive subject and tensions may rise where there are differences in opinions.
43. Given the above, the Commissioner is satisfied that, under the circumstances of this case, the rights and freedoms of the individuals outweigh that in the legitimate interests identified. They were specifically told what information would be disclosed if they were to submit a response, and the complainant's request is seeking additional information which they would not have been aware of at that time.

44. The Commissioner has therefore decided that the council is able to apply Regulation 13(1) to withhold the post codes of responders to the consultation.
45. In conclusion, the Commissioner therefore requires the council to disclose the remaining names of the individuals who submitted consultation responses to the council. He does not require the council to disclose postcode data.

Regulation 5(2) – time for compliance

46. The complainant made his request for information to the council on 30 July 2023. The council did not provide its response to the complainant until 9 October 2023.
47. This falls outside of the 20 working days required to respond to a request for environmental information as stipulated in Regulation 5(2) of the EIR.
48. The Commissioner's decision is therefore that the council's response did not comply with the requirements of Regulation 5(2) of the EIR.

Right of appeal

49. 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

50. 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.
51. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Ian Walley
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