

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 18 November 2024

Public Authority: Wakefield Council

Address: County Hall
Wakefield
West Yorkshire
WF1 2QW

Decision (including any steps ordered)

1. The complainant requested the number of complaints received by Wakefield Council (the council) about noise nuisance at a particular property. The complainant also asked for the number of objections made by local residents to a planning application for the same property which had included concerns about noise.
2. The council provided the complainant with the relevant number of local objections made in relation to the planning application, but refused to provide the number of complaints it had received about noise nuisance, citing regulation 13 (personal data) of the EIR.
3. The Commissioner's decision is that regulation 13 of the EIR is not engaged in respect of the withheld information.
4. The Commissioner requires the council to take the following step to ensure compliance with the legislation.
 - Disclose the number of complaints it had received (at the time of the receipt of the request) about noise nuisance for the property.
5. The council must take this step 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

6. On 9 February 2024, the complainant wrote to the council and requested information; for ease of reference the Commissioner has separated the request into two parts, as follows:

Part 1. "In regard to noise complaints on [name of road redacted] around the area of [address redacted] relating to the greyhound unlawful settlement; how many noise complaints have been made to the council regarding this property since 2018."

Part 2. "In regard to the retrospective planning application that [address redacted] submitted and was refused in January 2024. How many of the objectors to the application lived in the local area and had made comments/concerns in regards noise issues they have faced as to their objection to the planning application."

7. On 7 March 2024, the council provided the complainant with the following information in response to Part 2 of their request:

"23 objections were received from the local area (i.e. people who comment about hearing noise from their property) relating to noise complaints.

In addition, the Parish Council commented regarding noise and also one objection was received from Spawforths on behalf of a local resident also referring to noise."

8. The council advised the complainant that it was withholding the information relevant to Part 1 of the request under regulation 13 of the EIR. It said that it considered this information to be the personal data of third parties and that its disclosure would breach the Data Protection Act 2018.
9. The complainant requested an internal review, stating there was no significant difference between the two sets of information they had asked for, and that the council should now provide the number of complaints it had received since 2018 for a business that has been causing noise.
10. The council provided its internal review response on 9 May 2024, stating that it remained satisfied that the information relevant to Part 1 of the request would result in the disclosure of personal information that would breach a data protection principle. The council said that, given this, its original decision to refuse Part 1 of the request under regulations 12(3) and 13 of the EIR was correct.

Scope of the case

11. The complainant is not satisfied with the council's handling of Part 1 of their request. They argue that disclosing the number of complaints made since 2018 in relation to noise at the relevant property is not sensitive information, and should be disclosed.
12. The Commissioner will decide whether the council is entitled to rely on regulation 13 of the EIR as its basis for refusing to provide the information relevant to Part 1 of the complainant's request.

Reasons for decision

Regulation 13 – third party personal information

13. Regulation 13 of the EIR provides that information is exempt from disclosure if it is the personal data of an individual other than that of the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.
14. 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').
15. 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.
16. 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?

17. Section 3(2) of the DPA defines personal data as:
"any information relating to an identified or identifiable living individual".
18. 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. The council has argued that releasing the number of complaints it has received about noise nuisance “could potentially” lead to individuals who made the complaints, and by default, those individuals who did not make complaints, being identifiable to the requester, and others.
22. The council has also said that the property in question is currently considered to have residential status, and that disclosure of the withheld information would allow the residents of the property to be identified. It says that it considers the information to relate to the residents, and that it is therefore their personal data.
23. The Commissioner’s [guidance](#) says that when deciding whether information is personal data, consideration should be given as to whether a person can be identified, either directly or indirectly, from the relevant information. In circumstances where it is not obvious that someone may be identifiable (in this case it is not obvious whether someone could be identified from a number), consideration should be given to all the practical steps and all the means reasonably likely to be used by someone who is motivated to identify the people to whom the information relates to.
24. The withheld information in this case does not concern a significantly large number of individuals, and the Commissioner is mindful that more often than not, the smaller the size of the group of individuals from which the number is drawn, the easier it will be to identify individuals within that group. However, it should not be automatically assumed that individuals can be identifiable simply on the basis that the size of the group is small.
25. In [NHS Business Services Authority vs Information Commissioner and Spivack](#) [2021] UKUT 192 (AAC) (6 August 2021), the Tribunal said that:

“Saying that it is reasonably likely that someone is covered by the data is not sufficient. Still less is it sufficient to say that it is reasonably likely that a particular individual may be one of the pool.” [para 21-22]
26. The Tribunal went on to conclude that data protection legislation “provides that actual identification is necessary in order for data to be personal data” [para 37].

27. The Commissioner considers that in cases where the information is not obviously personal data, the key question to be asked is whether individuals can be identified from information with a degree of certainty.
28. Given that the relevant property is situated in a residential area, the Commissioner considers that it is not unreasonable to assume that any issues of noise nuisance associated with that property will have an impact on a number of individuals who live nearby. He notes that 43 objections were made to the planning application relevant to the property that included concerns about noise, and the council has also confirmed in response to Part 2 of the request that 23 of these objections were from the local area. The Commissioner therefore considers that there is a significant number of individuals who could potentially have submitted direct complaints to the council about noise from the property.
29. Furthermore, the Commissioner considers that the release of the number of complaints received about noise nuisance at a property would not reveal whether they were all sent by one individual, separate individuals, or whether any of the complaints were sent on behalf of a group of individuals.
30. The Commissioner notes that the council has said that it has concerns that the release of the withheld information would allow the complainant to identify the individuals who submitted the complaints.
31. The Commissioner acknowledges that the complainant has been closely involved in those matters that relate to the request, and it is therefore likely that they will have some local knowledge of events, and other residents' views, on these matters. However, the council has not provided any evidence to support its claim that the complainant would be able to identify the individuals who made the complaints with a degree of certainty. To say that the release of the information "could potentially", or is likely to allow for individuals to be identified, or that calculated guesses or assumptions could be made, is not sufficient for the information to fall within the definition of personal data.
32. The Commissioner therefore considers that the council has failed to provide sufficient explanations, reasoning or evidence to support its claim that the identity of the individuals who made complaints would be revealed as a result of the disclosure of the withheld information. Neither has the Commissioner identified any other basis beyond the reasoning from the council as to how the withheld information could result in the identification of any individual. His view, therefore, is that the withheld information is not the personal data of the noise complainants.

33. With regard to the council's claim that the withheld information is the personal data of the residents of the property, the Commissioner acknowledges that the name of the owner and the address of the property is published as part of the retrospective planning application. Information which has already been released to the complainant in response to previous requests about the noise nuisance at the property also identified the address. Furthermore, there is information which has been published in the [local media](#) that identifies individuals living at the property.
34. The Commissioner therefore considers that the residents of the property are identifiable from information that is in the public domain.
35. The Commissioner considers that any complaints made about noise nuisance relating to the relevant property will directly relate to the residents of the property. The complaints are about them and their activities, and any action that may be considered by the council will have a direct impact on them.
36. The Commissioner is therefore satisfied that the withheld information falls within the definition of personal data in section 3(2) of the DPA, as it identifies and relates to the residents of the property that is referred to in the complainant's request.
37. The fact that information constitutes the personal data of an identifiable living individual, or individuals, does not automatically exclude it from disclosure under the EIR. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
38. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

39. Article 5(1)(a) of the UK GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.
40. 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.
41. 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

42. The Commissioner considers that the lawful basis most applicable is basis 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”¹.

43. 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;
- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

44. The Commissioner considers that the test of ‘necessity’ under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

45. 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.

46. 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

¹ 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”.

However, section 40(8) the EIR (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

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.

47. The complainant has argued that the public has a right to know if complaints have been made about noise nuisance at a particular property. They have also said that they require the requested information in order to assist them in making a decision about whether to take their own action regarding the noise nuisance.
48. The complainant states that they believe some weight should be attached to the general principles of accountability and transparency with regards to the broader issues to which their request relates. They have said that local residents are concerned about how the noise nuisance and use of the land are being dealt with by the council, and whether it is acting appropriately and in line with requirements.
49. The council has said that it accepts that the complainant has a right to certain data, as a local resident who has raised concerns about the impact of the noise from the property. However, it goes on to say that it has already provided information about the matters to which the request relates where to do so would not breach any data protection principle.
50. The Commissioner notes that the council has already confirmed that complaints have been made about noise from the relevant property, and also that a Noise Abatement Notice has been issued.
51. In addition, on 27 September 2023, a retrospective planning application was submitted for a change in use of the land for dog training at the relevant property. The application was refused by the council (as the planning authority) on 23 January 2024, and the impact of noise from the property was cited as a factor in its decision. A similar planning application submitted on 15 April 2024, is, at the time of this decision notice, still undecided.
52. Given the above, it is the Commissioner's view that the matter of noise nuisance at the property is broader than simply the complainant's own interests, and that the principles of openness and transparency in relation to a public authority's activities and processes is of relevance in this case.
53. The Commissioner therefore considers that the complainant is pursuing a legitimate interest, and that disclosure of the requested information is necessary to meet that legitimate interest.

Is disclosure necessary?

54. '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.
55. The Commissioner is satisfied that, in the circumstances of this case, there are no less intrusive means of achieving the legitimate aims identified.

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

56. 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.
57. 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.
58. In the Commissioner's view, it is important to take into account that the reasonable expectations of an individual can be shaped by factors such as a general expectation of privacy, whether the information relates to them as an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.

The complainant's position

59. The complainant has said that it has already been disclosed publicly that complaints have been received by the council about noise nuisance, that a Noise Abatement Notice has been issued, when it was issued, and the address to which it was served, and that it is also public knowledge how many objections to the planning application included concerns about noise. They argue it would not cause any harm to disclose the number of complaints that were made about noise, but would allow for accountability and transparency in relation to the council's actions.

The council's position

60. The council has said that it considers that revealing the number of noise complaints received about a specific property would associate those complaints in the minds of the public with that property's residents. It states that complaints can be made for a number of reasons, some of which may be malicious or unfounded, and disclosure would be unfair to the residents.
61. The council has argued that there is a distinct difference between the two parts of the complainant's request. It states that Part 2 of the request relates to planning legislation, where objections are made public via the council's online portal. It says it is clear to anyone reading the entries that the comments are the personal opinions of objectors, and any visitor to the website can then form their own opinion as to whether the arguments are fair or valid.
62. The council states that it considered it appropriate to release the information relevant to Part 2 of the request because it is in the public domain as a result of its duty under planning legislation to make planning objections publicly available.
63. However, the council argues that the number of complaints made to the Environmental Health Department in relation to noise complaints at the property is not information that is already known to the public, and it has no statutory duty to make such information publicly available.
64. The council argues that providing a specific number of complaints held by its Environmental Health Department "to the world" under the EIR would be a different matter to releasing information about objections to a planning application. It argues that the use of regulation 13 is appropriate, in order to protect the right of privacy of the individuals at the property, and to reduce the likelihood of negative comments and actions being directed to them locally.
65. The council says that it accepts that the requester may have a legitimate interest in this case, but considers that it is not appropriate to

release information publicly that could potentially cause harm or distress, and have a negative effect on identifiable third party individuals.

The Commissioner's view

66. The Commissioner is aware that planning legislation requires the publication of certain information in order for the process to be open and transparent. Planning applicants are made aware that their application and associated documents will be made publicly available. They are also aware that third parties are entitled to raise objections to the planning application, and that this information will also be made publicly available. Given this, the Commissioner considers that all relevant parties have a reasonable expectation that the information they submit in relation to a planning application, and other information relevant to that application, will be publicly accessible.
67. The Commissioner considers it pertinent to note that a copy of an email from the Environmental Health Department dated 1 November 2023, is included within the planning documents published by the council. The email sets out the Environmental Health Department's recommendation that the planning application be refused and includes the following comments:

"From February 2023 the application site developed a history of noise complaints. This comprised a complaint about noise from 30-40 greyhounds, which has been determined a statutory noise. Occupiers of [address redacted] recently received a Noise Abatement Notice, dated 24/10/2023. This confirms that noise nuisance from dog(s) barking, howling, whining is arising from the application site and requires the nuisance to stop no later than 6 December 2023.

Information, such as a noise management plan, hasn't been submitted with this application demonstrating how noise would be effectively managed and reduced to prevent the sound of barking, howling and whining causing a nuisance. Therefore, refusal is recommended."
68. Given that the above information is in the public domain, the Commissioner has found some difficulty establishing why releasing the number of complaints received about noise nuisance would cause harm or distress to the residents of the property.
69. Furthermore, the Commissioner considers that the residents of the property would have been fully aware that the issue of noise nuisance would be a relevant factor in the consideration of their retrospective planning application, both in relation to public objections, and the decision made by the council (in its role as the planning authority).

70. Given the above, the Commissioner considers that the residents of the property should, in the circumstances of this case, have had a reasonable expectation that the noise complaints, and actions that have been taken as a result, would be considered to be relevant and made publicly available as part of the planning process. Indeed, the council must have also considered this to be the case, as it has published information that relates to the noise complaints.
71. The Commissioner is not persuaded that the release of additional information, which would only confirm the number of complaints received about noise nuisance, would not be within the reasonable expectations of the residents of the property, or cause them harm or distress.
72. The Commissioner considers that as the Planning Decision Report confirms that noise was a factor in the decision to refuse the planning application, there is value to releasing the number of complaints received. This will allow for further transparency and accountability with regard to the Environmental Health Department's recommendation to refuse the application, and the final decision that was reached to refuse the planning application.
73. Based on the above factors, the Commissioner has determined that there is sufficient legitimate interest in disclosure to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is an Article 6 basis for processing and so the disclosure of the information would be lawful.

Fairness and transparency

74. Even though it has been demonstrated that disclosure of the requested information under the EIR would be lawful, it is still necessary to show that disclosure would be fair and transparent under the principle (a).
75. In relation to fairness, the Commissioner considers that if the disclosure passes the legitimate interest test for lawful processing, it is highly likely that disclosure will be fair for the same reasons.
76. The requirement for transparency is met because as a public authority, the council is subject to the EIR.
77. For these reasons the Commissioner's view is that, whilst the withheld information is the personal data of the residents of the property in question, it would not breach principle (a) to disclose that personal data in response to the complainant's information request.

Conclusion

78. To summarise, the Commissioner has found that:

- The withheld information is not the personal data of the noise complainants.
- The withheld information is the personal data of the residents of the property in question, but disclosure of that personal data would not breach the data protection principles.

79. This means that the Commissioner's decision is that regulation 13(1) is not engaged. At paragraph 4 above the council is now required to disclose the withheld information, which is the number of noise complaints made to the council regarding the property in question between 2018 and the date of the complainant's information request.

Right of appeal

80. 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

81. 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.
82. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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