

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

Decision notice

Date: 25 November 2024

Public Authority: Guildford Borough Council
Address: Millmead House
Millmead
Guildford
GU2 4BBX

Decision (including any steps ordered)

1. The complainant requested information relating to their planning complaint. Guildford Borough Council (the "Council") disclosed information but the complainant considers that it failed to provide all information held within the scope of the request.
2. The Commissioner's decision is that the Council:
 - failed to provide all the requested information in time and breached regulation 5(1) and regulation 5(2);
 - correctly withheld third party personal information under regulation 13 and;
 - wrongly handled parts of the request which identify the complainant's own personal information under the EIR and that regulation 5(3) applies to this information.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose the information identified in paragraph 26.

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 2 February 2024 the complainant wrote to Guildford Borough Council and requested the following information:

"On 13 September 2023 I emailed [redacted] about an unresolved breach of planning policy/control relating to the roof pitch/height at [redacted]. This is a long overdue and unresolved complaint raised 1 May 2022 [HB/35] and followed up by Ward Councillor/Lead Member for Planning [redacted] on 3 May 2022. Having not had a response from [redacted] I am writing to make a Freedom of Information (FOI) request in relation to the complaint (ref COM2022/00505 stage 2 complaint). In accordance with the Freedom of Information Act 2000, I request the following information pertaining to the above-mentioned complaint. I understand information should be available including (but not limited to):

1. Copies of all documents, including but not limited to emails, letters, and reports, related to the handling and investigation of my complaint.
2. Any correspondence between your organization and any third parties, including regulatory bodies, concerning my complaint.
3. Other correspondence or advice given on plans and planning and the process including e-mails, letters, reports, faxes, file notes, notes of phone calls, videos, audio, digital recordings.
4. 5. (this is the numbering given in the original request) Details of the individuals involved in the investigation of my complaint, including their names, positions, and roles.
6. Any policies or procedures followed in the handling and resolution of complaints, particularly those relevant to my case.
7. Any internal communications or memos discussing my complaint and its resolution.
8. Site visits, diary entries and measurements (of roof height and window height etc)."

6. The Council responded on 28 February 2024 and disclosed information to the complainant.
7. On 10 April 2024 the complainant asked the Council to carry out an internal review. The complainant raised concerns that the text of some of the disclosed information was unreadable. The complainant also suggested that the Council had not disclosed all the relevant information that it holds.
8. On 19 April 2024 and, in relation to the legibility issue, the Council provided the complainant with new versions of the documents in question. On 24 April 2024 the Council provided its final internal review response which confirmed that, aside for minor redactions for personal information, it had disclosed all the relevant information held.

Scope of the case

9. On 6 May 2024 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
10. During the investigation the Commissioner noted that there had been ongoing correspondence between the complainant and the Council in relation to concerns about a planning matter. The Commissioner also noted that the complainant had submitted a number of requests for information associated with their concerns.
11. Where possible the Commissioner tries to resolve complaints informally as this can result in less burden on public resources and can lead to swifter disclosure of information to which a requester is entitled. In some cases, for example, where it appears that requests relate to a substantive issue which seems unlikely to be resolved via requests for information, the Commissioner may explore alternative approaches to complaint resolution. The Commissioner considers that such strategies fall under his general functions to advise and assist any person as set out in section 47(2) of the FOIA.
12. In this case the Commissioner invited both parties to consider meeting to discuss the complainant's concerns and to potentially identify a route for these to be addressed. Whilst this would be action taken outside of the FOIA, the Commissioner considered it might be an effective use of his resources and a realistic remedy for both parties to facilitate resolution of the matter.
13. The complainant declined to take up the offer to meet with the Council so the Commissioner confirmed to the complainant that he would decide whether the Council complied with the request.

14. In October 2024, at the prompting of the complainant, the Council identified and disclosed additional information to the complainant. The Commissioner has considered whether the Council correctly withheld personal information under regulation 13 and whether it has disclosed all relevant information that it holds.

Reasons for decision

Would the requested information be environmental?

15. 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);
16. As the request relates to decisions made in relation to a planning complaint, the Commissioner believes that the information is likely to

relate to a "measure" as defined in regulation 2(1)(c) of the EIR. For procedural reasons, he has, therefore, assessed this case under the EIR.

Regulation 5 – duty to make environmental information available on request

17. The request relates to a complaint the complainant submitted to the Council in relation to an alleged breach of planning by their neighbour.
18. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request. Under regulation 5(2), authorities should do this within 20 working days.
19. Where there is a dispute between a public authority and a complainant as to whether all requested information falling within the scope of a request has been provided, the Commissioner, following the lead of a number of First-tier Tribunal decisions, must decide the matter based on the civil standard of on the balance of probabilities.
20. The complainant has raised specific concerns that, in their view, the Council failed to carry out adequate searches for information falling within the scope of the request. The complainant identified a number of specific individuals at the Council which they consider should hold relevant information.
21. The Council has stated that, in response to the request, a large volume of documentation was sent to the requester by a member of the Council's Planning Department. The Council considers that the information provided was very comprehensive and included five PDF files of 150 pages in total, amounting to a total combined file size of 6,966 KB. The Council confirmed that the information disclosed included: email correspondence involving council officers, councillors and third parties, Planning Officer's reports, details of site visits, relevant comments, letters, maps, plans, photographs, architectural drawings and notes of telephone calls.
22. The Council confirmed that, having consulted relevant planning officers and carried out appropriate searches, everything matching the complainant's original request had been provided and no information had been withheld, save for personal information which was redacted under regulation 13.
23. However, subsequent to the Council's submissions, the Council to carried out further searches for information, based on the complainant identifying the records of specific officers at the Council.

24. The Council carried out these searches and identified further information which it disclosed to the complainant, redacting some personal information under regulation 13.
25. The complainant subsequently raised further concerns with the Commissioner that the Council had still failed to disclose all the relevant information that it holds.
26. In addressing the points made by the complainant the Council identified some additional information falling within the scope of the request and confirmed that this would be disclosed to the complainant. At the time of issuing this decision notice, however, this had not happened. The Commissioner considers it is appropriate to find a breach of regulation 5(1) in relation to this information and he has identified the disclosure of this information as a step in this decision notice.

Regulation 5(3) – the requester’s personal information

27. Regulation 5(3) of the EIR provides that where a request for information constitutes the personal data of which the applicant is the data subject, that information is exempt from the duty to disclose provided for under regulation 5(1).
28. Section 3(2) of the DPA defines personal data as: “any information relating to an identified or identifiable living individual”.
29. The two main elements of personal data are therefore that the information must relate to a living person, and that the person must be identifiable.
30. 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 or an online identifier; or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
31. 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.
32. Some of the additional information located by the Council directly relates to the complainant’s substantive planning complaint. The Commissioner notes that the complainant is referred to by name in the information in question. The complainant is clearly therefore identifiable from the information and the information is significant and biographical to them.
33. Whilst the Council has cited the exception in regulation 12(4)(d) (material in the course of completion) as grounds for withholding this

information the Commissioner considers that it is appropriate for this information to be excepted under regulation 5(3), which provides that the EIR does not apply to a requester's personal information. This element of the request, therefore, should be handled by the Council under the subject access provisions of the UK General Data Protection Regulation ('UK GDPR').

Regulation 13 – personal information

34. The Council withheld names and contact details from the information disclosed. The complainant has asked the Commissioner to consider whether the Council's redactions are in accordance with the EIR.
35. 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.
36. 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 GDPR.
37. 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.
38. 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.
39. 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.
40. 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.
41. 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.

42. In this case, the withheld information consists of names and contact details of third parties and of junior Council officers. This information both relates to and identifies those individuals and therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
43. 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."
44. 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.
45. 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.
46. 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.
47. 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.
48. In this case the complainant is in dispute with the Council in relation to a planning matter and the information relates to this issue.
49. 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.
50. The Commissioner considers that the complainant is pursuing a legitimate interest in transparency regarding how the Council is acting in respect of a dispute regarding a planning matter. He will, therefore, next consider the question of necessity.
51. "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.

52. 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.
53. 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 and junior Council officers 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.
54. The Commissioner is mindful that the complainant would be aware of other remedies available to them for redressing their grievance with the Council that do not require disclosures under the EIR. 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.
55. 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.

Other matters

56. Although they do not form part of this decision notice the Commissioner would like to note the following matters of concern.

Personal data of the requester

57. Regulation 5(3) of the EIR (and section 40(1) of the FOIA) confirm that any information falling within the scope of a request that constitutes the requester's own personal data is excluded from the duty to disclose.

58. In such cases, an authority should handle the request as a subject access request (SAR) under the UK General Data Protection Regulation (UK GDPR).

59. One scenario in which there is a likelihood that a request identifies the requester's own personal data, is where a requester asks for information associated with a complaint they have made to an authority. The Commissioner has published detailed guidance in relation to this specific scenario¹.

60. In this case the request clearly relates to a complaint the complainant had submitted to the Council, however, the Commissioner is aware of no evidence to suggest that the Council considered whether it was appropriate to handle relevant parts of the request under the UK GDPR. He also notes that the Council failed to disclose some of the complainant's personal information until during the course of the Commissioner's investigation.

61. In future, the Commissioner expects that the Council will ensure that it correctly identifies the legislation under which requests should be handled and carry out adequate searches for relevant information held.

General request handling

62. The Council's handling of this request is characterised by the piecemeal disclosure of information over a long period of time which continued during the Commissioner's investigation. He, therefore, has concerns that the Council is not meeting its obligations under the EIR.

¹ <https://ico.org.uk/media/for-organisations/documents/2021/2619040/s40-access-to-information-held-in-complaint-files-final-v-31.pdf>

63. In view of this the Commissioner intends monitoring the Council's future handling of requests via complaints received and, if he finds a recurrence of this or other poor practice, further action might be taken.

Right of appeal

64. 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

65. 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.
66. 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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