

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

Date: 28 November 2024

Public Authority: Dorset Council
Address: County Hall
Colliton Park
Dorchester
DT1 1XJ

Decision (including any steps ordered)

1. The complainant has requested information from Dorset Council ("the council") relating to their complaint about street lighting near their property. The council refused the request on the basis that Regulation 12(4)(a) (internal communications) and Regulation 13 (personal data) applied.
2. The Commissioner's decision is that the majority of the information is personal data relating to the complainant, and that it is therefore exempt from disclosure under the EIR under Regulation 5(3) (personal data of the applicant). Of the remainder, the Commissioner's decision is that the council was not correct to withhold information under Regulation 12(4)(e) (internal communications), but that it was correct to withhold other information under Regulation 13(1) (personal data).
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - To disclose the withheld information to the complainant, subject to any appropriate redactions under Regulation 5(3) and Regulation 13 of the EIR.

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 3 April 2024, the complainant wrote to the council and resubmitted a request for information he had made previously, on 18 December 2023, for the following information:

"a) copies of all communications from and to the Council relating to my complaint about the street lighting outside my home, beginning in June 2022 to the present date. This includes all communications with Enerveo, your PFI contractor, or other parties including the Ombudsman service. (You do not need to copy written communications with me as I already have these).

b) Copies of information obtained during the enquiry conducted by [name redacted by the ICO], your director of public health, into the health risk from artificial light at night that I had identified to the Council.

c) Transcripts of any telephone calls relating to this case that have been recorded by the Council, including my own calls with the Council, any conducted with the PFI contractor and any conducted by [name redacted by the ICO] relating to the issue of health risk from artificial light at night.

d) Copies of any instructions given to Council members of staff, employees or contractors relating to the handling of my complaint or the installation of these street lights.

e) Copies of the British Standard(s) that it has been claimed the street lighting installations comply with."

6. The council had responded to the initial request on 20 March 2024
 - a) It provided information in relation to the request
 - b) It explained that no enquiry was carried out
 - c) It explained that it does not record telephone conversations
 - d) It provided information in response to the request
 - e) It explained where copies of the relevant BS standards could be obtained from (upon payment of a fee).

7. However, it said that it had redacted some information on the basis that Regulation 13(1) (personal data of third parties) and Regulation 12(4)(a) (internal communications) applied.
8. Following an internal review the council wrote to the complainant on 14 June 2024. It maintained its initial decision.

Scope of the case

9. The complainant contacted the Commissioner on 14 June 2024 to complain about the way their request for information had been handled.
10. The complainant argues that the information should have been considered under FOIA rather than the EIR. The complainant also considers that the withheld information should have been disclosed in response to their request.
11. The following decision notice therefore considers whether the council was correct to consider the request under the EIR, and whether it was correct to withhold information under Regulation 12(4)(e) and Regulation 13.

Reasons for decision

Is the requested information environmental?

12. 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);
13. The requested information relates to correspondence about an activity (the introduction of new street lighting) which is affecting, or likely to affect the elements and factors referred to in (b) of Regulation 2(1) of the EIR – namely emissions.
14. Whilst the complainant argues that the information is too distanced from matters which will have an effect upon the environment, the Commissioner notes that the withheld information falling within the scope of the request does relate to a complaint about light emissions, and he therefore considers that the council was correct to consider the information under the EIR rather than under FOIA.

Regulation 5(3) - personal data relating to the requestor

15. The Commissioner has viewed the withheld information. It primarily relates to complaints made to the council by the complainant about how a change of bulb type on a street light outside of their property has had a detrimental effect upon them and their property, and the wider public health impacts of the use of these lights. Much of the withheld information therefore relates to the complainant, their property and their ongoing dispute with the council over this.
16. The withheld information therefore provides biographical detail about the complainant, as well as opinions, and the opinions of third parties relating to the complainant, their property, and their complaint.
17. The Commissioner therefore considers that the majority of the withheld information is personal data relating to the complainant.
18. Regulation 5(1) states that: *"a public authority that holds environmental information shall make it available on request."*
19. However, Regulation 5(3) states that: *"To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data."*

20. Disclosure under the EIR is considered to be disclosure to the world at large and not to the complainant specifically. It is the equivalent of the council publishing the information on its website. The Commissioner considers that the council should have firstly considered the withheld information under the complainant's rights under the DPA and applied Regulation 5(3) to refuse to respond to the request further under the EIR where the withheld information is personal data relating to the complainant.
21. The Commissioner has therefore taken the decision to apply Regulation 5(3) proactively to the withheld information.
22. Regulation 5(3) is an absolute exception and the Commissioner is not required to consider either the balance of public interest or the complainant's wishes.
23. The Commissioner considers that the majority of the withheld information is personal data relating to the requestor. The Commissioner therefore concludes that, where the withheld information is personal data relating to the complainant, Regulation 5(3) is engaged and the council is not obliged by the EIR to disclose it.

Regulation 12(4)(e) – Internal Communications

24. Regulation 12(4)(e) provides that information is exempt if it involves 'the disclosure of internal communications'. In order for the exception to be engaged it needs to be shown that the information in question constitutes a communication within one public authority, specifically, the authority to which the request is made.
25. It is a class-based exception, meaning there is no need to consider the sensitivity of the information in order to engage the exception. Rather, as long as the requested information constitutes an internal communication, then it will be exempt from disclosure.
26. In its submissions to the Commissioner, the council said that the withheld information is all internal communications between council officers. It said that where a communication was sent externally to a contractor or copied a contractor in, it disclosed copies of these to the complainant, subject to redactions to remove third party personal data. It therefore considers the emails to constitute internal communications.
27. The Commissioner is satisfied that some of the emails, including the attachments to those emails, constitute internal communications as they were sent between council officers.

28. However, some emails relate to correspondence between the council and a private company; Enerveo, which it has outsourced street lighting functions to.
29. The Commissioner's guidance on the application of Regulation 12(4)(e)¹ states that:

"A communication from a third party does not automatically become an internal communication if it is later circulated within the public authority. However, if information from the external communication is later reproduced in a separate internal communication, that separate communication is internal, irrespective of the origin of the content."
30. The Commissioner is satisfied that although the emails are included within an email chain of internal communications, they are separate communications from third parties in their own right.
31. Additionally, some correspondence is between the council and the LGSCO. Again, this is not internal communications, even where it is contained within a chain of otherwise internal communications.
32. These sections of correspondence are not internal communications and Regulation 12(4)(e) cannot be applied to withhold them.
33. As the correspondence relating to both of these organisations are not internal communications, and no other exceptions have been applied directly, the Commissioner requires the disclosure of these to the complainant, subject to the exception in Regulation 13, and the Regulation 5(3) being applicable. The Commissioner notes, however, that the council has indicated that it has already disclosed this information to the complainant.
34. For the remaining information, however, the Commissioner finds that Regulation 12(4)(e) of the EIR is engaged. He will now go on to consider the public interest test.

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-12-4-e-internal-communications/what-are-internal-communications/#internal>

Public interest test

35. As with the other exceptions under the EIR, when Regulation 12(4)(e) is engaged, the public authority must still carry out the public interest test in order to decide whether the information should be withheld.
36. Under Regulation 12(1)(b), the public authority can only withhold the information if, in all the circumstances of the case, the public interest in the exception being maintained outweighs the public interest in the information being disclosed.
37. Furthermore, Regulation 12(2) provides a presumption in favour of the information being disclosed.

The public interest in the information being disclosed

38. The complainant argues that that the council's new street lighting does not meet safety requirements and that it will have a detrimental effect on public health. The complainant considers that they have provided scientific evidence demonstrating this to the council, and is unhappy that these concerns appear to have been discounted. The council is reported as having responded to a press inquiry over the issue by dismissing the complainant's concerns as based upon "conspiracy theories and misinformation campaigns found online". The complainant, however, argues that he provided the council with peer-reviewed scientific reports describing the dangers, and that the council is ignoring the importance of the issue on public health. The complainant also argues that their questions over the council's handling of this matter remain unanswered.
39. The complainant has made a successful complaint to the Local Government and Social Care Ombudsman, which found fault in the council's actions in regard to the complaint. Although the LGO found fault with the council's actions in a number of areas, it found that errors in relation to its complaints handling did not cause an injustice because the council rectified the faults within a short period of time.²
40. There is a strong public interest in information relating to public health being disclosed into the public domain, however very little of the withheld information relates to this issue. The Commissioner considers

² <https://www.lgo.org.uk/decisions/transport-and-highways/street-furniture-and-lighting/22-007-648#point6>

that in the context of the withheld information, the issue is primarily a personal issue relating to the complaint.

41. There is a stronger public interest in the council being transparent about how it has dealt with the complainant's issues and the concerns which were expressed to it.
42. There is also a public interest in the council being clear how it has reached decisions in relation to the lighting issues, and how it has considered and addressed the issues highlighted by the complainant. Much of this information has already been highlighted in the LGSCO's decision, however. This was issued on 20 September 2023.
43. The Commissioner also considers that there is a public interest in disclosing information which demonstrates the relationship between the council and its contractor, Enerveo, and how the parties deal with complaints of this nature.

The public interest in the exception being maintained

44. The council argued that it needs to have a 'safe space' to think in private' in order to develop ideas, debate live issues and reach decisions away from interference and distraction. The withheld information primarily concerns its discussions as to how to deal with the complainant's complaints and correspondence. The council considers that a disclosure of the withheld information would have a 'chilling effect' on free and frank discussions which would undermine its decision making and make the outcome of its decisions less informed.
45. The council further highlighted that the requested information falls within the timeframe of June 2022 to the date of the request, (17 December 2023). It considered that as the complaint involves a recent matter, this makes the information more topical, relevant and accurate which increases the sensitivity of this information and the impact which its disclosure would have.
46. The council further noted that the majority of the withheld information relates to the handling of the complainant's complaint, their ongoing correspondence with the council, and how it should manage that. It argues that there is little information about the wider subject of the street lighting. It therefore considers that this lessens the public interest as the information does not primarily relate to wider issues relating to the environment and how this is affected by its decisions regarding street lighting. It considers that disclosing information about how the council handles a single complaint would not provide information of much wider public value, and therefore that it would not serve the public interest.

The Commissioner's analysis of the public interest

47. The Commissioner considers that the underlying rationale for the exception at Regulation 12(4)(e) is to protect a public authority's need for a private thinking space. He considers that the extent to which disclosure would have a detrimental impact on internal processes will be influenced by the particular information in question and the specific circumstances of the request.
48. Arguments about protecting internal deliberation and decision-making often relate to preserving a safe space in which to debate issues away from external scrutiny and preventing a 'chilling effect' on the exchange of free and frank views in the future. Their weight will vary from case to case, depending on the timing of the request and the content and context of the particular information in question.
49. The need for a safe space is strongest when the issue is still live. Once a decision has been made the argument may carry little weight. The timing of the request is therefore an important factor.
50. The council has argued that the information relates to a recent issue. The Commissioner agrees, and notes that the complainant is still seeking information over an issue which he remains unhappy about. Nevertheless, the LGSCO had considered the matter and issued their decision by the time of the request.
51. The Commissioner therefore considers that the need for a safe space had largely dissipated by the time that the request was received. The central decisions in this case had been made, and the LGSCO had provided a view on the council's actions.
52. The Commissioner considers that the complainant has already had independent oversight of the council's actions in respect of their primary complaint, and that the matters which were highlighted as fault by the council have been addressed. However, the complainant has continued to pursue the council as it was not required to change the street lights by the LGSCO's decision. Discussions were therefore ongoing as to how to respond to the complainant's continued questions and complaints. The complainant was determined in chasing the council for the answers to their questions, and this was creating a significant burden upon it.
53. The Commissioner does place weight on the ability of the council to consider such issues away from public view, not least because they relate to matters which are personal to the requestor and their property. This is the reason why the Commissioner has applied Regulation 5(3) to exempt the complainant's personal data from disclosure under the EIR.

54. Light emissions are a matter which relates to public health, to the council's energy usage, and also to the issue of light pollution. The Commissioner has placed a weight in favour of disclosure where such issues are highlighted. The Commissioner accepts the council's argument, however, that very little of the withheld information relates to these issues.
55. However, the Commissioner also considers that there is a public interest in the council creating greater transparency on how it handled the complaint. There is also a public interest in the council being transparent about whether it took the concerns expressed to it seriously, and whether it considered the arguments submitted to it with a view to addressing these concerns where valid points were made.

The Commissioner's conclusion of the public interest test

56. The majority of the information relates to the complaints made by the complainant to the council about the effects on their own property, and the subsequent internal discussions within the council as to how to deal with this and the subsequent LGSCO investigation and decision. These are largely personal issues relating to the complainant.
57. The LGSCO has already considered the complainant's issues, and where it found fault, it has required the council to take steps to rectify these.
58. Nevertheless, there remains a public interest in the council being transparent about its actions regarding the complaint, and in particular, in it creating greater transparency on how its relationship with Enerveo factored into its ability to deal with the complaint.
59. As there has already been independent oversight of the issues which has concluded, the need for the safe space which the council required in order to discuss and deliberate its actions has significantly declined. The fact that the LGSCO found fault adds weight to the public interest in the information being disclosed.
60. On balance, the Commissioner has therefore decided that the public interest in the exception being maintained does not outweigh that in the information being disclosed.
61. The Commissioner's decision is therefore that the council was not correct to apply Regulation 12(4)(e) to withhold the information at the time that the request was received by it.

Regulation 13 – personal data

62. The council applied Regulation 13(1) to withhold personal data relating to third parties from the information which it disclosed. It said that the

personal data redacted from documents mainly consists of names, job titles and contact information of officers below the level of Service Manager. It said that it has also redacted the names and contact details of staff working for external contractors.

63. The following analysis considers whether the council is entitled to apply Regulation 13(1) of the EIR to redact the names, identities and contact details of some individuals from the information falling within the scope of the complainant's request.
64. Regulation 13(1) 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.
65. In this case the relevant condition is contained in Regulation 13(2A)(a)³. 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').
66. The Commissioner is satisfied that the withheld information is personal data. Disclosure under either FOIA or the EIR is effectively an unlimited disclosure to the world at large, without conditions.
67. The Commissioner acknowledges that the complainant considers that they have a legitimate interest in disclosure of the withheld personal information. However, the Commissioner must balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms.
68. The Commissioner has not seen any evidence of any wider public interest in disclosure of the redacted information. It is not necessary to know the names and contact details of the individuals involved in order to understand the matters which were under discussion.
69. Following his decision in many previous decision notices addressing the same types of personal data, the Commissioner has an established view that non-senior officers would have a reasonable expectation that their personal data would not be disclosed to the wider world in response to an EIR request. Non senior officers or employees from third party organisations would also have a similar expectation. Disclosing the

³ As amended by Schedule 19 Paragraph 307(3) DPA 2018.

personal data of these individuals would be unnecessary, intrusive and would be likely to cause them harm or distress.

70. Based on the above factors, the Commissioner has determined that the legitimate interests identified to not outweigh the data subject's fundamental rights and freedoms.
71. The Commissioner therefore considers that disclosing the information in question would contravene a data protection principle as it would not be lawful. Therefore, he has decided that the data is exempt under Regulation 13(1) by virtue of 13(2A)(a).
72. The Commissioner's decision is therefore that the council was correct to withhold the information under Regulation 13(1).

Other matters

73. In this case, the council failed to recognise that the complainant had requested their own personal data and did not consider the request under the Data Protection Act 2018 (DPA).
74. Whilst the Commissioner cannot require a public authority to take action under the DPA via an EIR decision notice, in view of his decision that the requested information is the personal data of the complainant, the council should consider providing a response to the complainant under the DPA in respect of the information they requested.
75. The Commissioner has published guidance relating to requests for information held within complaints files which may be of use to the council in these circumstances.⁴

⁴ <https://ico.org.uk/media/for-organisations/documents/2021/2619040/s40-access-to-information-held-in-complaint-files-final-v-31.pdf>

Right of appeal

76. 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

77. 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.
78. 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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