

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

**Date:** 17 December 2024

**Public Authority:** Newry, Mourne and Down District Council  
**Address:** Monaghan Row  
Newry  
County Down  
BT35 8DJ

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to a shellfish farm in a specified location. Newry, Mourne and Down District Council (“the Council”) relied on regulation 13(5) of the EIR (third party personal information) to neither confirm nor deny that it holds the requested information.
2. The Commissioner’s decision is that the Council has correctly relied on regulation 13(5) to neither confirm nor deny that it holds the requested information.
3. The Commissioner does not require further steps.

**Request and response**

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4. On 9 February 2024, the complainant wrote to the Council and requested information in the following terms:  
  
“Under FOI/EIR I would like to request a digital copy of any and all information held by NMDDC on the illegal site operated in [redacted]. Please include all internal communication and external communications with DAERA, FSANI and all other bodies.”

5. The Council responded on 28 February 2024. It stated that to confirm whether or not the information requested was held would, in itself, disclose personal data relating to individuals connected to the business listed. It therefore cited regulation 13(5) of the EIR to neither confirm nor deny that it holds the requested information.
6. Following an internal review the Council wrote to the complainant on 23 May 2024. It maintained its original position.

## Reasons for decision

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### Regulation 13(5) of the EIR – personal data (NCND)

7. Regulation 13(1) 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.
8. Regulation 13(5)(a) of the EIR provides that the duty to confirm or deny whether information is held does not arise if it would contravene one of the principles relating to the processing of personal data (as set out in Article 5 of the UK General Data Protection Regulation (UK GDPR)) to provide that confirmation or denial.
9. Therefore, in the circumstances of this case, for the public authority to be entitled to rely on regulation 13(5)(a) as the basis for refusing to confirm or deny whether it holds information falling within the scope of the request, the following two criteria must be met:
  - Confirming or denying whether the requested information is held would constitute the disclosure of a third party's personal data; and
  - Providing this confirmation or denial would contravene one of the data protection principles.
10. The decision to use a 'neither confirm nor deny' response will not be affected by whether a public authority does or does not in fact hold the requested information. The starting point, and main focus for a 'neither confirm or deny' response in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not particular information is held. The Commissioner's guidance explains that there may be circumstances in which merely confirming or denying whether or not a public authority holds information about an individual can itself reveal something about that individual.

**Would confirming or denying that the requested information is held constitute the disclosure of a third party's personal data?**

11. Section 3(2) of the DPA defines personal data as:  
"any information relating to an identified or identifiable living individual".
12. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
13. 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.
14. Information will relate to a person if it about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
15. In the circumstances of this case, having considered the requested information, the Commissioner is satisfied that providing a confirmation or denial that the information is held would reveal personal data to the world at large. This is because the company which the complainant is seeking information about is a very small family-run business, therefore any allegations of wrong-doing or accountability for the activities it carries out would clearly lie with the sole director of the company. The sole director can be readily identified from the publicly available company information.

**Criminal Offence Data**

16. The Commissioner also considers it appropriate to consider whether confirming or denying whether it holds the requested information would result in the Council's disclosure of criminal offence information relating to identified or identifiable individuals.
17. Information relating to criminal convictions and offences is given special status in the UK GDPR. Article 10 of the UK GDPR defines 'criminal offence data' as being personal data relating to criminal convictions and offences. Under section 11(2) of the DPA personal data relating to criminal convictions and offences includes personal data relating to:-
  - (a) the alleged commission of offences by the data subject; and
  - (b) proceedings for an offence committed or alleged to have been committed by the data subject or the disposal of such proceedings, including sentencing.

18. The Commissioner understands that it is a crime to market or label a food product to wrongly portray its quality, safety, origin or freshness, and to make, use or possess false documents with the intent to sell or market a fraudulent or substandard product.
19. From the wording of the request, along with further correspondence to the Commissioner which states that the complainant has witnessed shellfish being stored on the alleged illegal site before being shipped abroad, it is clear that if the Council were to hold any information within the scope of the request, that it would relate to alleged criminal offences.
20. Criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed, which includes confirming or denying whether the information is held in response to a request for information under FOIA, if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA 2018 can be met.
21. The Commissioner has considered each of these conditions and whether any of them could be relied upon by the Council to confirm or deny whether it holds criminal offence data falling within the scope of this request. The Commissioner has considered these on his own merit and finds that, having regard for the restrictive nature of the Schedule 1, Parts 1 to 3 conditions, none of the conditions can be met.
22. As none of the conditions required for processing criminal offence data are satisfied there can be no legal basis for confirming whether or not the requested information is held; providing such a confirmation or denial would breach data protection principle (a). Therefore, the Commissioner finds that the Council was entitled to rely on regulation 13(5)(a) of the EIR to neither confirm nor deny whether it holds the requested information in this case.

## Right of appeal

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23. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

24. 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.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Michael Lea**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**