

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

Date: 18 March 2025

Public Authority: Sefton Metropolitan Borough Council
Address: 1st Floor
Magdalen House
Trinity Road
Bootle
L20 3NJ

Decision (including any steps ordered)

1. The complainant has requested from Sefton Metropolitan Borough Council (the Council) site visit notes and images regarding a specific property development. The Council disclosed some information and applied regulations 5(3) and 13(1) to the remainder, which concern personal data.
2. The Commissioner's decision is that:
 - The Council was entitled to rely on regulation 5(3) of the EIR when refusing to provide the complainant's own personal data.
 - The Council was entitled to rely on regulation 13(1) when refusing to provide the remaining information.

Background

3. The complainant originally made a request to the Council on 24 May 2024, seeking the following information.

"You say: 'I would advise that a site visit has been undertaken'.

May I please be informed when this was undertaken and by whom.

May I also make a freedom of information request for all reports relating to each and every site visit (including images taken) relating to this development both before and during construction."

4. The Council responded on 24 June 2024 providing some information within the scope of the request. It advised that with the exception of the planning application site visit, the remaining site visits were undertaken in response to complaints alleging breaches of conditions and unauthorised works. The Council noted that due to this, no formal reports were available as reports would only be produced in the event of formal enforcement action being taken.

Request and response

5. On 24 June 2024, the complainant wrote to the Council and requested information in the following terms:

"In respect of the reports that you say are not available, may I then see the various officers notes from any / all site visits – and any related correspondence, including between parties and outside parties that reference or acknowledges these cites visits please. I note there are no images included of the partially dismantled fencing... Please can I have these and also the images sent to Sefton Council from the Developers showing the fencing erected which was subsequently signed off as acceptable part of the conditions."

6. The Council responded on 15 July 2024. It provided a website link to some of the requested information and stated that some information was being withheld under section 31 of FOIA, which concerns law enforcement. In response to the part of the request which sought images, the Council advised that further clarification was required before it could respond.
7. Following an internal review the Council wrote to the complainant on 14 August 2024. It maintained that information within the scope of the request was available online, it also stated that there were no images within the scope of the request and confirmed that it was revising its reliance on section 31 and instead relying on regulations 5(3) and 13(1) of the EIR.

Scope of the case

8. The complainant contacted the Commissioner on 13 September 2024 to complain about the way their request for information had been handled.
9. During the Commissioner's investigation, the Council provided the complainant with images within the scope of the request. The Commissioner wrote to the complainant to see if they believed any additional information was held, but the complainant did not make any additional arguments.
10. For the above reason, the Commissioner considers that the scope of his investigation is to determine whether the Council was entitled to rely on regulations 5(3) and 13(1) of the EIR when refusing to provide some of the requested information.

Reasons for decision

Is the requested information environmental?

11. 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);
12. As the requested information is information that relates to development of a property, the Commissioner believes that the requested information is information on measures affecting or likely to affect the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 5(3) – the complainant’s own personal data

13. 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).
14. Section 3(2) of the DPA defines personal data as: “any information relating to an identified or identifiable living individual”.
15. 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.
16. 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.
17. 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.
18. In this case, the Commissioner has reviewed the withheld information and notes that the complainant is named in some parts of the site notes. In addition to this, the withheld information also details complaints made to the Council by the complainant, along with responses to these complaints from the Council.
19. It is clear to the Commissioner that the complainant’s name and complaint information is clearly information which relates to and identifies them. The Commissioner is also satisfied that this part of the withheld information, is significant and biographical to the complainant.

20. Based on the above, the Commissioner is satisfied that this part of the withheld information constitutes the complainant's own personal data and finds that the exception at regulation 5(3) of the EIR is engaged. The Council was not obliged by the EIR to disclose this part of the requested information.

Regulation 13 - third party personal information

21. 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.
22. 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').
23. 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.
24. 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?

25. Section 3(2) of the DPA defines personal data as: "any information relating to an identified or identifiable living individual".
26. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
27. 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.
28. 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.
29. In the circumstances of this case, having considered the information in question, the Commissioner is satisfied that the information relates to

the owner(s) of the property in question – ie the data subject(s). This is because the information relates to their property, its development and potential enforcement action being taken regarding the development in question.

30. Having viewed the withheld information, the Commissioner notes that it contains both the planning application reference number and the data subject(s) address. This is information which clearly relates to and identifies the data subject(s).
31. He has considered whether the remaining information could be disclosed if the planning application reference number and address were redacted. Disclosure under the EIR is effectively disclosure to the wider world, not just to the applicant. Redacting the address and reference number would make it difficult for the data subject(s) to be identified more widely but, in the circumstances of this case, such a redaction wouldn't prevent the complainant, or others in the locality of the property, from identifying the data subjects.
32. The Commissioner is therefore satisfied that all the remaining information being withheld is personal data which relates to and can identify the data subject(s).
33. Although the information falls within the definition of 'personal data' in section 3(2) of the DPA, the fact that information constitutes the personal data of an identifiable living individual 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.
34. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

35. 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".

36. 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.
37. 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

38. 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.

39. 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.

40. 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

41. In considering any legitimate interest(s) in the disclosure of the 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.

42. 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.

43. The Council acknowledged that there was a broad public interest in accountability and transparency relating to disclosure. And the complainant has specific concerns about the development in question, which is a legitimate interest for them to have.
44. The Commissioner has next considered whether disclosure would be necessary to address the legitimate interests that have been identified.
45. As has been discussed, some of the information is the complainant's own personal data, which they will already have access to. However, they don't have access to the information to which the Council has applied regulation 13. To fully address their interest, and the general interest in transparency, it would therefore be necessary to disclose this information.
46. In considering the final balancing test, the Commissioner takes into account any or all of the following: 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 data subject(s) expressed concern about the disclosure; and the reasonable expectations of the data subject(s).
47. A key issue is whether the data subject(s) concerned have a reasonable expectation that their information won't be disclosed. These expectations can be shaped by factors such as the individual(s) general expectation of privacy, whether the information relates to employees in their professional role or to them as individuals, and the purpose for which they provided their personal data.
48. It's also important to consider whether disclosure would be likely to result in unwarranted damage or distress to those individuals.
49. The data subject(s) in this case are private homeowners. The information being withheld is information about site visits following complaints about development work at their property and is over and above anything that would be routinely published on the Council's planning portal about this planning application. Nor does the information concern any formal enforcement action. As such, the Commissioner is satisfied that the data subject(s) would have the reasonable expectation that their personal data wouldn't be disclosed to the world at large under the EIR. Disclosing the information would therefore be likely to cause the data subject(s) damage or distress.

50. Based on the above factors, the Commissioner has determined that there's insufficient legitimate interest to outweigh the data subject(s)' fundamental rights and freedoms. The Commissioner therefore considers that there's no Article 6 basis for processing and so disclosing the information wouldn't be lawful.
51. Because disclosure would be unlawful, the Commissioner doesn't need to go on to consider separately whether disclosure would be fair or transparent.
52. The Commissioner's decision is that the Council is entitled to withhold the remaining requested information under regulation 13(1) of the EIR.

Right of appeal

53. 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

54. 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.
55. 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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