

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

Date: 7 April 2025

Public Authority: Basingstoke and Dean Borough Council
Address: Civic Offices
London Road
Basingstoke
RG21 4AH

Decision (including any steps ordered)

1. The complainant requested information about concerns they had raised about unlicensed dumping and burning of mixed waste at a particular site. Basingstoke and Dean Borough Council (the Council) initially withheld the information requested under regulation 12(5)(b) (course of justice) of the EIR. In its internal review the Council withdrew its reliance on regulation 12(5)(b) of the EIR and disclosed the information requested, subject to some information being redacted under regulation 13 (personal data) of the EIR. During the course of the Commissioner's investigation, the Council disclosed some of the information it had originally withheld, as it constituted the complainant's own personal data. The Council continued to withhold the remaining information under regulation 13 of the EIR. The complainant considered that the Council held additional information relevant to the request, other than the documents disclosed and was unhappy with the information that the Council had redacted from the documents it disclosed.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any additional information falling within the scope of the request. The Commissioner also finds that the Council correctly applied regulation 13 to the information it redacted from the documents disclosed. The Commissioner does not require any steps to be taken.

Request and response

3. On 21 February 2024 the complainant wrote to the Council regarding concerns raised about continuing unlicensed dumping and burning of mixed waste from multiple clients by commercial gardeners and others at Freefolk, close to St Nicholas Church, and requested information in the following terms:

"I am requesting under Freedom of Information Act, all documentation that the council holds relating to this matter".
4. The Council responded on 20 March 2024 and stated that the information requested was exempt under regulation 12(5)(b) of the EIR.
5. On 2 April 2024, the complainant requested an internal review of the Council's refusal to provide the information requested.
6. The Council provided the outcome of its internal review on 21 October 2024 and confirmed that it was withdrawing reliance on regulation 12(5)(b) of the EIR. It disclosed the information requested, subject to some information being redacted under regulation 13 of the EIR.

Scope of the case

7. The complainant initially contacted the Commissioner on 2 October 2024 to complain about the delay in the Council providing the outcome of its internal review. Following the Council's internal review response, the complainant contacted the Commissioner again on 13 November 2024 to confirm they remained dissatisfied with the handling of their request. They specifically raised concerns that the Council had not identified all of the information requested and with the information that the Council had redacted from the documents it disclosed.
8. During the course of the Commissioner's investigation the Council disclosed some of the information it originally redacted from the documents it disclosed. This disclosure was made on the basis that the information constituted the complainant's own personal data and as such, it should have been handled as a Subject Access Request under section 7 of the Data Protection Act 1998 (the DPA). The Council maintained reliance on regulation 13 in relation to the remaining redactions.
9. In light of the above, the scope of the Commissioner's investigation into this complaint is to determine whether the Council holds any additional information relevant to the request. He has also considered whether the

Council has correctly applied regulation 13 of the EIR to redact information from the documents it has disclosed.

Reasons for decision

Regulation 5(1) of the EIR– duty to make environmental information available on request

10. Regulation 5(1) of the EIR states that 'a public authority that holds environmental information shall make it available on request.' This is subject to any exceptions that may apply.
11. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. The Commissioner will also consider the actions taken by the authority to check that the information is not held, and any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.
12. The Council explained that investigations and actions relating to the dumping and burning of rubbish are investigated by its Environmental Health team. As such, all searches undertaken in relation to the request were undertaken within that department. The Council also confirmed that all information relating to the subject matter associated with the request would be held electronically.
13. The Council advised that, on receipt of the request, searches were undertaken of its case management system (Uniform) and its document management system (IDOX DMS). Uniform holds information on officer actions and includes notes of telephone calls, visits and any interactions with persons involved in each case. IDOX DMS is a repository for documents, emails and evidence linked to the case.
14. The Council explained that all officers who had had an involvement in the subject matter were asked to check and ensure that all email correspondence had been saved to IDOX DMS and that all records were up to date. This included any duplicate or draft documents which had temporarily been saved in officer's folders.
15. Searches carried out on the Council's case management system were undertaken using the customer name and address. The search yielded four cases and all of the information held on the four cases has been disclosed to the complainant, subject to some information being redacted under regulation 13 of the EIR.

16. The Council confirmed that in the autumn of 2024 a further investigation was undertaken in respect of burning waste at the site in question. This investigation arose as a result of additional concerns that the complainant raised which resulted in a stage 2 complaint and an enquiry to the Local Government Ombudsman. However, any information relating to this investigation falls outside the scope of the request which was submitted in February 2024.

Conclusion

17. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed the information that a complainant believes it must hold, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in the paragraphs above, the Commissioner is required to make a finding on the balance of probabilities.
18. Based on the evidence available to him, the Commissioner is satisfied that the Council has carried out adequate searches, which would have been likely to locate information falling within the scope of the request. Based on the searches undertaken and the other explanations provided, as referred to above, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any additional information falling within the scope of the request other than that which it has already disclosed.

Regulation 13 – third party personal data

19. Under regulation 13(1) of the EIR, information is excepted from disclosure if it is the personal data of someone other than the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.
20. In this case the relevant condition is contained in regulation (2A)(a)¹. 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 General Data Protection Regulation (GDPR).
21. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection

¹ As amended by Schedule 19 Paragraph 58(3) DPA

Act 2018 (DPA). If it is not personal data then regulation 13(1) cannot apply.

22. 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?

23. Section 3(2) of the DPA defines personal data as:

“any information relating to an identified or identifiable living individual”.

24. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
25. 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.
26. The information which the Council has redacted from the documents in question comprise names and contact details of junior members of staff, the names and addresses of the owners of the site, along with references to employees of the property's owners. In addition, the Council has also redacted information which references individuals by description following a site visit, along with two vehicle registration numbers which were alleged to be on the site. The vehicle registration numbers were provided to the Council by the complainant.
27. The Council contends that the withheld information constitutes personal data as the individuals in question could be identified directly (via their names, addresses and contact details) or indirectly (via their description and vehicle registration numbers).
28. Having viewed unredacted copies of the documents in question, the Commissioner is satisfied that the information which the Council has redacted constitutes personal data. The Commissioner is satisfied that the information both relates to, and identifies the third parties concerned. This information therefore falls within the definition of “personal data” in section 3(2) of the DPA.
29. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
30. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

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

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

32. 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.

33. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

34. 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”².

35. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, 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;

² 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) FOIA (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 GDPR would be contravened by the disclosure of information, Article 6(1) of the 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”.

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

36. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.
37. In considering any legitimate interest(s) in the disclosure of the requested information under the FOIA, 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.
38. 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.
39. The Commissioner is satisfied in this case that the complainant has a legitimate interest in accessing the information as they made complaints about the subject matter. The Commissioner also considers that other individuals who live near the site may also have a legitimate interest in knowing what action the Council has taken in relation to the matter.
40. '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 FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
41. In relation to the junior members of staff whose personal data has been redacted, it is common practice for a public authority to argue that the names of junior officials are exempt from disclosure as disclosure would contravene the principles set out in Article 5 of the GDPR. Furthermore, unless there are very case specific circumstances, the Commissioner accepts that the names of junior officials are exempt from disclosure. This is in line with the approach taken in the Commissioner's guidance on section 40 of the FOIA³. Therefore, in this case the Commissioner

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https://ico.org.uk/media/fororganisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf - see pages 11 and 12

adopts the reasoning set out in these previous decision notices which found that the personal data of junior officials was exempt from disclosure on the basis of section 40(2) of the FOIA⁴.

42. The Commissioner has gone on to consider the other individuals whose personal data has been redacted. The Commissioner is satisfied that the individuals concerned would have had a reasonable expectation that their personal data would not be disclosed to the wider world in response to an EIR request. The Commissioner also considers that disclosing their personal data would be an invasion of their privacy.
43. The Commissioner notes that the Council has disclosed the substance of the emails in question and the only information that the Council has withheld is the names and/or contact details of individuals and vehicle registration numbers. The Commissioner considers that this meets any legitimate interest in transparency of decision making without undue interference into the privacy rights of individuals.
44. The Commissioner struggles to see any compelling wider legitimate interest that would necessitate publishing the personal data concerned. He is not persuaded that any legitimate interest in accessing the information would override the interests or fundamental rights and freedoms of the data subject in this case.
45. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest in disclosure to outweigh the data subjects' fundamental rights and freedoms. Furthermore, it is not necessary for the information to be disclosed to the world at large, to enable the complainant to pursue any concerns they might have about the property in question.
46. The Commissioner therefore considers that disclosing the withheld information would contravene principle (a) of Article 5(1) of the UK GDPR, as it would not be lawful. In light of this, the Commissioner's decision is that the Council was entitled to withhold the information under regulation 13(1) of the EIR.

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022310/ic-114449-b7p7.pdf> - see paragraphs 49-71, <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022447/ic-110922-t9r1.pdf> - see paragraphs 39-62 and <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4026862/ic-240684-f9v5.pdf> - paragraphs 11 to 36

Right of appeal

47. 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

48. 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.
49. 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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