

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

Decision notice

Date: 17 April 2025

Public Authority: Cheshire East Council
Address: Earle Street
Crewe
CW1 2BJ

Decision (including any steps ordered)

1. The Commissioner's decision is that, on the balance of probabilities, Cheshire East Council ('the Council') holds no further information about particular planning applications. The Council has correctly applied regulation 13(1) of the EIR to personal data that it's withholding.
2. It's not necessary for the Council to take any further steps.

Request and response

3. The complainant made the following information request to the Council on 17 September 2024:

"Full detail on planning app [redacted] Sept 2023 until today

We request full disclosure on the above planning applications relating to [redacted].

[1] We seek all correspondence between the planning officer and applicants, all correspondence between the planning office and architect.

[2] All internal notes between planning officer and other internal planning officers.

- [3] All meeting notes, all details relating to site visits, all details related to the revised submitted plans in August 2024 in application [redacted].
- [4] All correspondence and discussion relating to the decision taken by the planning officer.
- [5] All information relating to the published concerns from all neighbours.”
4. The Council responded on 7 October 2024. In respect of part 5 and all information about the revised plans, it directed the complainant to its planning portal, where relevant information is published. The Council advised that it didn't hold any internal notes between planning officers or any meeting or discussion notes, and applied regulation 12(4)(a) of the EIR to those parts of the request. That exception concerns information that isn't held. The Council provided information about a site visit.
 5. The complainant requested an internal review on 9 October 2024. They considered that the Council would hold further information, such as emails about the planning application and discussion, meeting, and site visit notes.
 6. The Council provided a review on 17 October 2024. It had identified that it did hold further relevant information – email correspondence. The Council disclosed this with personal data redacted under regulation 13 of the EIR.

Reasons for decision

7. Based on their complaint to the Commissioner, this reasoning covers whether the Council holds any further information that's relevant to the complainant's request, and its application of regulation 13 of the EIR to some of the information.

Regulation 5 – duty to make environmental information available on request

8. Regulation 5(1) of the EIR requires a public authority to make information available on request if it's held and isn't subject to an exception.
9. The Commissioner asked the Council to explain how it's sure that it doesn't hold any further information that falls within scope of the request.

10. In its submission to him, the Council has confirmed that it had initially searched its planning systems, and it says that it considered that all the information relevant to the request was published on its website under the various planning application numbers.
11. However, the Council goes on to say, as part of the internal review process, it carried out further searches of planning officers' email accounts. Further relevant information was then identified, and this was provided to the Information Rights Team.
12. The Planning Officer provided the Council with detailed information about what information was held under what planning reference, or in some instances, what information wasn't held. The Council says it provided these details to the complainant, to evidence why certain information hadn't been provided [ie because it wasn't held].
13. The Council says that the electronic searches were conducted using the planning reference numbers, names of people involved – the planning applicants, their architects and planning officers.
14. It's regrettable that the Council hadn't carried out more thorough searches for relevant information before it issued its first response to the complainant. When pressed by the complainant, it then identified additional information. Understandably, this would lead an applicant to believe that a public authority's searches aren't exhaustive and that it could hold further information.
15. The Commissioner considers that the Council's explanation and the description of the searches it has carried out are satisfactory. He'll accept, on the balance of probabilities, that all the relevant information it holds, and that isn't personal data, has either been published on its website or provided to the complainant. The Council has therefore complied with section 5(1) of the EIR.

Regulation 13 – personal data

16. Regulation 13 of the EIR provides that information is exempt from disclosure if it's the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) of the Data Protection Act is satisfied.
17. The relevant condition is contained in section 40(3A)(a). This applies where disclosing 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).

18. Personal data is information that relates to a living individual and from which they can be identified.
19. The Council has confirmed that it's redacted from the information it has disclosed, the first names of the planning applicants, their contact details and those of the architect and Council officers. The Council has also redacted other information that it says identifies and relates to specific individuals.
20. The Commissioner has reviewed the information the Council has redacted. He's satisfied that it does indeed relate to specific individuals – the data subjects - and they could be identified from the information. As such the information can be categorised as personal data.
21. The Commissioner has gone on to consider whether disclosing the personal data under the EIR would contravene any DP principle.
22. The most relevant DP principle in this case is principle 5(1)(a) of the UK GDPR. This says that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
23. 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.
24. 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..."
25. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under the EIR, the Commissioner considers a three-part test: the legitimate interest test, the necessity test, and the balancing test.
26. The Commissioner has considered the circumstances of the request and appreciates that the complainant has a legitimate interest in the information they've requested, including that they consider that there have been procedural mistakes made with the planning applications in question. There's also a general legitimate interest in a public authority demonstrating it manages the planning process correctly and transparently.

27. The Commissioner has next considered whether it would be necessary to disclose the withheld information to address the legitimate interests that have been identified. He's satisfied that it wouldn't be necessary to disclose the applicants' names or any contact details to meet the identified interests. The Commissioner will accept though, that disclosing the remaining withheld information would be necessary to address the complainant's interests, although not the general wider interest in transparency. That has been met, in the Commissioner's view, through the information the Council has disclosed or has already published.
28. The Commissioner has therefore finally carried out the balancing test - whether the above interests override the legitimate interests or fundamental rights and freedoms of the data subjects. In doing so, it's necessary to consider the impact of disclosure. For example, if the data subjects wouldn't reasonably expect that the information would be disclosed to the public under EIR in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
29. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information won't be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
30. It's also important to consider whether disclosure would be likely to result in unwarranted damage or distress to the individuals.
31. The Commissioner has considered all the circumstances of this case. He's satisfied that the data subjects in this case - as private citizens - would have the reasonable expectation that their personal data wouldn't be disclosed to the world at large as the result of an EIR request. Disclosing the information would therefore be likely to cause them unwarranted damage or distress.
32. Based on the above factors, the Commissioner has determined that there's insufficient legitimate interest to outweigh the data subjects' 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.
33. The Commissioner is satisfied that the complainant's legitimate interests and the general interest in transparency are met to a satisfactory degree through information the Council has disclosed or has published.

34. The Commissioner has therefore decided that the Council was entitled to withhold the information under regulation 13 of the EIR.

Right of appeal

35. 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

36. 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.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Cressida Woodall
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Wycliffe House
Water Lane
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