

Environmental Information Regulations 2004

Decision notice

Date: 4 November 2014

Public Authority: London Borough of Hackney
Address: Town Hall
Mare Street
London
E8 1AE

Decision (including any steps ordered)

1. The complainant requested IP addresses that were used to respond to a public consultation organised by the London Borough of Hackney. The London Borough of Hackney refused the request under regulation 13(1) of the Environmental Information Regulations (EIR), as it considered the information to be personal data and that disclosure of the information would breach one of the data protection principles.
2. The Commissioner's decision is that the information is not personal data and cannot be withheld under regulation 13(1) of the EIR. The London Borough of Hackney also breached regulation 14(2) of the EIR as it did not issue its refusal notice to the complainant's request within the statutory timeframe of 20 working days.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the information to the complainant or issue a valid refusal notice which does not rely on regulation 13 of the EIR.
4. The public authority must take these steps within 35 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 30 September 2013 the complainant asked the London Borough of Hackney for the raw data behind the responses to a consultation survey that had been conducted. The London Borough of Hackney provided the information but removed all of the information it considered to be personal data, including IP addresses.
6. On 10 November 2013, the complainant wrote to the London Borough of Hackney and requested information in the following terms (numbers added by the Commissioner for reference):

"1. Please could you give me the IP address that was used by these 7 respondents. I don't think it can be objected that this is personal information: since the same IP address is available to at least 7 different people, it clearly could not be used to identify any individuals.

2. Please could you also let me know how many respondents in the range 2638874435 to 2697303801 inclusive used the same IP address as these 7 respondents."
7. The London Borough of Hackney acknowledged the request on 14 November 2013 but did not provide a response within the required timeframe of 20 working days. The complainant appealed to the Commissioner, who contacted the London Borough of Hackney and asked it to respond to the request in accordance with its legal obligations.
8. The London Borough of Hackney responded on 24 March 2014. The response stated that the London Borough of Hackney considered the IP addresses to be personal data, and that disclosure would breach the first data protection principle as it would be unfair to the individuals concerned.
9. Following an internal review the London Borough of Hackney wrote to the complainant on 6 June 2014. It upheld the previous decision.

Scope of the case

10. The complainant contacted the Commissioner on 22 December 2013 to complain about the way his request for information had been handled. At this stage the appeal was concerned with the London Borough of Hackney's failure to respond to the complainant's request.

11. After receiving the internal review decision on 6 June 2014, the complainant submitted a new appeal against the London Borough of Hackney's refusal of the request under regulation 13 of the EIR. Therefore the scope of this case is whether the London Borough of Hackney can refuse the request under regulation 13 of the EIR.

Reasons for decision

Regulation 14(2)

12. The London Borough of Hackney acknowledged receipt of the complainant's request on 14 November 2013. It did not provide a refusal notice to the complainant's request until 24 March 2014. The statutory time-limit for a refusal notice is 20 working days, whereas the London Borough of Hackney took 90 working days. This is a breach of the EIR, and was one of a number of breaches that made the Commissioner instigate formal monitoring of the London Borough of Hackney's performance in handling information requests.¹ The Commissioner asks that the London Borough of Hackney avoid such lengthy delays in future.

Regulation 13(1)

Is the information environmental?

13. The London Borough of Hackney argued that the information came within the definitions of regulation 2(1) of the EIR:

In these Regulations—

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form 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;

¹ http://ico.org.uk/news/latest_news/2014/cabinet-office-monitored-over-foi-response-times-23012014

(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) and (b) as well as measures or activities designed to protect those elements;

14. In its refusal notice of 24 March 2014, the London Borough of Hackney stated that the information was part of the Hackney Marsh North Pavilion Consultation Survey. This survey was created as part of the London Borough of Hackney's plans to alter the North Pavilion area of the Hackney marshes. Therefore the information would meet the definition under 2(1)(c) at it is about a measure likely to affect the elements listed in 2(1)(a).
15. The Commissioner accepts this view. The specific information in this request itself is not of an environmental nature, but it is part of a survey which would likely have an impact on the way the London Borough of Hackney implemented plans that would affect the Hackney marshes.

Is the information personal data?

16. Information is exempt from disclosure on the basis of regulation 13(1) if it constitutes third party personal data (i.e. the personal data of anyone other than the individual making the request) and either the first or second condition in section 13(2)(a)(i) is satisfied. This includes where a disclosure of the information would breach one of the data protection principles of the Data Protection Act 1998 (DPA).
17. The definition of personal data is provided in section 1 of the DPA. This states it is data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of – or is likely to come into the possession of – the data controller. It is also considered by the Commissioner to need some biographical significance to the individual concerned.
18. When considering the points in this case the Commissioner has borne in mind that disclosure under the EIR is putting information into the public domain, and that whilst the withheld information might not allow the complainant to identify the individuals concerned it might be possible for others to do so. The focus is on the process of disclosure and whether and member of the public could identify an individual from the information. The Commissioner takes the view that information would be

classed as personal data if a determined person using reasonably accessible means could identify the individuals to whom the data relates.

19. At first glance, it is not obvious that an IP address is personal data. An IP address is also known as an "IP number" or simply an "IP", and this is a code made up of numbers separated by three dots that identifies a particular device (computer, router or server) on the internet. IP stands for internet protocol. Every device requires an IP address to connect to the internet. IP addresses consist of four sets of numbers from 0 to 255. An Internet Service Provider (ISP) will assign either a static IP address (which is always the same) or a dynamic IP address (which changes every time someone logs on). ISPs typically assign dial-up users a dynamic IP address each time they sign on because it reduces the number of IP addresses they must register. However, if connected to the internet through a network or broadband connection, a static IP address may be more likely.
20. The Commissioner has visited this issue in a previous decision, which also involved the London Borough of Hackney.² In this case the Commissioner decided that the information was not personal data and so could not be withheld under regulation 13. The Commissioner is of the view that the reasoning from this previous decision stands unless it can be shown otherwise. However, the London Borough of Hackney has argued that since that decision there have been a number of situations where IP addresses have been treated as personal data, which supports its view that the information can be withheld under regulation 13. The Commissioner will address these cases where relevant.
21. The Commissioner wishes to make clear that the submissions relate entirely to item 1 of the request – whether the IP addresses are personal data. No submissions were put forward for item 2 of the request – whether informing the complainant how many respondents used the same IP address is personal data. The Commissioner's view for item 2 of the request is that the figure would only reveal the number of respondents who used a unique IP address and would not identify any personal data. The rest of this analysis will reflect how the London Borough of Hackney's arguments relate to information relevant to item 1 of the request.

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http://ico.org.uk/~media/documents/decisionnotices/2011/fs_50315994.aspx

22. Firstly, the London Borough of Hackney referred to a civil monetary penalty notice (CMP) issued by the Commissioner on ACS Law on 9 May 2011. This CMP was issued as ACS Law – acting as the data controller – failed to comply with all of its obligations under the seventh data protection principle as it did not have appropriate technical and organisational measures to protect against the accidental loss of personal data. The London Borough of Hackney considers that this CMP is relevant as the data controller's clients were able to provide it with an IP address and the data controller was then able to obtain the names and postal addresses of those individuals.
23. However, the Commissioner disagrees that this CMP shows that IP addresses can be seen as personal data in the circumstances of this current case. ACS Law was acting on its clients' behalf to prosecute individuals who were suspected of copyright infringement. ACS Law was only able to obtain the names and postal addresses of the individuals because it was able to apply directly to the ISPs who held this data, and the data was only provided because ACS Law was intending to instigate legal proceedings against these individuals. The CMP was issued because ACS Law did not protect the IP addresses along with the names and postal addresses of the individuals concerned. This does not compare to this current case. The request is only for the IP addresses not the names and postal addresses, and the IP addresses in this case relate to individuals who have completed a survey about Hackney marshes. There is nothing to suggest that this is a criminal activity that would give legal justification for these individuals' names and postal addresses to be given out. The London Borough of Hackney has not demonstrated how an IP address alone would allow the complainant or another person to successfully access names and postal addresses from the ISP which held the information. Without that the circumstances are not comparable.
24. Secondly, the London Borough of Hackney referred to an opinion from the European Union Article 29 Data Protection Working Party.³ The London Borough of Hackney stated that this concluded that both IP addresses and cookies qualify as personal data. Once again, the Commissioner does not share this view. He notes that the opinion states on page 8 that:

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http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2008/wp148_en.pdf

"Though IP addresses in most cases are not directly identifiable by search engines [this refers to the providers of search services, not an individual using a search engine], identification can be achieved by a third party. Internet access providers hold IP address data. Law enforcement and national security authorities can gain access to these data and in some Member States private parties have gained access also through civil litigation. Thus, in most cases – including cases with dynamic IP address allocation – the necessary data will be available to identify the user(s) of the IP address."

25. The IP addresses themselves are only considered to be personal data if the individual has access to other information linked to that address which identifies the data subject. The Commissioner considers that this identifying information is highly unlikely to be in the possession of the complainant or reasonably accessible to other individuals who might want to determine the individuals from the IP addresses. Therefore, the Commissioner does not consider this argument shows that IP addresses are personal data.
26. Lastly, the London Borough of Hackney cited the Court of Justice of the European Union (CJEU) of *Scarlet v SABAM* (case C-70/10).⁴ In this case, SABAM – a society of Belgian music auteurs, composers and editors – wanted an ISP to filter all peer-to-peer traffic to block potentially unlawful communications, such as illegal file sharing. The judge in this case was required to determine whether an IP address could be considered personal data, and decided to use a definition provided in Opinion 136 of the Article 29 Working Party.⁵
27. Having reviewed this opinion the Commissioner notes that it makes the following comments on whether IP addresses can be considered personal data:

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<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130de36e2f1895ca246d388a1e15717ee4cbe.e34KaxiLc3eQc40LaxqMbN4Ob3qQe0?text=&docid=81776&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=369013>

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http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2007/wp136_en.pdf

"Internet access providers and managers of local area networks can, using reasonable means, identify Internet users to whom they have attributed IP addresses as they normally systematically "log" in a file the date, time, duration and dynamic IP address given to the Internet user. The same can be said about Internet Service Providers that keep a logbook on the HTTP server. In these cases there is no doubt about the fact that one can talk about personal data in the sense of Article 2 a) of the Directive"

28. This again shows that IP addresses can be considered personal data when combined with other identifiable information. The CJEU decision refers to ISPs, and as mentioned previously these organisations usually hold additional information that would allow it to identify users of its services from an IP address. It is also clear that these organisations have the resources and means that go far beyond what any complainant or any other person is likely to have access to.
29. It has not been demonstrated that the complainant, or other individuals using reasonable means, could obtain the additional information required to make the IP addresses identifiable. The Commissioner does not consider that it is a justifiable link without evidence to support it. Therefore, the Commissioner's decision is that he has not seen any evidence that would suggest that IP addresses are personal data in these circumstances.
30. As the Commissioner does not consider the IP addresses to be personal data in the circumstances of this case, regulation 13 does not apply. The Commissioner requires the London Borough of Hackney to disclose the information to the complainant or issue a valid refusal notice in accordance with the EIR.

Right of appeal

31. 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: 0300 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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