

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 7 January 2016

Public Authority: Bristol City Council
Address: City Hall
College Green
Bristol
BS1 5TR

Decision (including any steps ordered)

1. The complainant has made a request to Bristol City Council ("the council") for public objections to a proposed 'residents parking scheme' ("the RPS"). The council withheld the information under regulation 12(4)(b) and regulation 13(1) of the Environmental Information Regulations ("the EIR").
2. The Commissioner's decision is that the council has correctly applied regulation 12(4)(b) and regulation 13(1). However the council breached regulation 5(2) by failing to provide a response to the request within 20 working days.
3. The Commissioner does not require steps to be taken.

Request and response

4. On 6 January 2015 the complainant requested information of the following description:

It has been noted that persons have e-mailed [email address] requesting the Clifton Village RPZ decision reports, but no response has been forthcoming.

Therefore, the Clifton Village RPZ decision reports are hereby requested, inclusive of all appendices, for both 16th July 2014 and the 18th September 2014.

5. On 27 February 2015 the council responded. It disclosed held information, but withheld some on the basis that it was personal data and exempt under section 40(2) of the Freedom of Information Act ("the FOIA").
6. The complainant requested an internal review on 2 March 2015 in respect of the withheld information.
7. The council sent the outcome of its internal review on 1 April 2015. It maintained that the information was exempt from disclosure, but confirmed that the refusal should have been under regulation 12(4)(b) and regulation 13(1) of the EIR.

Scope of the case

8. The complainant contacted the Commissioner on 24 June 2015 to contest the council's response.
9. During the Commissioner's investigation it has emerged that the council's application of regulation 13(1) is interconnected with its application of regulation 12(4)(b). The Commissioner will first consider regulation 13(1), and then use this to inform his decision under regulation 12(4)(b).

Reasons for decision

Is the information environmental?

10. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR rather than the FOIA. Under regulation 2(1)(c), any information on activities affecting or likely to affect factors of the environment listed in regulation 2(1)(b) will be environmental information. The information requested represents public objections during the consultation period for a proposed RPS, which the Commissioner recognises may affect a range of factors including noise emissions. The Commissioner therefore considers that the request should be dealt with under the EIR.

Regulation 13(1) – personal data

11. This exception provides that third party personal data is exempt if its disclosure would contravene any of the data protection principles set out in Schedule 1 of the Data Protection Act 1998 ("the DPA").

Is part of the withheld information personal data?

12. Personal data is defined by section 1 of the DPA as:

...data which relate to a living individual who can be identified–

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual...

13. The information withheld by the council is contained within 993 objections received from both private individuals and organisations during the consultation period of a proposed RPS. These objections constitute appendix 3 of a decision report on the proposed RPS that was issued on 16 July 2014.
14. The council has advised that it considers the objections to be comparable to the content of complaints files, and that besides the contact and biographical information that they contain, the remaining content of the objection notices may represent the personal opinions of individuals. The council considers that some anonymization of the objections is likely to be possible (particularly those deriving from organisations), but that this would incur significant costs due to the time required to individually consider each objection and redact all identified personal data. This is the reason for the council's joint application of regulation 12(4)(b).
15. In order for this exception to apply the information being withheld must constitute personal data as defined by section 1 of the DPA. In this instance, the Commissioner has reviewed a sample of 25 randomly selected objections. The Commissioner has identified that these objections take the form of complaints, and include the names and contact details of individuals acting either for themselves or on behalf of their organisations. The objection notices also include a diverse range of detailed biographical information about individuals, including their living arrangements, professional memberships, employers, working patterns, and sensitive personal data relating to health. However, it is also evident to the Commissioner that some of the objections received from

organisations contain information that may not constitute personal data. The council acknowledges this itself, and accepts that for some objections anonymised versions could be produced that do not contain personal data.

16. Having considered the above factors, the Commissioner is satisfied that a proportion of the withheld information contains personal data as defined by the DPA.

Would disclosure breach the data protection principles?

17. The data protection principles are set out in Schedule 1 of the DPA. The first principle, and the most relevant in this case, states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations of the data subject

18. When considering whether a disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
19. In this case the complainant considers that individuals would have held clear expectations of their objections being placed in the public domain, and has advised the Commissioner that the hardcopy consultation notices stated:

Please include your name and address and note that all representations received may be considered in public by the City Council and that the substance of any representation together with the name and address of the person making it could become available for public inspection.

20. However the council has clarified that hard copy consultation notices were only made publically visible in the area for which the RPS was proposed. Whilst these consultation notices provide the caveat that objections may be made public, the council considers that the wide media interest in the matter resulted in a considerable amount of objections by email, and that many individuals and organisations may have submitted these objections without knowledge of the caveat.

Consequences of disclosure

21. Having considered the variety and amount of personal data contained within the objections, the Commissioner considers that public disclosure of this may have consequences. For example, the disclosure of personal data about an individual's health and physical limitations, or an individual's absence from their residence, may feasibly place individuals or their property at risk of harm.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

22. The Commissioner considers that there is inherent public interest in ensuring that information, where possible, is released into the public domain so as to ensure transparency and accountability on the part of the public authority. This is particularly relevant in matters relating to environmental issues. However, in the circumstances of this case, the personal data contained in the objections relates to a wide range of aspects spanning from professional lives to health, and there is no evidence to prove that every objector had full knowledge of the caveat contained within the public notice. The disclosure of this personal data may have the potential to not only breach any expectation of privacy held by objectors, but also cause distress and potential harm.

Conclusion

23. Having appraised the circumstances of this case, including a sample of objections, the Commissioner considers that the objections contain a large proportion of personal data.
24. Having considered the detailed content of the objections, the Commissioner accepts that it is highly likely a significant number of these may have been submitted with no awareness of the caveat that they could be publicly disclosed. Whilst the caveat has been considered by the Commissioner, this does not in itself dis-apply the duties placed on the council by the DPA, and it is clear that the caveat only specifies that objections 'may' be disclosed. Additional to this, the Commissioner has perceived that the consequences of such disclosure, in which individuals would have a varied range of biographical information placed into the public domain, are significantly harmful enough to outweigh any legitimate reasons for doing so.
25. In view of the above, the Commissioner finds that the right to privacy outweighs the legitimate public interest in disclosure. As such, the disclosure of the personal data contained within the objections would contravene the first data protection principle because it would be unfair.

Regulation 12(4)(b) – requests that manifestly unreasonable

26. Regulation 12(4)(b) provides that:

For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that-
(b) the request for information is manifestly unreasonable...

27. The Commissioner has issued public guidance on the application of regulation 12(4)(b)¹. This guidance contains the Commissioner's definition of the regulation, which is taken to apply in circumstances where either the request is 1) vexatious, or 2) where the cost of compliance with the request would be too great. In this case the council considers that circumstance 2) is applicable.
28. The EIR does not contain a limit at which the cost of compliance with a request is considered to be too great. However, the Commissioner's guidance suggests that public authorities may use The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 as an indication of what Parliament considers to be a reasonable charge for staff time.
29. For the purposes of the EIR, a public authority may use this hourly charge in determining the cost of compliance. However, the public authority is then expected to consider the proportionality of the cost against the public value of the request before concluding whether the request is manifestly unreasonable.

Is the exception engaged?

The council's position

30. The council has applied regulation 12(4)(b) to withhold the 993 objections received as part of its public consultation on the proposed RPS. The council's position (as upheld by the Commissioner in this decision) is that these objections contain a high proportion of personal data, which would need to be redacted under regulation 13(1). The council considers that the cost of applying the exception to each objection means that the request must be refused as manifestly unreasonable.

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http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/manifestlyunreasonable-requests.ashx

31. The council estimates that for each objection it would take approximately 4 minutes to access the file, identify and redact the personal data, and save the new file in a format suitable for disclosure. As such the council has calculated that it would take an approximated total of 66 hours to apply the exception to all 993 objections.

The complainant's position

32. The complainant believes that redacted versions of the objection notices can easily be effected, and has referred the Commissioner to a similar request made to the council on the topic of a proposed RPS for another region of Bristol, to which the council released the objections in a 'redacted' form². The Commissioner has considered this similar request, and in particular has accessed the 'redacted' objections that the council disclosed in response to that request. Having considered that disclosed information, the Commissioner notes that the information provided appears to be a generalised summary of each objection and the council's specific responses to the points raised. Having considered this, the Commissioner does not consider that it directly affects the decision on this case. The information withheld in the circumstances of this complaint are electronic copies of the objections as originally submitted.

The Commissioner's conclusion

33. In the context of this complaint the council considers that complying with the request would be manifestly unreasonable due to the need to consider the application of regulation 13(1) to each objection.
34. The Commissioner is responsible for regulating both the DPA and EIR. In this role, and as part of this decision, he has already concluded that the objections contain personal data, and that this personal data is exempt from public disclosure under regulation 13(1).
35. The Commissioner therefore recognises that compliance with the request would require the council to apply regulation 13(1) to each objection. Having considered the lack of uniformity between objections and the likely need for each objection to be individually reviewed and redacted, the Commissioner considers that the council's estimates of cost are cogent and realistic. The Commissioner therefore accepts that

² https://www.whatdotheyknow.com/request/cotham_north_rpz

the request is manifestly unreasonable within the meaning of regulation 12(4)(b).

Regulation 12(1)(b) – the public interest test

36. Regulation 12(4)(b) is subject to the public interest test set out in regulation 12(1)(b). This specifies that a public authority may only rely on an exception if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.

Public interest arguments in favour of disclosing the information

37. The Commissioner is aware from the complainant's submission that he is concerned that public objections have not been appropriately considered as part of the decision making process. Further to this, he has advised that none of the objectors are aware of how their own specific objection has been dealt with.

Public interest arguments in favour of maintaining the exception

38. The Commissioner has already concluded that the objections contain personal data that is exempt from public disclosure under regulation 13(1). Should the council be required to comply with the request it would be required to disclose a redacted version of each objection.
39. Having considered a sample of 25 objections, the Commissioner considers that the redacted objections would contain highly varied levels of context. For objections submitted by private individuals it is likely that the redaction of personal data would result in a significant lack of context, which would be likely to hide the grounds that the objection was made on. Whilst the objections submitted by organisations may be disclosed with more background context, it has become apparent from reviewing the complainant's own submissions that the purpose of requesting the objections is to see how the council has responded to the concerns of each objector. However it is evident to the Commissioner that the objections do not include any analysis or response by the council, and the council has confirmed that its responses to the objections are contained in the remainder of the report (which has been disclosed).
40. The council has also advised that the RPS has now been implemented, and that the time for challenging it has elapsed. The council has confirmed that its analysis and responses to the objections raised are included in the body of the published report, and that additional measures were implemented in order to alleviate some of the concerns raised in the objections. As such the council considers that the

significant diversion of resources required to redact each objection would not result in any public value.

Balance of the public interest

41. The Commissioner recognises the inherent importance of accountability and transparency in decision-making within public authorities, and the necessity of a public authority bearing some costs when complying with a request for information. However, in considering the public interest test for this matter, the Commissioner must assess whether the cost of compliance is disproportionate to the value of the request.
42. Whilst the complainant's concerns about the lack of transparency about how the objections have been considered is noted, it has also emerged that the disclosure of the redacted objections would be unlikely to address this concern, as no analysis or response by the council is attached to them. To affect this disclosure, the council would be required to divert significant public resources in order to consider the application of regulation 13(1) to each objection.
43. It has also become apparent that the RPS has been implemented, and that any formal challenge to it (if still in time) would need to be made to the appropriate public authority. The Commissioner's role does not extend to considering the validity of the RPS, and the available evidence in this case do not suggest any significant lack of transparency or inappropriate action by the council which would strengthen the public interest in disclosure.
44. Having considered the relevant factors in this matter, and particularly the limited public value that disclosure of the redacted objections would provide, the Commissioner has concluded that the public interest favours the maintenance of the exception.

Regulation 5(2) – duty to make environmental information available on request

45. Regulation 5(2) states:

Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of request.

46. The council did not provide its response to the complainant's request until after 20 working days following the date of receipt, and therefore breached regulation 5(2).

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.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.

Signed

Andrew White
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