

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

Date: 26 July 2018

Public Authority: Cambridgeshire County Council
Address: Shire Hall
Castle Hill
Cambridge
Cambridgeshire
CB3 0AP

Decision (including any steps ordered)

1. The complainant has asked Cambridgeshire County Council for a copy of the recorded contact it has had from two persons in respect of the replacement of two bollards. Relying on Regulation 13(5) of the EIR, the Council has refused to confirm or deny whether such information exists and is held.
2. The Commissioner's decision is that Cambridgeshire County Council has correctly applied Regulation 13(5) to the complainant's request.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 24 January 2018, the Council wrote to the complainant in respect of its replacement of two bollards.
5. The Council's email prompted the complainant to ask the Council provide him with a copy of

"...the recorded contact with both [name and address redacted] and [councillor name redacted] with your team in respect of the two bollards."
6. The Council responded to the complainant on 9 February 2018, by refusing to comply with his request in reliance on Regulation 13(5) of

the EIR. The Council's refusal notice stated:

"Regulation 13 of the Environmental Information Regulations exempts information from disclosure where it relates to personal data of which the applicant is not the data subject. 13(5) allows a public authority to refuse to confirm or deny whether such information exists and is held if doing so would breach a principle of the Data Protection Act.

In this case, whether or not we have had correspondence with a member of the public, and then related correspondence with a councillor, regarding a matter constitutes their personal data and disclosure would breach the first Data Protection Act principle, which states that personal data shall be processed fairly and lawfully."

7. Following his receipt of the Council's response, the complainant wrote to the Council and asked it to carry out an internal review of its decision to refuse his request.
8. On 9 March 2018, having completed its internal review, the Council wrote to the complainant to advise him of its final decision. The Council confirmed that:

"We have considered your request for this decision to be reviewed and concluded that, on this occasion, the 'neither confirm nor deny' stance made under Regulation 13(5) to have been correctly applied.

We note additionally that this request is another part of considerable volume of communications from yourself to various officers and councillors, as well as to other organisations. We consider this continued correspondence to be evidence of vexatious behaviour, applicable to Section 14 of the FOI Act and Regulation 12(4)(b) of the EIR."

Scope of the case

9. The complainant contacted the Commissioner on 9 March 2018 to complain about the way his request for information had been handled.
10. Having considered the complainant's complaint, the Commissioner decided that the focus of her investigation should be to determine whether the Council is entitled to refuse the complainant's request in reliance on Regulation 13(5) of the EIR in the first instance and, should the Council confirm it also relies on Regulation 12(4)(b) of the EIR, to then determine whether the Council is entitled to rely on that provision.

Background information

11. The Council has provided the Commissioner with information which it considers is relevant to her consideration of this complaint.
12. The Council has told the Commissioner that the complainant has been in dispute with the Council and other public authorities for many years about matters relating to the land the land south and west of his property.
13. At time of writing, the requestor has five separate FOI complaints lodged with the ICO relating to the Council. The Council advised the Commissioner that under consideration in this notice was part of ongoing service correspondence in regard to bollards near the complainant's property. The Council has confirmed that it had considered the complainant's request under the EIR.

Reasons for decision

14. Under Regulation 13(5) of the EIR a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, if to do so would contravene any of the data protection principle of the Data Protection Act 1998.
15. The Council has provided the Commissioner with its rationale for its application of Regulation 13(5) of the EIR and neither confirming nor denying whether it holds the information which the complainant has requested.
16. The Council considers that the information, if it is held, constitutes the personal data of a member of the public and the councillor who are referred to in the complainant's request.
17. Personal data is defined in Section 1(1) of the Data Protection Act 1998 ("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."
18. Applying this definition of personal data, the Commissioner readily accepts that the requested information is the personal data of the two persons referred to in the complainant's request.
19. The question which the Commissioner must now consider is whether the Council would breach the first data protection principle by confirming whether it holds the requested information. The first data protection principle states:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."

20. The Council asserts that the effect of providing the complainant with confirmation that it holds the information he has requested would in itself provide the complainant with personal data relating to a matter which may or may not have been raised by a private individual with a particular councillor.
21. Likewise, that same confirmation would also disclose whether that Councillor received a complaint about the two bollards referred to by the complainant.
22. The Council does not argue that disclosing the Councillor's personal data would be 'unfair' processing. This is because if the Councillor had received correspondence about the bollards it would be in her official capacity rather than as a private matter. That said, the Council considers that it would not be able to confirm whether or not the Councillor received correspondence from a private individual without also disclosing the personal data of the private individual.
23. The Council points out that the request is specifically made with reference to identifiable individuals. It asserts that there is no way it can confirm whether it holds the requested information where it could anonymise to reduce the impact on their privacy.
24. The Council further asserts that the information request is designed to reveal what actions these two individuals have or have not taken.
25. If the Council was to confirm whether it held correspondence from the individual referred to by the complainant, it would also confirm that this individual had contacted the Councillor about the two bollards. This confirmation would reveal would reveal the Councillor's personal data as the request is inextricably associated with the assumption that the Councillor was taking forward matters which may or may not have been raised by the private individual.
26. The Council has explained why confirming whether it holds the information requested by the complainant would be unfair to the persons referred to or named in his request.
27. The Council's position is that it is completely voluntary whether a member of the public chooses to raise a matter with a Councillor. That individual would be under a clear expectation that details of their

correspondence would not be put into the public domain, particularly where such correspondence concerns a matter which would not normally be disclosed through an established process of public inspection.

28. In this case, the issue at the root of the complainant's request concerns two bollards. The Council points out that, "matters relating to highways infrastructure potentially being installed or removed can be a contentious topic among neighbours/local residents" and, "if members of the public felt that they couldn't raise a matter with a Councillor or the Council without that being made public knowledge then this would clearly have a detrimental effect" on whether individuals felt they were able to raise such topics.
29. It is not known to the Council whether the complainant knows via another route if the private individual referred to in his request contacted the particular councillor. From the perspective of disclosing information into the public domain there is a clear risk that such requests can be fishing expeditions designed to uncover the actions of neighbours, effectively to find out if that person has or hasn't contacted a councillor or the Council.
30. The Council has not asked the private individual whether he/she would consent to their personal data being disclosed to the complainant. The Council believes it unlikely that the person would give such consent.
31. In addition to being unfair to the individuals concerned, the Council considers that none of the conditions in Schedule 2 of the DPA can be met in order to allow it to process their personal data by confirming whether the Council holds the requested 'recorded contact'.
32. Normally in cases such as this, the Commissioner would consider whether condition 6 of Schedule 2 of the DPA can be met.
33. Condition 6 of Schedule 2 of the Data Protection Act allows disclosure of personal data if the processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
34. The Council has informed the Commissioner that it has provided the complainant with answers to his queries about the bollards of concern to him. It asserts that disclosing the specific details of correspondence, which it may or may not hold, would not add to the information already given him to any significant extent.
35. In respect of 'disclosure to the world' rather than just to the complainant, the Council asserts that, "there does not appear to be any compelling grounds on which to argue that there are strong legitimate

interests in knowing precisely who may have contacted a councillor about these bollards". It says, "A local resident may have some curiosity around knowing who did (and who did not) contact a councillor on the topic but the information is not of any great significance [...] to warrant overriding the expectations of the data subject".

36. In the Council's opinion, there is no expectation that the individuals referred to in the complainant's request would have their contact with a councillor made public, whether that contact was made or not made. Therefore, providing confirmation of the existence or non-existence of that contact into the public domain would be contradicting their reasonable expectations and legitimate interests.
37. Confirming the existence of any recorded contact between a named private individual would likely inhibit correspondence and engagement with the Council from members of the public in the future, particularly if they believe that other local residents will be able to gain details about them as a result.
38. The Commissioner has carefully considered the Council's representations in this matter. The Commissioner agrees with the Council that providing the complainant with confirmation of whether or not the Council holds 'recorded contact' between two named individuals about a particular matter would be unfair: Such confirmation would in all probability be against the reasonable expectations of those individuals.
39. The Commissioner also agrees with the Council that providing confirmation whether it holds 'recorded contact' between two individuals would not meet condition 6 of Schedule 2 of the DPA.
40. The Commissioner decision is that Cambridgeshire County Council has correctly applied Regulation 13(5) of the EIR in respect of the complainant's request and it is entitled to neither confirm nor deny whether it holds the 'recorded contact' which the complainant has asked for.
41. In view of the preceding decision, the Commissioner considers that is not necessary to consider the Council's additional application of Regulation 12(4)(b) of the EIR. The Commissioner has however noted the Council's representations made in support of that application.

Right of appeal

42. 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

43. 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.
44. 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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