

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

Date: 28 August 2018

Public Authority: Cheshire East Council
Address: C/O Municipal Building
Earle Street
Crewe
Cheshire
CW1 2BJ

Decision (including any steps ordered)

1. The complainant has asked Cheshire East Council to provide him with the name of the person or persons who made a complaint to the Council's Planning Enforcement Department about a business operated by the complainant's daughter and son-in-law. The Council has refused to supply the requested information in reliance on Regulations 13 and 12(5)(f) of the EIR.
2. The Commissioner's decision is that Cheshire East Council is entitled to withhold the information requested by the complainant in reliance on Regulation 13 of the EIR.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 31 October 2017, the complainant wrote to Cheshire East Council and requested information in the following terms:

"Further to my earlier email today, I've spoken with [name redacted] with regards to Council control of anti-social behaviour. [Name redacted] confirmed the neighbour who recently issued an unfounded complaint (through Enforcement Officer, [name redacted]) against [name redacted] and [name redacted] is protected by the Data Protection Act, unless there is shown to be a history of complaint. You

now have to hand considerable evidence relating to on-going course of conduct of the neighbours gratuitous complaint and as such it is only right that this individual is named. As you know I have applied for this information under the Freedom of Information Act."

5. The Council acknowledged receipt of the complainant's request on 28 November 2017 and advised him that it would be dealt with under the provisions of the FOIA.
6. On 4 January 2018, the Council sent the complainant its response to his request. The Council confirmed that it holds the information the complainant had requested but advised him that it was being withheld in reliance on Regulations 12(3), 12(5)(b) and 12(5)(f) of the EIR.
7. On 9 January 2018, the complainant wrote to the Council. The complainant stated:

"I understand it is highly unusual to release the name of a complainant, however, in this case and given our quest for justice (DPA Schedule 2) I am formally requesting that you do so. Please note I first requested this information from the Monitoring Officer October 2017. We would appreciate a speedy reply."
8. On 26 January 2018, the Council provided the complainant with its internal review decision: The Council upheld its application of Regulations 12(3) and 12(5)(f) and withdrew its application of Regulation 12(5)(b).

Scope of the case

9. The complainant contacted the Commissioner on 18 April 2018 to complain about the way his request for information had been handled.
10. In view of the documents supplied to her by the complainant, the Commissioner decided that the focus of her investigation would be to determine whether the Council has handled the complainant's request in accordance with the EIR, and specifically, to determine whether the Council is entitled to refuse the request in reliance on Regulation 13 of the EIR and/or Regulation 12(5)(f).

Background information

11. For the purpose of putting the request into context, the Commissioner has been advised that the complainant's request relates to a planning enforcement matter concerning the complainant's daughter and son-in-law's business.

12. The complainant has been in direct correspondence with the Council's Planning Enforcement Service in an attempt to uncover the identity of the person or persons who made a particular complaint.
13. The Council has explained that the complainant has had numerous telephone conversations with its officers, including with its Principle Planning Officer and Head of Planning, about the identity of the person or persons who made the complainant.
14. The complainant's request was initially considered under the Council's normal business procedures and therefore informally. However, following the Council's refusal to provide the identity or identities of the person who submitted the complaint, the matter was then dealt with formally under the EIR. This is because the complainant made a formal request for the identity/identities on 28 November 2017.
15. The Council made its response to the complainant on 4 January 2018 under the EIR, refusing to disclose the requested information in reliance on Regulations 12(3), 12(5)(b) and 12(5)(f).
16. The Council has not asked the person or persons, whose identity which the complainant seeks, whether he, she or they give permission to release their identity for reasons which the Commissioner has decided are quite understandable.

Reasons for decision

Regulation 13 of the EIR – the personal data of a third party

17. The Council has relied on Regulation 13 of the EIR to withhold the name(s) of the person or persons who made a complaint relevant to a particular planning enforcement matter. The Council's reliance on this exception is based on the fact that the person(s) who made that complaint constitutes that person's or those persons' personal data and the disclosure of the identity/identities would contravene the provisions of the Data Protection Act 1998 ("the DPA").
18. Regulation 13 of the EIR provides an exception to disclosure of personal data where the applicant is not the data subject and where disclosure of the personal data would contravene any of the data protection principles.
19. In order to engage regulation 13, the information sought by the applicant must satisfy the definition of personal data provided by section 1(1) of the Data Protection Act 1998 ("the DPA").
20. Section 1(1) of the DPA defines personal data 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."

21. Here, the Council has determined that the information requested by the complainant is the personal data of a third party or third parties because the information constitutes a person or persons' name.
22. In the Commissioner's opinion the information requested by the complainant is undoubtedly personal data.
23. The Commissioner is required to consider whether disclosure of the requested identity/identities would breach any of the data protection principles contained in Schedule 1 of the DPA. The Commissioner considers that the first data protection principle is the one most relevant to this case.
24. 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."
25. In this case, the data subject/subjects made a complaint about a business operated by the complainant's daughter and son-in-law. In submitting this complaint, the data subject/subjects did so in a private capacity with a legitimate expectation that their complaint would be treated in confidence, and their identity/identities would not be released to anyone, not least to the wider general public. Indeed, the person/persons who submitted the complaint made clear that it was "Private and Confidential". It is for these reasons the Council considers that disclosure of the withheld identity/identities would be unfair.
26. The Commissioner agrees with the Council that disclosure of the requested identity/identities would contravene the first data protection principle on the grounds that it would be unfair to the data subject/subjects.
27. The Commissioner also agrees with the Council in respect of its consideration of the conditions necessary for processing personal data which are contained in Schedule 2 of the DPA 1998. She considers there is no condition in Schedule 2 of the DPA which would allow the requested information to be released to the world in a response to a

request made under the EIR, nor can the Commissioner find any lawful basis which would permit the release of this information to the world.

28. It is clear that the complainant believes the person or persons who made a complaint to the Council did so maliciously. That being the case, the matter would be one for the police to consider, as it is the police which has the necessary authority to request the same information.
29. The Commissioner understands that the complainant took this matter to Cheshire Constabulary and that no action was taken. Likewise, the matter, which was the focus of the complaint, was dealt with by the Council's Planning Enforcement Team, who investigated the complaint and found that there was no breach of planning control.
30. The Commissioner's decision is that the Council is entitled to withhold the information requested by the complainant in reliance on Regulation 13 of the EIR.
31. In view of her decision above, it is not necessary for the Commissioner to consider the Council's reliance on Regulation 12(5)(f) of the EIR – where disclosure would prejudice the interests of the information provider.

Right of appeal

32. 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

33. 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.
34. 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

Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
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SK9 5AF