

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 27 November 2013

Public Authority: Hurworth Parish Council
Address: Hurworth Grange Community Centre
41 Hurworth Road
Hurworth
Darlington
DL2 2BN

Decision (including any steps ordered)

1. The complainant has requested allotment waiting lists from Hurworth Parish Council ("the council"). The council refused to provide this information on the basis that it was the personal data of third parties.
2. The Commissioner's decision is that the council has correctly identified the information as personal data, but should have cited regulation 13(1) of the Environmental Information Regulations ("the EIR") in their refusal of the request.
3. He requires no steps to be taken by the council.

Request and response

4. On 3 March 2013, the complainant wrote to the council and requested the following information:
 - 1) *Please could you provide me with a copy of the waiting list for an allotment in Hurworth from Jan 2010 to March 1st 2013.*
 - 2) *Could I have separate lists if there are 2, one for the Grange and one for Strait Lane otherwise a single list will do.*
 - 3) *Please include the person applying's name and address and also the date they were added to the waiting list?*

- 4) *Please also include people who are already allotment holders who wish to add another allotment to their present one? If they are not required to re-join the list how is this situation managed and how and who decide who gets what?*
 - 5) *If there have been any people getting additional allotments in this period please confirm there were not others without one waiting for vacant ones?*
 - 6) *Is it correct that residents of the parish get priority over non-residents?*
 - 7) *Is the Parish legally allowed to allocate allotments to people who live outside the County? ie; Croft residents? If so please provide copies of all legislation that allows out of County residents to take up an allotment within the village of Hurworth?*
5. The council responded on 8 March 2013. It provided information in response to parts 4 to 7 of the request, but refused parts 1 to 3 on the basis that the requested information was personal data.
 6. The complainant requested an internal review on 2 September 2013, due to not being aware until that time that the council had provided a response to his request. The council responded to the complainant on 4 September 2013, and advised that it considered the request to be vexatious.

Scope of the case

7. The complainant contacted the Commissioner on 5 September 2013 to contest the grounds of the council's refusal. The council subsequently advised the Commissioner that it maintained the requested information was personal data, and that this was the basis for not disclosing it.
8. The Commissioner identified that the request should have been considered under the terms of the EIR. The council subsequently confirmed that it would therefore rely upon the exception provided for personal data by regulation 13(1) of the EIR.

Reasons for decision

Is part of the information environmental?

9. 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 the elements or factors of the environment listed in regulation 2 will be environmental information. One of the elements listed is land. The information that has been requested is the waiting list for allotments, which can be identified as relating to the way in which the land is used. The Commissioner therefore considers that the request should be dealt with under the EIR.

Regulation 13(1) – Third party personal data

10. 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 the withheld information personal data?

11. 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”

12. In order for the exception to apply the information being requested must constitute personal data as defined by section 1 of the DPA. In this instance, the Commissioner accepts that the information contained within the requested waiting lists is personal data as defined by the DPA. The Commissioner has identified that the waiting lists are composed of the names, addresses, email addresses, telephone numbers and application dates relating to third party individuals.

Would disclosure breach the data protection principles?

13. 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

14. When considering whether a disclosure of personal information 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. In this case, the council has explained that individuals would have provided their names, addresses, and contact information to the council in the expectation that this was privileged information and only to be used for the purpose for which it was provided.

Consequences of disclosure

15. The council has explained that if it were to disclose the requested information, it would allow the requester to make direct contact with the individuals concerned. The council has also expressed concern that the requester would take steps to distribute the information into the wider public domain.

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

16. 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 may be particularly relevant in matters where the council is responsible for providing facilities such as allotments, which may be subject to high demand. Understanding the extent of this demand may inform members of the public about availability of such facilities. However, in the circumstances of this case, the information relates to private individuals who can be clearly identified. The disclosure of this information would therefore not only damage the general relationship between the public and the council, but it would also cause distress and potential harm to the individuals themselves, who could be directly contacted through their telephone numbers, postal addresses or email addresses.

Conclusion

17. Having appraised the circumstances of this case, including the withheld information, the Commissioner considers that the right to privacy outweighs the legitimate public interest in disclosing the requested information.
18. The requested information has been provided to the council by members of the public, and the Commissioner considers it highly unlikely that this information would have been provided with the expectation that it would be publically disclosed. Further to this, the Commissioner has perceived that the consequences of such disclosure, in which individuals would have their names and contact details placed in the public domain, outweighs any legitimate reasons for doing so.
19. In view of the above, the Commissioner finds that providing the requested information would contravene the first data protection principle because it would be unfair. The council was therefore correct to refuse the request.

Right of appeal

20. If 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

21. 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.
22. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF