

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

Decision notice

Date: 27 August 2014

Public Authority: Wirral Metropolitan Borough Council
Address: Town Hall
Brighton Street
Wallasey CH44 8ED

Decision (including any steps ordered)

1. The complainant requested information about the author of a briefing note. Wirral Metropolitan Borough Council ('the Council') refused to release the information, citing regulation 13 (personal information) of the EIR as its reason for doing so.
2. The Commissioner has decided that the Council has correctly applied regulation 13 to the request and does not require it to take any further action.

Request and response

3. On 22 January 2014, the complainant wrote to Wirral Metropolitan Borough Council and requested information in the following terms:

"...the report was provided this morning, but without the identity of the author. My question is: who wrote the report? Was it [Named individual], yourself, a combination of the two or some other party?"
4. The Council responded on 30 January. It initially said that the information was exempt from disclosure under section 40 of the FOIA (personal information) as it was the personal data of a third person.

5. The complainant requested an internal review and in correspondence dated 27 February the Council said it had already provided the complainant with the outcome of an internal review of its response to this request. The review had been part of a wider internal review that it had carried out in response to a separate, but related, information request that the complainant had submitted. The Council maintained its reliance on section 40(2) to withhold the information.
6. Following intervention from the Commissioner, the Council advised the complainant that it had amended its initial response to the request and had considered it under the Environmental Information Regulations. It still withheld the requested information, arguing that it was now exempt under regulation 13 (third party personal data).

Scope of the case

7. The complainant had contacted the Commissioner on 5 March 2014 to complain about the way their request for information had been handled.
8. The Commissioner has focussed his investigation on the Council's application of regulation 13 to the requested information.

Reasons for decision

9. Regulation 13(1) of the EIR says that information is exempt from disclosure if it is the personal data of a third party (ie someone other than the requester) and the conditions under either regulation 13(2) or 13(3) are also satisfied.
10. The Commissioner therefore first considered whether the requested information is the personal data of a third party.
11. The Data Protection Act (DPA) defines personal data as '...data which relate to a living individual who can be identified... from those data and other information which is in the possession of...the data controller'.
12. The Commissioner is satisfied that the individual concerned could be identified if their name was to be released, and that the requested information is therefore the personal data of the individual concerned.
13. Having decided that the requested information is third party personal data, the Commissioner then turned his attention to the conditions under section 13(2).

14. The first condition under section 13(2)(a) says that personal data is exempt from disclosure to a member of the public if doing so would contravene one of the data protection principles set out in Schedule 1 of the DPA. The Commissioner considered whether the Council was correct when it argued in its correspondence to the complainant that disclosing the information would breach the first data protection principle: that personal data 'shall be processed fairly and lawfully...'
15. When considering whether disclosure would be unfair, and so breach the first principle, the Commissioner takes into account whether the individual has given their consent to disclosure, the likely consequences of disclosure and the reasonable expectations individuals have about what will happen to their personal data
16. Assessing fairness however, also involves balancing the individuals' rights and freedoms against the legitimate interest in disclosure to the public. It may still be fair to disclose the information if there is an overriding legitimate interest in doing so. The Commissioner therefore also finally considered these interests.
17. The individual concerned has not given their consent to disclosure and the Commissioner considers that there is a credible risk that they might experience a degree of damage and distress if their personal data was to be released.
18. The Council has told the Commissioner that, at the time they wrote the briefing note, the individual concerned was not a senior member of staff. This attracts a strong expectation that their personal data will not be made publicly available. The Council has provided an additional explanation to the Commissioner as to why the author of the note would have a reasonable expectation that their personal data would not be disclosed to a member of the public through an EIR request. This explanation is contained in a confidential annex to this notice. Having considered the Council's arguments, the Commissioner agrees that it is reasonable to suppose that this individual would expect that their personal data would be held securely by the Council.
19. Finally, the Commissioner has considered whether there is a legitimate public interest in disclosure that would override an individual's rights and freedoms. The briefing note that is mentioned in the information request (where it is referred to as a report) provides advice about street lighting on highways. The Council has argued that it has addressed the complainant's legitimate interest in street lighting by providing them with the briefing note.
20. The briefing note in question discusses the implications (eg cost and legal implications) of certain street lights in Wirral being switched off,

and was provided to the Council's Deputy Director by the Street Lighting Manager. The note does not make any recommendations. The complainant believes that the author of the note might also have authored an internal report for the Council's Cabinet in 2011 that cautioned against switching off street lights in Wirral - the author of this report was made public. The complainant considers that the Council is now unwilling to release the name of the author of the more recent briefing note in order to avoid possibly damaging its reputation.

21. The Commissioner agrees with the Council's position that the information in the note adequately addresses any legitimate public interest which may be served by the request. Even if the same person had authored the 2011 report and the briefing note, and they were apparently contradictory in some respects, the Commissioner does not consider it unreasonable for an individual's professional opinion to alter over time, for example on the basis of new evidence, guidance or circumstances. In addition, the briefing note does not make any explicit recommendations – either to turn off certain street lights or to keep them on – it simply details various factors that the final decision maker might want to take into account.
22. The Commissioner does not consider that disclosing the identity of the author of the briefing note would increase the Council's accountability or serve any further legitimate interest in this case. The Commissioner therefore finds that regulation 13 is engaged in relation to the withheld information. He has not therefore gone on to consider the condition under regulation 13(3).

Right of appeal

23. 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: grc@hmcts.gsi.gov.uk

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

24. 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.
25. 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

Pamela Clements
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