

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

Date: 7 September 2015

Public Authority: Rhondda Cynon Taf County Borough Council
Address: The Pavilions
Cambrian Park
Clydach Vale
Tonypandy
CF40 2XX

Decision (including any steps ordered)

1. The complainant requested information about a particular planning application. The Council initially treated the request under the FOIA and stated it was relying on section 21 of the FOIA. In its internal review response the Council confirmed that it had reconsidered the request under the EIR. It provided the information requested, subject to some personal data being redacted under regulation 13 of the EIR. During the course of the Commissioner's investigation, the Council disclosed some of the information it had originally redacted. The Commissioner's decision is that the Council has correctly applied regulation 13 to the remaining withheld information. He does not require any steps to be taken.

Request and response

2. On 21 January 2015 the complainant wrote to the Council and requested information in the following terms:

"Why did you give planning permission to [name and address redacted] garage and walls to the front, and did you give permission for planning permission for wall erected in my boundaries. And why? Did you let this blot on the landscape, when it is against every covenant of the houses on site and you received (2) objections before hand".

3. The Council responded on 13 February 2015 and stated that the information requested related to one planning application which had been determined and one under consideration. The Council stated that the information held relevant to the request was available via its online planning access facility or by viewing the information in situ at its offices. As such, the Council stated that it considered section 21 of the FOIA applied. The Council also provided some background information about the planning applications in question.
4. On 20 March 2015 the complainant requested an internal review of the Council's handling of her request.
5. The Council provided the outcome of its internal review on 29 April 2015 and confirmed that the request should have been handled under the EIR as opposed to the FOIA. The Council provided the information held relevant to the request, subject to some details being redacted under regulation 13 of the EIR.

Scope of the case

6. The complainant initially contacted the Commissioner on 18 February 2015 to complain about the way her request for information had been handled. In accordance with section 50 of the FOIA the Commissioner advised the complainant that before he could consider her complaint she would need to have exhausted the Council's internal review process.
7. The complainant contacted the Commissioner following receipt of the Council's internal review response to complain about the handling of her request. Some of the issues that the complainant raised were outside the remit of the Commissioner. These issues include the accuracy/legal provenance of some of the documents disclosed, and the fact that there was no signature on some of the reports disclosed. In addition, the complainant raised concerns about the legality of the Council's decision to grant planning permission, which she considers is in breach of a particular covenant relating to the property. She also complained that the Council had breached the time for complying with her request.
8. The Commissioner wrote to the complainant to outline his remit in considering complaints under the FOIA and the EIR. He confirmed that he had no remit to investigate any concerns regarding the legality of any planning permission granted by a public authority. He also confirmed that based on the evidence available to him, the Council has responded to the request and the internal review request within the appropriate timescales. The Commissioner asked the complainant to confirm the nature of any outstanding concerns she had, based on his remit as stated.

9. The complainant wrote back to the Commissioner on 11 May 2015 re-iterating that the planning permission agreed by the Council was in breach of the covenant in place at the property in question. She also again raised concerns about the provenance of some of the documents provided by the Council.
10. The complainant telephoned a member of the Commissioner's staff on 5 June 2015 to discuss her case. She indicated that she had not received a response to the questions contained in her letters to the Commissioner in relation to the planning permission granted by the Council, which she considers illegal. A member of the Commissioner's staff re-iterated that the Commissioner has no remit to investigate any issues concerning the legality of planning permission or whether any such permission was in breach of any covenant in place. It was confirmed that the Commissioner's role was limited to investigating whether a public authority had complied with its obligations under the FOIA and/or the EIR in its handling of a request. The complainant asked the Commissioner to issue a decision notice relating to her complaint as she wished to pursue matters relating to the covenant with the Information Tribunal. It was again confirmed to the complainant that any such decision notice would be unable to address any issues concerning the planning permission itself or whether it was in breach of any covenant. It was agreed with the complainant that a decision notice would be issued to address the information which the Council had withheld under regulation 13 of the EIR, and the timescales in dealing with the request.
11. During the course of the Commissioner's investigation, the Council disclosed the house number of the individual who had submitted comments on the planning application in question. However, it continued to withhold the email address of the individual.
12. In light of the above, the Commissioner's investigation is to determine whether the Council has correctly applied regulation 13 to the remaining withheld information, namely the email address of an individual who commented on the planning application in question.

Reasons for decision

Regulation 13 – the exemption for third party personal data

13. 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.

Regulation 13(1): third party personal information

Is the requested information personal data?

14. In order to engage regulation 13 the information sought by the applicant must constitute personal data as defined by section 1 of the DPA. It defines personal information as data which relates to a living individual who can be identified:
- from that data,
 - or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
15. In this case, the withheld information which has been redacted from one of the documents which the Council disclosed is the personal email address of an individual who commented on the planning application. The Commissioner is satisfied that the redacted information relates to a living individual who may be identified from that data. The requested information therefore falls within the definition of personal data as set out in the DPA.

Would disclosure breach one of the data protection principles?

16. Having accepted that the information requested constitutes the personal data of a living individual other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles. He considers the first data protection principle to be most relevant in this case. The first data protection principle has two components:
- personal data shall be processed fairly and lawfully; and
 - personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

Would disclosure be fair?

17. In considering whether disclosure of the information requested would comply with the first data protection principle, the Commissioner has first considered whether disclosure would be fair. In assessing fairness, the Commissioner has considered the reasonable expectations of the individual concerned, the nature of those expectations and the consequences of disclosure to the individual. He has then balanced against these the general principles of accountability, transparency as well as any legitimate interests which arise from the specific circumstances of the case.

The Council's position

18. The Council contends that individuals who submit comments or objections on planning applications do so with the expectation that their personal data, in this case their email address, would not be made public. The Council advised that it is made clear that comments received on planning applications are available for public inspection and that no comments can be considered on a "confidential" basis. However, the Council confirmed that there is no legal requirement for it to publish the name, address or email address of any such individual. As such it contends that individuals would have no expectation that their personal data would be disclosed into the public domain. The Council confirmed that the individual in question had not been consulted in relation to disclosure of their personal data
19. As stated earlier in this notice, the Council originally withheld the house number of the individual concerned as well as their email address. However, as a result of queries the Commissioner raised, the Council confirmed that although objection letters were not published online, they were available for inspection on the public planning file and this included the postal addresses of objectors. As such, the Council disclosed the house number, but continued to withhold the email address of the individual.
20. The Council is of the view that disclosure of email addresses of objectors is unwarranted by reason of prejudice to the rights and freedoms of the individual concerned. The Council considers that there is no legitimate interest to the public in publishing the email addresses of objectors because letters and emails from objectors are already disclosed in redacted form which allows interested parties to see the representations made.

The complainant's position

21. The complainant has not submitted any representations specifically relating to disclosure of the personal data which the Council has withheld. She has continued to raise concerns about the legality of the planning permission granted by the Council which she considers is in breach of a covenant relating to the property. However, as mentioned earlier in this notice, this is not a matter that the Commissioner has any remit to investigate.

The Commissioner's position

22. The Commissioner considers that it is necessary to review any relevant legislation and guidance that specifically deals with the disclosure of planning information which existed at the time of the request. Article 8

and Article 25 of the Town and Country Planning (General Development Procedure) Order 1995 (SI 419 1995) appears to be the relevant legislation. The Commissioner notes that the legislation requires that certain information following should be included on the public planning register such as the name and address of the planning applicant, the date of the application and the address of the land to which the application relates. However, there is no express provision in the legislation about the publicising of the personal information of objectors.

23. Alongside the planning legislation there is also PARSOL guidance (Planning and Regulatory Services Online) and in particular the "Planning and Building Control Information Online – Guidance Note for Practitioners" (August 2006)¹. The ICO was consulted on, and provided substantial input into, this guidance. It reiterates that local authorities have a legal duty to make available certain details relating to planning applications (as a public register). The PARSOL guidance stipulates that, in the case of objectors, their telephone number, email address or signature should not be placed on the website. It is also considered good practice for both applicants and objectors to be made aware that the information that they provide may be published on the internet.
24. Given that there is no express legal requirement to publish personal data relating to objectors and that the PARSOL guidance is simply "guidance" it is inevitable that practice at a local level will vary in terms of what information is proactively made available about planning applications. It is therefore necessary to examine the particular circumstances of this case.
25. The relevant page of the Council's website states that:

"Anyone may comment on a planning application or development - either to object, support, or give a general comment. Comments must be in writing and will be acknowledged. Anonymous comments cannot be taken into account. All comments will be available for public inspection and may be referred to in reports to the Development Control Committee"
26. When the Commissioner asked the Council to explain whether anything is said to the objectors that would give them an expectation of disclosure, the Council confirmed that the following sentence was included in its letter of consultation:

¹ <http://www.planningportal.gov.uk/uploads/pins/parsol.pdf>

"Anyone can comment on a planning application. This must be in writing, by letter or email (planningservices@rtcbc.gov.uk), and received on or before [date]. Please note that all comments are open to public inspection and may be displayed online".

27. In view of the above, the Commissioner considers that it would have been within the reasonable expectations of the objectors that at least some of the information they provide could be disclosed to the public. However, the Commissioner notes that paragraphs 3.7 and 3.8 of the PARSOL guidance (mentioned in paragraph 23 of this notice) advises withholding email addresses, telephone numbers and signature. The Commissioner is therefore satisfied that the individual in this case would have a strong expectation that their email address would not be disclosed into the public domain.
28. The Commissioner has also taken into account any legitimate interests in disclosure because it is his approach that notwithstanding individuals' expectations of privacy or any harm that could be caused, there may be occasions when it is still fair to disclose personal data if there is a public interest in disclosure. The Commissioner acknowledges that there is a tension between public access to information and the need to protect personal information. As far as possible, a public authority must be transparent and accountable for its actions. In this case, the Commissioner is satisfied that there is not a compelling case for disclosure of the email address when this is balanced against the public interest in protecting the rights and freedoms of the individual concerned. In his view disclosure of the email address of the individual would not add anything material to the rest of the information which the Council has disclosed. In his view, any public interest in transparency and accountability surrounding the Council's actions and decisions has been met through disclosure of the rest of the information with the email address redacted.
29. Taking all of the above into account, the Commissioner concludes that it would be unfair to the individual concerned to release their personal data. Disclosure would not have been within the reasonable expectations of the individual and the loss of privacy could cause unwarranted distress. As the Commissioner has decided that the disclosure of the information would be unfair, and therefore in breach of the first principle of the DPA, he has not gone on to consider whether there is a Schedule 2 condition for processing the information in question. The Commissioner has therefore decided that the Council was entitled to withhold the information under the exception at regulation 13(1).

Right of appeal

30. 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

31. 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.
32. 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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