

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

Decision notice

Date: 18 November 2015

Public Authority: London Borough of Richmond Upon Thames
Address: Civic Centre
44 York Street
Twickenham
TW1 3BZ

Decision (including any steps ordered)

1. The complainant has requested copies of emails and notes relating to a meeting that took place between council officers and residents in relation to an ongoing dispute about a lamppost. The council disclosed the requested information but redacted the personal data of a number of third parties under regulation 13 of the EIR.
2. The Commissioner's decision is that the council has correctly applied regulation 13 of the EIR to all remaining withheld information. He therefore does not require any further action to be taken.

Request and response

3. On 15 January 2015, the complainant wrote to the council and requested information in the following terms:

"1. Why was I precluded from meeting [name redacted] instigated with Council officers and other residents – particularly as the offending lamppost is decidedly closer to my property than No 5 and I had raised all the issues of light pollution?

2. Why was the "dark spot" never demonstrated to me

3. When did this/these meetings take place? Can notes/emails of these meetings now be provided – albeit with possible redaction of third party

data disclosure? I would point out that [name redacted] has already stated to me on 4.1.15 that all her emails will be provided; I confirmed with the manager of the Council's Democratic Services on the 22/12/14 that if you asked for information under the Freedom of Information Act the Council officers will provide it. This will include all of my emails on the matter.

4. With respect, I am not technically qualified, nor I doubt whether you are, to access or understand "ILP Technical Report No. 29 – White Light". Nor do I understand the fundamentals of "S Class Lighting Levels", you are quoting as answers. That's why I specifically asked [named redacted] under a Freedom of Information request for the calibration I do understand; Lux levels for residential settings. This request of 23.12.14 has not been answered. My question to [name redacted] concerned general Richmond Lux policy/levels in residential street settings, not what was recorded in my bedrooms!"

4. The council responded on 12 February 2015. It stated that the majority of the complainant's request was not for recorded information but rather asking for an explanation into a specific dispute. The council informed the complainant that there is no requirement to provide such explanations under the FOIA but in order to provide advice and assistance it would provide a brief explanation or response to each question. It also stated that it does not hold any minutes of the meeting that took place on 15 December 2014 or any specific policy over and above the national guidance.
5. The complainant requested an internal review on 13 February 2015. In relation to question three of the request, the complainant stated that he had still not received the emails he was promised by a particular councillor on 4 January 2015 and requested again for these to be provided. The complainant also stated that he was unhappy with the council's response to question four and stated again that he required the council's policy and specification for lux levels from lanterns in residential settings – in others words the exact levels that are suitable in the context of environmental health and security.
6. The council carried out an internal review and notified the complainant of its findings on 27 February 2015. It informed the complainant that his request should have been considered under the EIR. In relation to question three, the council disclosed a chain of emails but redacted the personal data of third parties under regulation 13 of the EIR. In respect of question four the council confirmed that it sent a report to the complainant on 20 February 2015 to address this question.
7. Further correspondence between the council and the complainant proceeded, as the complainant believed further emails may be held. On

25 March 2015 the council disclosed a further chain of emails redacted under regulation 13 of the EIR as they again contained third party personal data.

Scope of the case

8. The complainant contacted the Commissioner on 1 June 2015 to complain about the way his request for information had been handled. Specifically the complainant stated that he is unhappy with the redactions made to the emails disclosed on 27 February and 25 March 2015 and requires access to full copies of each email.
9. During the Commissioner's investigation it was established that some of the emails in the chains disclosed constituted the personal data of the complainant himself. A separate case reference was set up to deal with these emails under the Data Protection Act 1998 (DPA) - RFA0593609.
10. This notice will only address the remaining emails and the remaining withheld information in them, which constitutes the personal data of third parties. The emails in question are all those disclosed to the complainant on 27 February 2015 and the following emails in the chain disclosed on 25 March 2015:
 - the email dated 4 December 2014 at 08:46; and
 - the email dated 3 December 2014 at 15:50.
11. During the Commissioner's investigation the council agreed to disclose some of the remaining third party personal data to the complainant. The council proceeded to disclose a further copy of the emails in question to the complainant but it took a different approach to redaction this time when compared to the first set of emails it released. At certain points throughout the second copy of the emails in question the council decided to redact information which it had previously released to the complainant.
12. As a means of moving this case forward, the Commissioner has decided to consider the application of regulation 13 of the EIR to the remaining withheld information – i.e. to those sections of the emails referred to in paragraph 10 above which the complainant has still not had sight off whether as a result of the first copy or the second copy of the emails that were disclosed. The Commissioner understands this to be:
 - the mobile number of the council's Principal Street Lighting Engineer;

- the name or reference by gender to a private individual outside of the council;
- the name of a junior member of staff at the council; and
- the name of a member of staff who was the subject of a complaint.

Reasons for decision

13. Regulation 13 of the EIR states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure would breach one of the data protection principles outlined in the DPA.

14. Personal data is defined 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 that individual and any indication of the intentions of the data controller or any other person in respect of the individual...”

15. The Commissioner considers the first data protection principle is most relevant in this case. 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.”

16. The Commissioner must first consider whether the requested information is personal data. If he is satisfied that it is, he then needs to consider whether disclosure of this information would be unfair and/or unlawful. If he finds that disclosure would be unfair and/or unlawful the information should not be disclosed and the consideration of regulation 13 of the EIR ends here. However, if he decides that disclosure would be fair to the data subjects concerned and lawful, the Commissioner then

needs to go on to consider whether any of the conditions listed in schedule 2 and 3 of the DPA are also met.

Is the requested information personal data?

17. The name of an individual is often the most obvious example of personal data; it is information from which a living individual can be identified. The Commissioner also considers the mobile number of a particular individual constitutes personal data where, as here, it is possible to make a connection between the individual and the number. The Commissioner is also satisfied that the reference to one individual by gender is also personal data. He considers it would be possible for the complainant and possibly others interested in this particular dispute to work out who the individual is from the reference to their gender.
18. As the Commissioner is satisfied that the remaining withheld information outlined in paragraph 12 above constitutes personal data, he now needs to consider whether the disclosure of this information would be unfair and in breach the first data protection principle.
19. Before he does, it is important to highlight here what disclosure under the EIR effectively means. Disclosure under the EIR is to the world at large; it is essentially saying that the information can be made public and be released into the public domain for anyone to see. The relevant consideration here is not whether the requested information can be disclosed to the complainant but whether the requested information can be released into the public domain.

Would disclosure be unfair?

The mobile number of a member of staff

20. The council confirmed that it has withheld the mobile number of a particular member of staff, as it considers disclosure of this information would be unfair and in breach of the first data protection principle.
21. The council explained that it has disclosed the member of staff's landline number and email address and it considers this information is sufficient to meet any legitimate public interest in the disclosure of staff contact information. Although the mobile number is for work purposes, its intended purpose is for the council to be able to contact the member of staff whilst they are out of the office on work related business. The member of staff only releases this information on a piecemeal basis to specific individuals in connection with council business; not to all members of the public.
22. The council stated that disclosure of this information to the general public would constitute an unwarranted intrusion into the working life of

this staff member. It stated that there is a distinction between disclosing the direct lines of senior members of staff and general customer contact centre numbers and the disclosure of mobile numbers. There is also a distinction between disclosing a mobile number in a controlled manner and in relation to a specific matter and disclosing it to the world at large.

23. The council argued that disclosure of mobile numbers, other than say in very controlled circumstances or in connection with a specific matter, would cause significant disruption to staff members and the operational procedures already in place in the council to field outside calls.
24. The Commissioner is of the view that the disclosure of the mobile number of the member of staff concerned to the world at large would be unfair. He considers that work mobiles are generally given to those members of staff that spend a proportion of their working day off site or travelling to enable contact between that member of staff and their place of work to be more efficient. They will be for work related business and the numbers will only be circulated for specific purposes and to certain people. Their intention is not to provide 24 hour contact for members of the public.
25. The member of staff concerned will therefore hold the expectation that this number will not be disclosed to the wider public. There will be occasions when this member of staff will be in public spaces or at external meetings or conferences. It would be inappropriate for a mobile connection to be one of the main avenues of contact for the public. Generally, customer contact numbers are provided to the public so they can contact a specific department when necessary and often when a member of the public is in correspondence with a particular member of staff over a specific matter direct numbers and email addresses are provided.
26. The Commissioner has decided that disclosure of this information would constitute an unwarranted intrusion into both the working life and private life of the data subject. He is therefore satisfied that disclosure would be unfair and in breach of the first data protection principle.

Name or reference by gender to a private individual

27. The council has confirmed that it has redacted the name of a private individual and reference to this individual by gender throughout the remaining emails because the individual concerned would have no expectation that their personal data could be released to the world at large. The council advised that this individual corresponded with the council on a private and confidential basis and expected their personal data to be treated in confidence. For these reasons, the council decided

that disclosure would be unfair and in breach of the first data protection principle.

28. The Commissioner has reviewed these redactions and he is satisfied that the private individual concerned contacted the council and corresponded with it in confidence. He is satisfied that this individual will hold a reasonable expectation that their personal data will remain private and confidential and will not be released into the public domain.
29. This individual contacted the council in confidence in relation to an ongoing dispute about a street light. Considering the dispute that was ongoing and the expectation of privacy that the individual holds the Commissioner is satisfied that disclosure would be unfair. Disclosure of the identity of this individual to the wider public would cause them distress and upset. It would also constitute an unwarranted intrusion into their private life and into the private dispute they are currently involved in.

The name of a junior member of staff

30. The council advised that its current policy on the disclosure of personal data relating to staff is to release the names and contact information for Heads of Service and above and any members of staff under this level that hold a public facing role. It considers members of staff that are under this level and do not hold public facing roles are of a more junior level in the organisation and do not hold positions of sufficient seniority to warrant the disclosure of such information under the EIR.
31. The council stated that it has contacted this member of staff about the request and they have specifically objected to the disclosure of their name and contact details under the EIR.
32. The Commissioner considers the council's policy on the disclosure of personal data relating to staff is reasonable and provides a sufficient level of accountability and transparency. Generally, within a public authority, senior staff are those individuals that are responsible for important decision making and its overall management. Due to the roles they perform and the responsibilities they hold, senior staff generally hold or should hold the expectation that they will be publically accountable for the decisions they make. However, generally, junior staff are those staff members that do not hold positions of authority or positions that require them to make such significant and high level decisions. The tasks and roles they undertake do not require public transparency and accountability to this extent and such staff will therefore hold the expectation that their personal data will remain confidential and will not be disclosed under the EIR.

33. The Commissioner considers the junior member of staff's expectations are reasonable and disclosure of their name and contact details under the EIR would cause them unnecessary distress and upset. As such, the Commissioner is satisfied that disclosure of this information would be unfair.

The name of a member of staff who was the subject of a complaint

34. The council confirmed that public disclosure of the name of the member of staff concerned would be unfair and inappropriate. It stated that this member of staff would have no expectation that such information would be released by their employer into the public domain.
35. Although the individual is performing a public role, the Commissioner considers there is still a general expectation that any issues relating to a person's professional conduct, complaints or any matters of a disciplinary nature will remain private and confidential between the individual concerned and their employer. It is the Commissioner's view that the individual concerned will have no expectation that this information could be disclosed into the public domain and he considers such public disclosure would cause the individual concerned considerable distress and upset.
36. There are generally appropriate mechanisms in place within public authorities for a complaint to be investigated fully and fairly and it is the responsibility of an employer to decide how best to deal with it. Disclosure under the EIR would constitute an unwarranted intrusion into a matter which should remain confidential and which should be addressed in accordance with the formal processes the public authority has in place. The Commissioner considers that just because a complaint has been made against a member of staff, it does not mean that it is justified or valid. There are also occasions when malicious complaints are also made about individuals. Such matters are not appropriate for public disclosure under the EIR and should be investigated in accordance with the procedures that are in place to deal with them.
37. For these reasons, the Commissioner is satisfied that disclosure of this information would be unfair on the data subject concerned and therefore in breach of the first data protection principle.
38. The Commissioner notes that there is a legitimate interest in the disclosure of the remaining information. However, he considers that due to the private nature of the dispute that instigated this request any legitimate interest to the wider public is very limited. The Commissioner must also weigh up any legitimate interest against any distress and intrusion disclosure would cause to the data subjects concerned.

39. As outlined above, the Commissioner has decided that the disclosure of all remaining information would be unfair to the data subjects concerned. He has decided that disclosure would cause an unwarranted intrusion into the lives of the data subjects concerned and would therefore cause them distress and upset. In this case, therefore, Commissioner has decided that any legitimate public interest in the disclosure of this information is clearly outweighed by the intrusion and distress disclosure would cause.

Right of appeal

40. 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

41. 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.
42. 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

Mrs Samantha Coward
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