

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

Date: 1 October 2015

Public Authority: Hambleton District Council
Address: Civic Centre
Stonecross
Northallerton
North Yorkshire
DL6 2UU

Decision (including any steps ordered)

1. The complainant has requested correspondence between the council and the owner of a private airfield. The council applied Regulation 13 of the EIR to the information, and in respect of any information which was not environmental information it applied section 40(2). Both of these sections relate to the personal data of third parties.
2. The Commissioner's decision is that Hambleton District Council has correctly applied Regulation 13 to the information.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 2 June 2014 the complainant wrote to the council and requested information in the following terms:

"details of all contact from 1 January to the present day between officers of Members of Hambleton District Council and [name redacted] and/or his representatives concerning [name redacted]."
5. The council's initial response in 2014 said that it could neither confirm nor deny that the information was held. Following a consent order from

the First-tier Tribunal however the council sent a further response to the complainant on 11 June 2015.

6. In its new response the council said that the requested information was the personal data of a third party and refused the request under Regulation 13(2)(b). It added that insofar as the information falling within the scope of the request might be caught under the terms of the Freedom of Information Act 2000 rather than the EIR it also applied section 40(2). Both of these exemptions apply to personal relating to third parties.
7. Following an internal review the council wrote to the complainant on 26 June 2015 upholding its initial decision.

Scope of the case

8. The complainant contacted the Commissioner on 3 July 2015 to complain about the way his request for information had been handled. He considers that the council was wrong to apply Regulation 13 and/or Regulation 40(2) to the information as any personal data will not relate to the private life of the individual but to his business dealings with the council. The individual concerned is a sole trader who owns an airfield, and the issues which the fall within the scope of the request relate to contact between the individual and the council regarding planning and enforcement matters.
9. The Commissioner considers that the complainant is therefore arguing that the council was wrong to apply the exemptions under Regulation 13 and section 40(2) to the information.
10. For the purposes of this decision notice it is not necessary for the Commissioner to separate out the differing access regimes to distinguish between information which is environmental information for the purposes of the EIR, and information which needs to be considered under the FOI Act. Both access regimes apply in the same way as regards the exemption for third party personal data. For the absence of doubt however, the issues relate to planning enforcement and the information is on changes to the landscape carried out by the owner. The Commissioner therefore considers that the information is all likely to fall within the scope of the EIR.

Reasons for decision

11. Regulation 13 of EIR states that:

"To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.

Regulation 13(2)

The first condition is –

(a) in a case where the information falls within any paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene –

12. any of the data protection principles; or

section 10 of the Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it; and

in any other case, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998(a) (which relates to manual data held by public authorities) were disregarded.

Regulation 13(3)

The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1) of the Act and, in all circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it."

Is the information personal data

13. The information requested relates to correspondence between the owner of a private airfield and the council related to matters to do with the airfield. The owner of the airfield is a sole trader in this capacity, and so information about his business (the airfield) is also (to an extent) personal information about him.
14. The complainant argues that the request is solely about information relating to the airfield. He considers that the information does not relate to the private life of the owner. He argues therefore that the information is not personal data as it relates only to the business dealings of the owner on behalf of the airfield. He argues that the First-tier Tribunal in

the initial appeal made comments which he considers negates the council from employing this argument to exempt the information. The Commissioner notes however that in fact the statement which the complainant is relying upon is a comment made by the Commissioner in his submission to the Tribunal rather than by the Tribunal itself. The comment was solely concerned with the application of 'neither confirm nor deny' aspect of its initial application of section 40. That appeal was ultimately settled via a consent order.

15. The Commissioner is however satisfied that the correspondence is with the owner of the airfield, relates to his own personal business and therefore does relate to him. Although it also relates to activities at the airfield it also relates to a living individual who can be identified from the information. For the absence of doubt, redacting any identifiers from the information would not anonymise that information in the circumstances of this case.
16. The Commissioner is therefore satisfied that the information is personal data as defined by The Data Protection Act 1998.
17. The complainant's arguments that the information relates mostly to the business rather than private life of its owner do however hold some weight in the consideration of whether it would be fair to disclose the information or not. This is considered further below.
18. As the information is personal data the Commissioner must next consider whether disclosing the information would breach any of the data protection principles.

Would disclosing the information breach any of the data protection principles?

19. The relevant data protection principle which the council identified is the first data protection principle. This states that:

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.

20. When considering the first data protection principle the Commissioner firstly considers whether a disclosure of the data would be fair. This relates in part to whether the data subject (the person to whom the information relates) would expect that their information would be

disclosed or whether that would be obvious under the circumstances of the case.

21. The test also takes into account any detriment which might occur to the individual should the information be disclosed. The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
 - whether information of the nature requested is already in the public domain;
 - if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?
22. If the individual would not expect their personal information to be disclosed the next question which the Commissioner needs to consider is whether there is a pressing social need for the information to be disclosed which might outweigh the expectations of the individual and make the disclosure fair.

Is a disclosure of the information 'fair'?

23. The Commissioner accepts that in the case of sole traders, information relating to their business also relates to their private lives to a great degree. It is much harder to separate the business dealings of a sole trader from their private lives than it would be for those employed by a limited company or for a public servant working within an authority. These latter organisations have their own legal personality and their actions are distanced from the actions of individuals working within them to an extent. Where sole traders are concerned, details of the actions, or the success or failure of the business have a direct relationship with the financial and personal interests of the individual. The Commissioner must therefore bear this in mind when reaching his decision.
24. The Commissioner has considered the withheld information. He agrees with the argument submitted by the complainant that as the correspondence directly relates to the airfield the information is separated from private personal information relating to the owner to a degree. It does not directly relate to his family life or even his personal financial interests. It relates to his business dealings as regards the activities of the airfield and whether the activities at the airfield meet with the planning conditions.
25. The complainant therefore argues that the information is not personal data per se, but is divorced from this as it purely relates to the activities

of the airfield. Again however actions taken against the airfield directly relate to actions taken against its owner as an individual, and it is difficult to separate the two separate factors for the reasons outlined above. The complainant is misconstruing the point – the first question is whether the information is personal data, which is a question of whether the information relates to an identifiable living individual, (which in this case it does), and the second is a question of whether disclosing that personal data would breach any of the data protection principles of the Data Protection Act 1998, and in particular in this case, whether its disclosure would be fair to the individual concerned.

26. The council has sought to apply planning restrictions on the airfield over a period of time. It has had correspondence with the owner to ensure that activities at the airfield can be monitored to ensure that they do not breach planning restrictions. In the past there have however been disagreements and enforcement notices have been issued and appealed.
27. As regards the correspondence caught within the scope of this request, the owner has provided information on a semi-informal/voluntary basis to the council. The Commissioner recognises however that where the council requires information in order to investigate a potential breach of planning conditions it would have the necessary legal powers to obtain that information on a formal basis should it need to do so. The owner would also recognise this and it is therefore in his interests to correspond and discuss issues with the council without the need for it to take formal action.
28. Although the information was provided voluntarily therefore, it was sent with the understanding that the council could obtain much of that information via more formal means if this was necessary to undertake its monitoring of planning conditions.
29. From the council's viewpoint, the informal discussions and the continued cooperation of the owner serve to provide the information it requires without the need for costly and time consuming formal legal processes and procedures to gather such information.
30. There has been active opposition to activities at the airfield from parts of the community for a number of years. There has also been a long history of enforcement notices and appeals against activities at the airfield from the council, resulting in many stories in the local media about actions being taken against the airfield. Media stories describe 14 previous enforcement notices being issued against the airfield, together with a number of public inquiries about its activities.
31. The owner would therefore understand that his dealings with the council will be under scrutiny by members of the local community who have

objections to some activities at the airfield. He would also recognise that some information on the activities would be likely to be reported back to complainants or be disclosed as part of the application of normal planning laws to the airfields activities. This would be no surprise to him, and as matter relating to enforcement had previously been published he would have less expectation that this correspondence might remain completely private, particularly if the issues were to result in further enforcement or litigation. The Commissioner is also aware that some of the issues within the correspondence have already been reported on by the local media.

32. The Commissioner therefore considers that he would have some degree of expectation that information on his activities might be disclosed as part of the normal planning and complaints process. Clearly the council will need to disclose some information to complainants on what they are doing to monitor the airfield and what action they are taking to address any breaches of planning conditions they find.
33. The information in this case goes beyond this approach. The complainant is requesting details of private correspondence between the council and the owner. At the time of the request there were no legal requirements for the council to disclose this sort of information as part of its regulatory, enforcement or planning functions, (although given the past history of events at the airfield it is always possible that some of this information may subsequently become relevant evidence as part of it carrying out these functions in the future).
34. For its part, the council argues that it already publishes the information which is necessary to demonstrate that it is monitoring the situation at the airfield, and to demonstrate what actions it takes in respect of breaches of planning conditions it finds. It argues therefore that it is not necessary for it to disclose details of the correspondence it has with the airfield owner in order to be transparent about its actions. This, in turn, would reduce any expectations by the owner that this personal data would be disclosed in response to a request.
35. It also argues that given the contentious nature of the relationship between the owner and parts of the community the owner would have no expectations that this sort of informal correspondence would be disclosed and it would be likely to be distressful to him if it were to be.
36. The Commissioner accepts that the individual cannot reasonably expect the same degree of privacy in relation to the withheld information as they would about information that relates solely to their private lives. The airfield owner is separately employed in a professional role which has nothing to do with the airfield. Information on his activities at the

airfield would not encompass details of his entire professional life therefore.

37. Whilst he might expect that some information would be disclosed on formal action taken by the council against the airfield, or in response to complainants, he would not expect that his private correspondence would be disclosed unless and until that information forms part of the evidence in formal enforcement procedures and appeals.
38. The Commissioner also considers that as there has been a long history of enforcement proceedings being taken against the airfield, there is a potential that some of that information may become evidence in enforcement proceedings taken against the airfield. The owner would have no expectations that information which he might need to rely upon in the future as evidence to demonstrate his attempts to comply with the councils requirements would become public prior to any enforcement proceedings taking place.
39. The Commissioner therefore considers that on the face of it, the owner would not expect that copies of his private correspondence with the council would be disclosed in response to an FOI request.
40. The Commissioner must therefore consider whether there is any pressing social need for the information to be disclosed which might outweigh those expectations.

Is there a pressing social need for the information to be disclosed?

41. As stated there is a long history of enforcement matters relating to the airfield which the Community are fully aware of. The issue of the airfield is particularly contentious, given the past history of events, and parts of the local community object to the airfield increasing its activities, or the extension of flying times.
42. The Commissioner must bear in mind that it is the council which regulates the planning laws, not the local community. The council will obviously take into account complaints made to it but it is the council which is legally able to enforce planning laws and it is its decision whether formal action is necessary.
43. To this extent a disclosure of the information to the public is not a necessity in order for planning laws to be upheld. The council argues, in effect, that a disclosure of the information may actually make it more difficult for it to monitor and regulate the airfield if the data subject withdraws from discussions with the council and refuses to provide details of his activities informally.

44. There a number of contributory factors however which strengthen the argument that there is a pressing social need for the personal correspondence to be disclosed in this case.
45. The council argues that it already discloses information on the formal actions it has taken against the airfield. It argues therefore that its actions are already transparent and open to scrutiny, and that it is not therefore necessary for the requested information to be disclosed in order to demonstrate that it is carefully monitoring the situation at the airfield and taking action where necessary.
46. The Commissioner notes however that members of the local community who object to the airfield's activities will retain concerns following previous failures in the council's enforcement of planning restrictions. In 2012 the Local Government Ombudsman issued a report finding maladministration by the council. The initial planning permission for the airfield was limited to the ownership of a named person and a limited number of flights. The council did not however enforce this restriction when the ownership of the airfield changed hands, and as a result of these activities continuing over a long period of time the council lost the ability to enforce these restrictions.
47. The LGO also reported that the Civil Aviation Authority is not able to regulate the airfield and as a result of the maladministration the council lost planning control over the number of aircraft which could use the field. This has been an ongoing issue which objectors have raised.
48. The council has subsequently tried to address successive issues through planning conditions and enforcement. The airfield has however had some success in appealing enforcement attempts to limit the number of flights from the airfield.
49. The complainant argues that the way that the council has approached regulating the use of the airfield has ignored the recommendations of the LGO. He further argues that the council's interpretation of a recent decision by the Planning Inspectorate does not accord with residents' interpretations of that decision. He argues that, due to this, planning conditions which could have been applied to the airfield which might have restricted some of the activities have not been followed through by the council.
50. Sections of the local community who oppose greater use of the airfield therefore retain concerns about the manner in which the council has addressed the activities at the airfield previously. Objectors (including the complainant's client) wish to scrutinise the council's actions in order to ensure that it is doing all it can to prevent any further expansion of business at the airfield.

51. The Commissioner understands that whilst that might be the case, he must balance the rights of the community to be informed about what actions the council has taken against the owner's right to have the privacy of his correspondence maintained.
52. The Commissioner has also taken into account the clear benefit of allowing informal discussions to take place between the parties outside of the public view in order that the parties can reach an informal resolution on as many issues as possible prior to the council undertaking any enforcement action. Clearly if the majority of the issues can be resolved without the need for formal intervention, in the long run this saves public money and provides a quicker solution to issues which might otherwise result in enforcement action and subsequent appeals. From the owners perspective this will also be likely to narrow down the scope of any enforcement action taken against him, and provide evidence that he has taken steps to meet the requirements of the council.
53. The informal discussions may well cease if the council were to disclose 'private' correspondence it has had with the owner. At the least the owner may become more cautious and reserved in his responses to the council if he believes this information may subsequently be disclosed to objectors within the local community. More formal communications may become more strained and contentious, making the council's regulatory role harder, and potentially the situation for those in the community objecting to the airfields activities worse. This reduction in informal dialogue may well increase the possibility of enforcement action being taken in the future, to the owner's detriment.

Conclusions

54. In summing up the above, whilst the Commissioner recognises that there are concerns within parts of the community which might be lessened if the council were to disclose the information, he considers that there is no pressing public need for this information to be disclosed. The counter side to this is that whilst trust in the council might be raised, a disclosure of the information might result in a raised level of tension between the objectors and the airfield's owner.
55. The community does not have the powers necessary to enforce planning regulations, and is reliant upon the council to carry out that role. The more recent history demonstrates that the council will take action where it is necessary to enforce the planning restrictions, albeit that there have been issues with this occurring and the way it has gone about this.
56. Where the council's actions do not meet with that expected by the community then there is the potential to challenge its decisions via

judicial review. Further complaints to the Ombudsman and other means such as complaints to local constituency MP's and councillors to lobby for changes can also be made.

57. The Commissioner recognises that the basis of the complaint is that members of the local community have sought changes to the activities of the airfield for many years and have not obtained the results which they hoped for. They do not trust the council to carry out their regulatory duties regarding the airfield appropriately.
58. The information is therefore sought in order to allow the complainant to check whether the council is carrying out its regulatory functions properly, and there is clearly an argument that greater transparency in this respect would aid in creating greater public confidence in the council.
59. Nevertheless a disclosure of correspondence may raise greater levels tension in the community regarding the airfield's owner. It is important to note that the airfield is carrying out a lawful business. The issues which the community has are the extent of that business and how it is being run.
60. However the Commissioner considers that the communities lack of trust in the council as regards this does not outweigh the owner's right to privacy of correspondence, particularly when the correspondence relates to matters which have in the past resulted in legal action being taken against him, and could potentially lead to that occurring again.
61. The Commissioner therefore considers that a disclosure would be unfair for the purposes of the first data protection principle. The council was therefore correct to apply Regulation 13(2)(b) to the information.

Regulation 30(1)(b)

62. The council has also claimed section 30(1)(b) (investigations and proceedings conducted by public authorities) in respect of parts of the withheld information.
63. As the Commissioner considers that the council was correct to apply Regulation 13 to the withheld information he has not found it necessary to consider this further within this decision notice.

Right of appeal

64. 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,
0LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

65. 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.
66. 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

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