

nvironmental Information Regulations 2004 (EIR) Decision Notice

Date: 30 August 2019

Public Authority: London Borough of Croydon
Address: Bernard Weatherill House
8 Mint Walk
Croydon
CR0 1EA

Decision (including any steps ordered)

1. The complainant requested information relating to a planning application regarding a specified property. The London Borough of Croydon provided most of the requested information and withheld some information in reliance on the exception at regulation 13 and regulation 12(5)(f) of the EIR.
2. The Commissioner's decision is that the Council was entitled to rely on regulation 13 in respect of the withheld information. The Commissioner does not require any steps to be taken.

Request and response

3. The complainant submitted the following request to the Council on 26 March 2018:

"Planning Application 18/00648/HSE

"Please provide copies of all information held regarding the above planning application and the Council's consideration of it.

"I acknowledge that the documentation submitted by the applicant is available on the Council's website and so could be omitted here, but to include it would help provide the 'full picture', in one place.

"The information provided should include, but not be restricted to, copies of the following:

- ALL consultation (objection) letters/emails, which should include the TWO I sent myself on 1 and 7 March 2018, - notes from case officer's site visit, and - the full case officer's report WITH recommendation."

4. The Council did not respond until the Commissioner issued a decision notice requiring it to do so.¹ The response, dated 13 July 2018, provided some information but stated that the following information had been withheld:
 - Information relating to information/ comments made by individuals (regulation 12(5)(f))
 - Personal information (regulation 13)
 - Information publicly available in another form or format (regulation 6(1)(b))
5. The complainant requested an internal review on 13 August 2018, and the Council communicated the outcome of the internal review on 10 October 2018 (although the letter was dated 9 October 2018). The Council provided some of the requested information, but maintained reliance on the exceptions at regulation 12(5)(f) and regulation 13.

Scope of the case

6. The complainant contacted the Commissioner on 26 October 2018 since he remained dissatisfied about the way his request for information had been handled.
7. The Commissioner notes that the complainant specifically requested copies of correspondence he had sent the Council. Since this information comprises personal data relating to the complainant, it falls outside the scope of the EIR by virtue of regulation 5(3). Therefore the Commissioner's investigation excluded this information, and focused on the information withheld under regulation 12(5)(f) and regulation 13.

Reasons for decision

Regulation 13: personal data of third parties

8. Regulation 13(1) says that information shall not be disclosed where it is the personal data of an individual other than the applicant, and where disclosure of the information to any member of the public would contravene any of the principles of the Data Protection Act 1998
-

¹ Decision notice FER0745851, issued 28 June 2018

(DPA98).² The Council has maintained to the Commissioner that disclosure of the information would be unfair and would thus contravene the first data protection principle.

9. The Council confirmed to the Commissioner that the information withheld under regulation 13 was provided by individuals objecting to the specified planning application. The Council had disclosed the detail of the objections, but had redacted names, addresses and other information that would identify those individuals in the context of the objections.
10. The Commissioner is satisfied that the information in question is personal data of individuals other than the complainant. This is because the individuals are identifiable, and the context of the information clearly relates to the individuals. The Commissioner has therefore gone on to consider whether disclosure of this information into the public domain would be unfair and thus contravene the first data protection principle.
11. When considering the fairness and the first data protection principle under the DPA98 the Commissioner will generally take the following factors into account:
 - the individuals' reasonable expectations of what would happen to their information;
 - whether disclosure would cause any unnecessary or unjustified damage or distress to the individuals concerned (ie the consequences of disclosure);
 - whether disclosure of the information is necessary to meet a legitimate interest; and
 - whether the legitimate interest in disclosure is sufficient to justify any negative impact to the rights and freedoms of the individuals as data subjects.
12. The Council maintained that individuals objecting to planning developments would have a reasonable expectation that their names and addresses would not be disclosed into the public domain. The Council set out that disclosure of this information would cause unwarranted distress to the individuals, and this outweighed any legitimate interest in disclosure.

² New data protection legislation came into force (the General Data Protection Regulation and the Data Protection Act 2018) on 25 May 2018. However, this request and the time for compliance with this request predates that new legislation. The applicable data protection legislation is therefore the DPA98.

13. The Council also pointed out that the complainant had submitted his request via the "What Do They Know" website. The Council was therefore concerned that any information disclosed to the complainant via this website would in effect be disclosed to the public at large. The Commissioner would remind the Council that any information disclosed under the EIR is presumed to be disclosed to the public at large.
14. The complainant drew the Commissioner's attention to an advice note indicating that the Council could not accept comments in confidence. The complainant argued that this meant that the Council was not entitled to withhold this information. The Commissioner accepts that the Council has sought to meet the legitimate interest in openness and transparency by disclosing a redacted version of the objections. This means that the public can see what comments were made, but not who made them.
15. The Commissioner is mindful that she has considered regulation 13 in the context of planning objections in several previous cases.³ The Commissioner has consistently found that individuals commenting on planning applications have a reasonable expectation that their names and addresses will not be published, although their comments will be disclosed. This meets the legitimate interest in transparency of decision making without undue interference in the privacy rights of individuals. Therefore the Commissioner does not consider that disclosure of those individuals' personal information is in fact necessary to meet a legitimate interest.
16. The Commissioner further accepts that disclosure of personal information relating to planning objectors would be likely to cause unwarranted distress to those individuals. They have a right to express opinions on planning applications, and may be discouraged from exercising this right if their personal information was made public.
17. For the above reasons, the Commissioner is satisfied that the Council was entitled to rely on regulation 13 in order to withhold the personal data redacted from the planning objections. The Commissioner finds that the disclosure of this personal information would be unfair and would contravene the first data protection principle.

³ For example, www.ico.org.uk/media/action-weve-taken/decision-notices/2015/1043408/fs_50559952.pdf

18. The Commissioner notes that the Council withheld the same information in reliance on regulation 13 and regulation 12(5)(f). Since the Commissioner is satisfied that the Council was entitled to rely on regulation 13 she is not required to consider the application of regulation 12(5)(f) to the same information.

Right of appeal

19. 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: now grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

20. 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.
21. 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

Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF