

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 1 February 2021

**Public Authority:** Middlesbrough Council  
**Address:** Civic Centre  
via Dunning Street (off Corporation Road)  
Middlesbrough, TS1 2RH

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to the relocation of a farm in Nunthorpe. Middlesbrough Council disclosed some information and withheld other information under the exceptions for commercial confidentiality (regulation 12(5)(e)) and personal data (regulation 13(1)).
2. The Commissioner's decision is that Middlesbrough Council has correctly withheld the information in part 4 of the request under regulation 13(1).
3. The Commissioner does not require the public authority to take any steps.

## Request and response

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4. On 5 May 2020, the complainant wrote to Middlesbrough Council (the "council") and requested information in the following terms:

*"1. Is the Hall Farm, Nunthorpe still owned by MBC?*

*2. Did MBC instigate the relocation of the operational base of the farm to land east of the A172?*

*3. If so did MBC contribute to the costs of relocation?*

*4. If so what was the total cost to MBC of enabling the relocation including costs associated with establishing the new farm base, compensation payments, removal costs, technical officers' salaries and any other costs?*

*5. What costs has MBC incurred in securing the buildings since they have been vacated?*

*6. Can you confirm that all of the farm buildings and structures within the village are within the Nunthorpe and Poole Conservation Area?*

*7. Can you confirm that your appraisal of buildings within the Conservation area agreed that the older buildings within the farm complex, while not listed, are of significant group value?*

*8. Can you confirm if there is any development interest in the areas of the farm on the eastern side of the village?"*

5. The council responded on 28 May 2020. It addressed the complainant's queries and withheld the information in part 4 of the request under the exception for commercial confidentiality (regulation 12(5)(e)).

6. Following an internal review, the council wrote to the complainant on 13 July 2020. It disclosed some additional information and confirmed that it was maintaining its reliance on regulation 12(5)(e) to withhold the information in part 4 of the request.

## Scope of the case

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7. On 23 July 2020 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner confirmed with the complainant that her investigation would consider whether the council had correctly withheld the information in part 4 of the request.
9. During her investigation it occurred to the Commissioner that the information in part 4 of the request may constitute the personal data of an identifiable individual. The Commissioner, therefore, asked the council to reconsider the matter. The council confirmed that, in addition to regulation 12(5)(e), it now wished to rely on the exception for personal data to withhold the information – regulation 13 of the EIR.

## Reasons for decision

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### Regulation 13(1) – personal data of third party individuals

10. In relation to the information requested in part 4 of the request, the council confirmed that it did not hold records pertaining to removal costs, technical officers' salaries and any other associated costs.
11. The council confirmed that it held the total cost of enabling the relocation including costs associated with establishing the new farm base, compensation payments and that it was withholding this information under the exception in regulation 13(1).
12. Regulation 13(1) allows a public authority to withhold personal data where the applicant is not the data subject and where one of the conditions listed in Regulation 13(2A), 13(2B) or 13(3A) is satisfied.
13. In this case the relevant condition is contained in Regulation 13(2A)(a)<sup>1</sup>. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ("the DP principles"), as set out in Article 5 of the General Data Protection Regulation ("the GDPR").

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<sup>1</sup> As amended by Schedule 19 Paragraph 307(2) DPA.

14. In order to engage regulation 13, the information sought by the applicant must satisfy the definition of personal data provided by sections 3(2) and (3) of the Data Protection Act 2018 ("the DPA") and means any information relating to an identified or identifiable living individual.
15. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
16. Information will relate to a person if it is about them, linked to them, has biographical significance to them, is used to inform decisions affecting them or has them as its main focus.
17. The Commissioner has examined the information which the council has withheld from the complainant. The council has stated that it considers that the information relates to an identifiable individual (i.e. the land owner, the "the data subject").
18. In the circumstances of the case, having considered the withheld information, the Commissioner considers that it does relate to and identifies living individuals. Specifically, she considers that all of the withheld information can be said to be the personal data of the data subject since it relates to their activities. She is therefore satisfied that it falls within the definition of 'personal data' in section 3(2) of the DPA. It is not special category personal data nor is it criminal offence data.
19. Article 5(1)(a) of the GDPR states that: *"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject"*. In this case processing personal data means its disclosure in response to a request for information.
20. In order to be lawful, processing must satisfy one of the lawful grounds provided by Article 6(1) of the GDPR and must also be 'generally lawful'.
21. The Commissioner considers that basis 6(1)(f) is relevant to the council's position in this case. This states:

*"...processing is necessary for the purposes or the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject and which require protection of personal data...."*

22. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the EIR, it is necessary to consider the following three-part test: -

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) of fundamental rights and freedoms of the data subject.

23. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

### **Legitimate interests**

24. In considering any legitimate interest(s) in the disclosure of the requested information under the EIR, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.

25. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

26. The personal data being considered in this case is that the data subject regarding negotiations in respect of their property and relocation of their business at the site in question. The complainant considers that the information relates to the use of public money in relation to public land in a conservation area and the accountability of the council in relation to its decision-making in these regards.

27. The Commissioner acknowledges that there is a legitimate interest in transparent decision making in this case. She accepts that that disclosure under the EIR would be necessary to meet the legitimate interest in disclosure explained above.

### **Balancing Test**

28. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, the impact of disclosure has to be considered. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the EIR in response to the request, or if

such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.

29. In considering this balancing test, the Commissioner has taken into account the following factors:

- the potential harm or distress that disclosure may cause;
- whether the information is already in the public domain;
- whether the information is already known to some individuals;
- whether the individual expressed concern to the disclosure; and
- the reasonable expectations of the individual.

30. In the Commissioner's view, a key issue is whether the individual concerned has a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.

31. The Commissioner asked the council to explain what reasonable expectations the data subject has about what will happen to their personal data. The council confirmed that, under the Heads of Terms used by the council in relation to the negotiations, the data subject understood that the information would remain confidential unless both parties consent to the release of the information into public domain.

32. The council further explained that it had asked the data subject whether they would consent to the release of the information. The data subject had confirmed that they consider any financial information pertaining to their vacation of, and relocation from the subject property to be private and confidential and they objected to the council releasing the information into the public domain.

33. In carrying out the balancing exercise, the Commissioner has focused on the rights and freedoms of the data controller. As previously explained, she is satisfied that all of the withheld information is their personal data.

34. The Commissioner considers that the focus of the withheld information is the dwelling arrangements of the data subject. That it relates to their business interests as a farmer does not detract from this as the data subject effectively has the status of a sole trader. In other words, information relating to their business interests is inextricably linked to their private life as an individual.

35. In the Commissioner's view, it is clear from the withheld information that the data subject engaged with the council in the matter of their dwelling and business with no expectation that information relating to this would be made public. It is likely, therefore, that disclosing the information would result in unforeseen intrusion into their private life and some damage and distress.
36. Furthermore, the Commissioner does not consider that disclosing this information is necessary to serve the legitimate interest in transparency and accountability around the council's decisions in relation to the management of its land interests or of a conservation area. She considers that the information in question would add little or nothing to the legitimate interest in understanding how decisions are made by public authorities.
37. Having taken these matters into consideration the Commissioner considers that disclosing the information would result in unwarranted intrusion into the life of the data subject.
38. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest in the disclosure of the information to outweigh the data subject's fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
39. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that she does not need to go on to separately consider whether disclosure would be fair or transparent.
40. The Commissioner has therefore decided that the council was entitled to withhold the information under regulation 13(1), by way of regulation 13(2A)(a).
41. As the Commissioner has concluded that the council is entitled to withhold the information under regulation 13(1) she has not gone on to consider regulation 12(5)(e).

## Right of appeal

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42. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

43. 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.
44. 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**  
**Head of FoI Casework and Appeals**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**