

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

Decision notice

Date: 20 June 2022

Public Authority: Newcastle Under Lyme Borough Council
Address: Civic Offices
Merrial Street
Newcastle
Staffordshire
ST5 2AG

Decision (including any steps ordered)

1. The complainant requested information from Newcastle Under Lyme Borough Council ("the Council") about the lease for Birchenwood Playing Fields. The Council initially refused to provide some of the requested information. During the course of the Commissioner's investigation it has disclosed further information but it continues to withhold the names and home addresses of the trustees of the charity which leases the playing fields and the names and signatures of the two signatories that signed the lease on behalf of the charity, on the basis of the personal data exception under regulation 13 of the EIR.
2. The Commissioner's decision is that the Council has correctly relied on regulation 13.
3. The Commissioner does not require further steps.

Request and response

4. On 28 April 2021, the complainant wrote to the Council and requested information in the following terms:

“Please can you supply in electronic form the following: A copy of the signed lease document for Birchenwood Playing Fields between NulBC and Kidsgrove Lads and Dads A copy of all council minutes where this lease was discussed and/or approved A copy of the land registry and covenants document which NulBC will retain for this piece of land A copy of the public consultation and impact and equality assessment which was undertaken prior to the execution of this lease. The annual sum that is payable for this lease The length of time this lease is in operation for The obligations of this lease.”

5. The Council responded on 12 May 2021. It provided some of the information requested, explained that some of the information was not held by the Council and refused to provide some of the requested information citing the personal information exemption under section 40 of FOIA.
6. Following an internal review the Council wrote to the complainant on 20 May 2021. It maintained its original position of refusing some of the information. It added that, in addition to the personal information exemption under section 40 of the FOIA, the commercial interests exemption under section 43 of the FOIA also applied to the information that it had refused to provide.

Scope of the case

7. The complainant contacted the Commissioner on 20 May 2021 to complain about the way their request for information had been handled.
8. The Commissioner asked the Council to reconsider the request under the EIR rather than FOIA on 7 February 2022 as he considers that the information requested is environmental information as defined under regulation 2(1) of the EIR.
9. Having reconsidered the request under the EIR and taking into account the passage of time the Council disclosed a redacted copy of the lease on 28 February 2022. As the Council did not state the exception upon which it was relying to withhold the redacted information the Commissioner asked the Council to carry out an internal review.
10. Following an internal review the Council wrote to the complainant on 23 March 2022. It stated that the redacted information, which comprised the names and home addresses of the trustees of the charity which leases the playing fields (Staffordshire Lads and Dads Club), the names and signatures of the two signatories that signed the lease on behalf of the charity and the rent payable, was withheld on the basis that it was

the personal data of a person other than the applicant under regulations 12(3) and 13 of the EIR.

11. During the course of the Commissioner's investigation the Council subsequently changed its position regarding whether the annual sum of rent that is payable for the lease could be disclosed. It disclosed this information, stating that "with the passage of time, especially now that the lease has expired, the reasons for withholding the information have fallen away".
12. This decision notice covers whether the information that the Council continues to withhold, which comprises the names and home addresses of the trustees of the charity which leases the playing fields and the names and signatures of the two signatories that signed the lease on behalf of the charity, is exempt from disclosure under the EIR on the basis of the personal data exception under regulation 13 of the EIR.

Reasons for decision

Regulation 13 personal data

13. Regulation 13(1) of the EIR provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.
14. In this case the relevant condition is contained in regulation 13(2A)(a)¹. 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 UK General Data Protection Regulation ('UK GDPR').
15. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then regulation 13 of the EIR cannot apply.
16. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

¹ As amended by Schedule 19 Paragraph 307(3) DPA 2018.

Is the information personal data?

17. Section 3(2) of the DPA defines personal data as:

“any information relating to an identified or identifiable living individual”.

18. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

19. 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.

20. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

21. The withheld information in this case is the names and home addresses of the trustees of the charity which leases the playing fields and the names and signatures of the two signatories that signed the lease on behalf of the charity.

22. Having considered the withheld information, the Commissioner is satisfied that this information both relates to and identifies the individuals concerned. This information therefore falls within the definition of ‘personal data’ in section 3(2) of the DPA.

23. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the EIR. The second element of the test is to determine whether disclosure would contravene any of the DP principles.

24. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

25. 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”.

26. In the case of an EIR request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.

27. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.
28. In addition, if the requested data is special category data, in order for disclosure to be lawful and compliant with principle (a), it also requires an Article 9 condition for processing.

Is the information special category data?

29. Information relating to special category data is given special status in the UK GDPR.
30. Article 9 of the UK GDPR defines 'special category' as being personal data which reveals racial, political, religious or philosophical beliefs, or trade union membership, and the genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.
31. Having considered the wording of the request, and viewed the withheld information, the Commissioner finds that the requested information does not include special category data.
32. As none of the withheld information is special category data, the Commissioner has gone on to consider whether there is an Article 6 basis for disclosing the withheld information.

Lawful processing: Article 6(1)(f) of the UK GDPR

33. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that "processing shall be lawful only if and to the extent that at least one of the" lawful bases for processing listed in the Article applies.
34. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of 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 which require protection of personal data, in particular where the data subject is a child"².

² Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

35. In considering the application of Article 6(1)(f) of the UK 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) or fundamental rights and freedoms of the data subject.
36. 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

37. 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.
38. 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.

However, regulation 13(6) EIR (as amended by Schedule 19 Paragraph 307(7) DPA and Schedule 3, Part 2, paragraphs 53 to 54 of the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

39. The Commissioner accepts that interest in transparency about who leases public land from the Council constitutes a legitimate interest in wanting to access the information and therefore this criterion is met for the names of the trustees.
40. However, he does not accept that there is a legitimate interest in wanting to access the Trustee's home addresses or a copy of the signatures of the two trustees who acted as signatories to the lease. Disclosure of this information would not, therefore, meet the requirements of principle (a).

Is disclosure necessary?

41. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the EIR must therefore be the least intrusive means of achieving the legitimate aim in question.
42. In this case, although the Council has refused to disclose the names of the Trustees under the EIR, this information is already in the public domain as the names of the Trustees are available on the register of charities on the Charity Commission's website.
43. The Commissioner's decision is therefore that disclosure is not necessary to meet the legitimate interest in disclosure.
44. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest in disclosure, he has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a).

The Commissioner's view

45. 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).
46. This finding by the Commissioner means that the Council was not obliged to disclose the personal information that it withheld - the names and home addresses of the trustees of the charity which leases the playing fields and the names and signatures of the two signatories that signed the lease on behalf of the charity - and so the Council is not required to take any further action in relation to the complainant's information request.

Right of appeal

47. 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

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

48. 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.
49. 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

Ben Tomes
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