

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 30 November 2022

Public Authority: Lincolnshire County Council
Address: County Offices
Newland
Lincoln
Lincolnshire
LN1 1YL

Decision (including any steps ordered)

1. The complainant requested from Lincolnshire County Council, ('the council'), information relating to the creation of a Traffic Restriction Order ('a TRO') on Silver Street, Bardney. The council applied Regulation 13(1) (personal data of third parties), and Regulation 12(4)(e) (internal communications) to withhold some information.
2. The Commissioner's decision is that the council was correct to apply Regulation 13(1) to withhold the personal data relating to third parties. He has decided that the council was partially correct to apply Regulation 12(4)(e), however the exception was not applicable to correspondence between the council and its contractor, Balfour Beatty. Finally, the Commissioner has also decided that, on the balance of probabilities, the council was correct to state that it holds no further information falling within the scope of the complainant's request for information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To disclose the correspondence between Balfour Beatty and the council, subject to suitable redaction of personal data as required by the terms of the Data Protection Act 2018.

4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. On 8th November 2021, the complainant wrote to the council and requested information in the following terms:

“[name redacted by ICO] would like to see correspondence, documentation and traffic reports in relation to the Traffic Regulation Order to install double yellow lines on Silver Street, Bardney, Lincoln, ...”

6. The council responded on 21 January 2022. It disclosed some information, however it redacted other information on the basis that Regulation 13(1) and Regulation 12(4)(e) applied.
7. Following an internal review, the council wrote to the complainant on 31 March 2022. It maintained its position that Regulation 12(4)(e) applied, highlighted that some of the third-party data related to the requestor, but maintained its position that Regulation 13(1) applied to other information.

Reasons for decision

8. The following decision notice considers whether the council was correct to withhold the requested information under Regulation 12(4)(e) and Regulation 13(1). It will also consider whether any further information is held falling within the scope of the complainant's request for information (Regulation 5(1)).

Regulation 12(4)(e) – internal communications

9. Regulation 12(4)(e) states that information is exempt from disclosure if it involves ‘the disclosure of internal communications’. It is a class-based exception, meaning there is no need to consider the sensitivity of the information in order to engage the exception. Rather, as long as the requested information constitutes an internal communication then it will be exempt from disclosure.

Correspondence with Balfour Beatty

10. The council argues that communications between council officers and its contractor Balfour Beatty are internal communications for the purposes of Regulation 12(4)(e).
11. It argues that Balfour Beatty is the council's 'Highways Partner' and acts as part of internal highways team. It therefore argues that its communications with this team are internal communications for the purposes of the exception.
12. It contends that it is responsible for 9,000 kilometres of highways, carriageways, and footpaths within the council's remit, and that it also delivers winter maintenance and drainage cleansing services on behalf of the council. It argues that its employees are based in the council's depots, and that the team is invited into the council's 'safe space' when considering options and making decisions.
13. The Commissioner's guidance on the application of Regulation 12(4)(e)¹ provides guidance on situations where third parties may be considered to form part of the council for the purposes of Regulation 12(4)(e). It notes that such situations will be exceptional, but that it can arise in some circumstances.
14. Having considered the council's argument, the Commissioner is not satisfied that the council has provided sufficient information to justify its decision that Balfour Beatty employees can be considered internal to the council, and that its communications may therefore fall within the scope of Regulation 12(4)(e). Whilst its employees are situated within council offices, and the council allows its employees into planning meetings etc, the council has not described issues such as management structure, decision making and complaints structures which would lead to the conclusion that its employees were effectively a part of the county council's internal highways team.
15. The Commissioner therefore requires the council to disclose the information to the complainant, subject to any appropriate redactions to ensure that personal data is not disclosed in breach of requirements of the Data Protection Act 2018.

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/regulation-12-4-e-internal-communications/what-are-internal-communications/#third>

Other information

16. As regards the remaining information withheld under this exception, the Commissioner is satisfied that the information is internal communications and that it therefore falls within the scope of the exception. He has therefore gone on to consider the public interest test required by Regulation 12(1)(b).

Public Interest Test

17. Where the exception in Regulation 12(4)(e) is engaged, the authority must carry out a public interest test.
18. The test is whether in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

The public interest in the information being disclosed

19. There is always a public interest in creating greater transparency and accountability over the actions of public authorities. The central public interest argument in favour of the disclosure of the information in this case relates to creating transparency about the reasons and deliberations over the making of the TRO.

The complainant argues that the council decided upon the TRO without reference to the local Parish Council, which had made requests for traffic restrictions and changes to other areas within the village but not to the road in question. The Parish Council questioned why their suggested TRO's were not taken forward, but this, unasked for restriction was decided upon. The Parish Council also argued that no formal traffic surveys have been carried out by the Lincolnshire council in the area (or anywhere else)².

² <https://bardney-group.parish.lincolnshire.gov.uk/news/article/36/disappointment-at-lcc-decision-to-install-double-yellow-lines-outside-the-post-office>

20. A petition was served on the council against placing the TRO in the area, along with two formal objections and opposition from the local parish council. Arguments were made surrounding the potential damage to a local business should the TRO be made. Nevertheless, the council agreed to take forward the advertising of the proposal in a meeting dated 26 August 2021³.

21. The Commissioner therefore recognises that there is a public interest in the council's reasons for its actions being made clear.

The public interest in the exception being maintained

22. The council argues that the making of a TRO is a statutory process which requires consultation and transparency, including, in this case, the TRO being considered by Planning and Regulation Committee. It argues, therefore, all relevant information is already in the public domain.

23. It argues that its officers and councillors need to have private thinking space to be able to consider and debate issues and reach decisions away from external interference and distraction, and that this is a significant factor in favour of withholding the requested information in this case.

24. The Commissioner notes that the council has already explained its reasons for the TRO. The withheld information does not primarily relate to this point. It relates to deliberation and debate as to how to respond to requests and questions received by the council about the TRO. It includes discussions and drafts of responses, and internal requests for further information in order to respond to requests and complaints.

25. The Commissioner notes that the withheld information relates to a period shortly before the request for information was received, and therefore the council is justified in considering that the issue was still live and ongoing at the time that the request was received, albeit that the TRO had been agreed some months prior to this.

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<https://lincolnshire.moderngov.co.uk/documents/g5808/Public%20reports%20pack%2006th-Sep-2021%2010.30%20Planning%20and%20Regulation%20Committee.pdf?T=10>

26. The Commissioner considers that there is little public interest in the disclosure of such correspondence as balanced against the need for safe space to discuss, deliberate, and seek advice over the issues involved.
27. Accordingly, the Commissioner's decision is that the public interest rests in the exception being maintained.

Regulation 12(2) – Presumption in favour of disclosure

28. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions.
29. As covered above, in this case the Commissioner's view is that the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in Regulation 12(2), is that the exception provided by Regulation 12(4)(e) was applied correctly.

Regulation 13(1) - personal data of third parties

30. The following analysis explains why the Commissioner is satisfied that the public authority was entitled to apply Regulation 13(1) of the EIR to the withhold relevant information.
31. Regulation 13(1) of the EIR allows a public authority withhold information if it is personal data, i.e., information falling within the scope of the definitions provided in sections 3(2) and (3) of the DPA 2018 and none of the conditions listed as a lawful basis for processing provided in Article 6(1) of the UK GDPR is satisfied.
32. The Commissioner is satisfied that the requested information is personal data. It relates to the contact details of a specified individuals, such as the contact details of various junior council officers, the mobile telephone number of a councillor, and letters/submissions from third parties in response to the consultation about the proposed TRO which contain identifiers, such as addresses, names and other information describing the area that they live.
33. The condition at section Regulation 13(1) is satisfied as a disclosure of the information would contravene data protection principle (a).
34. The Commissioner has ascertained this by assessing whether there is a lawful basis for processing the requested information under Article 6(1)(f) of the UK GDPR.

35. He has determined that, whilst the complainant has a legitimate interest in disclosure, and disclosure would be necessary to satisfy that interest, there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms.
36. The Commissioner has determined this by balancing the legitimate interest of the complainant against the fact that the individuals concerned would have a reasonable expectation that their information would not be disclosed to the public.
- Junior council officers would not expect that their details would be disclosed in response to an FOI request.
 - It would not be fair to disclose the direct mobile number of a councillor as this may cause unwarranted contacts and distress.
 - Unless individuals were notified otherwise, third parties responding to the TRO consultation would reasonably expect that their personal data would not be disclosed by the council. The Commissioner has seen no evidence that that council notified individuals responding to the consultation that their personal data may be disclosed. On the council's website, a current notification regarding a similar proposed TRO in Bardney provides the following notification:

"Objections to the proposals, together with the grounds on which they are made, must be made in writing to Chief Executive - Lincolnshire County Council, Lancaster House, 36 Orchard Street, Lincoln, LN1 1XX or Email: TRO@lincolnshire.gov.uk (For the attention of: [name of individual redacted by ICO], Traffic Orders Section) by 3rd October 2022."
 - The Commissioner also notes that a summary of the objections and consultation comments which were received by the council from third parties was disclosed to the complainant.
37. As the Commissioner has concluded that disclosure would not be lawful under Article 6(1)(f) of the UK GDPR, he has not gone on to separately consider whether disclosure would be fair or transparent.
38. The council was therefore able to withhold the personal data from disclosure under Regulation 13(1).

Regulation 12(4)(a) – information not held

39. The council argues that it does not hold any further information falling within the scope of the request for information. It has therefore applied Regulation 12(4)(a) (information not held).
40. The ICO must therefore decide whether, on the balance of probabilities, the public authority holds any additional information falling within the scope of the request.

The complainant's position

41. The complainant argues that further information may be held by the council as very little information was provided in response to the request.

The council's position

42. The council argues that it has carried out adequate and appropriate searches in order to locate any information held by it falling within the scope of the request for information. It says that it has not located any further relevant information.
43. The council described the searches which it carried out. Files relating to the TRO are all held in a single file, which is a networked resource. This file was searched. In addition, searches were carried out by the relevant team, including email accounts. Whilst further information was located, this fell outside of the scope of the complainant's request for information.

The Commissioner's conclusion

44. The complainant is concerned that further information may be held by the council. However, the council has confirmed that it has carried out adequate and appropriate searches of its records in order to locate any relevant information which it holds falling within the scope of the request for information. Where it has located relevant information, it has disclosed this to the complainant or applied one of the exceptions cited above to withhold it.
45. There is no contradictory evidence available to the Commissioner that indicates the council's position is wrong.
46. On this basis, the Commissioner has concluded that, on the balance of probabilities, no further information is held by the council falling within the scope of the complainant's request of 3 August 2020.

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: 0203 936 8963
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

Ian Walley
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