

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 25 November 2022

Public Authority: Herefordshire Council

Address: Plough Lane
Hereford
HR4 0LE

Decision

1. The complainant requested information from Herefordshire Council ("the Council") relating to a specific planning application.
2. The Commissioner's decision is that the Council is entitled to rely on regulation 13(1) (personal data) to refuse to provide the withheld information.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. The complainant made the following information request to the Council on 26 February 2022:

"I request all correspondence between Herefordshire Planning Department and [name redacted] (or [name redacted] or [name redacted]) regarding planning application [reference number redacted]: Proposed single storey dwelling ([address redacted]) and ancillary outbuildings. To include renewable technologies, reinstatement of heritage orchard and biodiversity enhancements.

I can see that [name redacted] has sent in a letter of objection to the application dated 30th January 2022, but I have been informed that [name redacted] has also contacted the Head of

Planning and one other senior planner, or others in relation to this application and they have corresponded directly with him / given advice. I would like to see all letters, emails, records of phone calls or meetings etc regarding these exchanges.”

5. On 16 March 2022, the complainant wrote to the Council to clarify the request. The complainant stated the following:

“Even though we have made our FOI quite broad in terms of any correspondence between [name redacted] and the ‘planning department’ please can you ensure that this includes conversations and correspondence with [name redacted] (the NDP Manager or members of the team) too.”

6. The Council provided the complainant with some information within the scope of the request, specifically, two emails from the Council to the individual named in the request. The Council also provided the complainant with a link to where some information within the scope of the request could be located on the Council’s website. However, the Council withheld the remainder of the requested information citing regulation 13 (personal data) of the EIR as its basis for doing so.

Reasons for decision

7. This reasoning covers whether the Council is entitled to rely on regulation 13 of the EIR to refuse to provide the withheld information.
8. 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.
9. In this case the relevant condition is contained in regulation 13(2A)(a). 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”).
10. Section 3(2) of the Data Protection Act 2018 defines personal data as:
“any information relating to an identified or identifiable living individual.”
11. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

12. In this case, the complainant has requested correspondence between the Council and a named individual relating to a specific planning application. The Commissioner has considered the withheld information and is satisfied that the withheld information is personal data as the information relates to and identifies the individual named in the request. Therefore, it falls within the definition of 'personal data' in section 3(2) of the DPA.
13. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
14. 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.
15. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
16. The Commissioner considers that the complainant is pursuing a legitimate interest and that disclosure of the requested information is necessary to meet that interest.
17. The Council has explained that it has consulted the individual named within the request regarding the disclosure of the withheld information. The individual has not consented to the withheld information being disclosed. Furthermore, the individual named in the request has confirmed to the Council that they were acting in a personal capacity when they contacted the Council regarding the planning application and not in their capacity as a Parish Councillor.
18. As the individual named in the request was acting in a personal capacity when contacting the Council, the Council considers that the individual has a reasonable expectation that their correspondence would remain confidential. The Council considers that disclosure of the withheld information would cause the individual named in the request some distress and would result in their privacy being lost. The Council therefore considers that disclosure of the withheld information would not be lawful.
19. Whilst the Commissioner notes that the Council has disclosed two emails from the Council to the individual named in the request that fall within

the scope of the request, the Council has explained that the emails were disclosed as they relate to the neighbourhood development plan and contain information which is already within the public domain.

20. As the withheld information is not already within the public domain and the individual named in the request was acting in personal capacity when corresponding with the Council, the Commissioner considers that the individual named in the request has a strong and reasonable expectation that the withheld information would remain confidential.
21. Therefore, the Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individual named in the request. Therefore, he considers that there is no legal basis for the Council to disclose the withheld information and to do so would be in breach of principle (a).
22. The Commissioner's decision is that the Council is entitled to rely on regulation 13(1) of the EIR to refuse to provide the withheld information. He requires no further action to be taken by the Council in relation to this request.

Right of appeal

23. 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

24. 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.
25. 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

Daniel Perry
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