

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

Date: 20 December 2022

Public Authority: Bournemouth, Christchurch and Poole Council
Address: Town Hall
Bourne Avenue
Bournemouth
BH2 6DY

Decision (including any steps ordered)

1. The complainant requested from Bournemouth, Christchurch and Poole Council (the Council) information regarding an anonymous complaint letter of 2019 in respect of a planning application. The Council disclosed information to the complainant but withheld some information (a handwritten note) under regulation 13(1) (personal data) of the EIR. It also confirmed that no further information was held other than what had been disclosed.
2. The Commissioner's decision is the Council was entitled to withhold information under regulation 13 (1) of the EIR. He also determined that the Council does not hold further information within scope of the request. Therefore, the Commissioner does not require the Council to take any steps as a result of this decision.

Request and response

3. On 19 August 2022, the complainant wrote to the Council and requested information in the following terms:

"I am requesting a copy of the anonymous complaint letter received by the LPA in the summer of 2019 in respect of Planning App Ref: 8/18/0816/HOU, as it could be relevant to our outstanding complaint regarding the permission granted to a Council employee for the redevelopment of this property."

4. On 17 October 2022 the complainant contacted the Commissioner to complain about the way her request for information had been handled.
5. Following the Commissioner's involvement, on 2 November 2022 the Council responded. It provided the complainant with a copy of the requested letter which is a complaint about construction work in respect of the planning application in question. However, the Council redacted some information - a handwritten note at the bottom of the letter and said that disclosure of this entry may lead to the identity of the author. The Council confirmed to the complainant, what the handwritten note said, and it explained that 'handwriting' is considered to be personal data as an individual can be identified by their handwriting.
6. On 4 November 2022 the complainant asked the Council for a review and a full unredacted copy of the information requested.
7. The Council provided its review response and maintained its original position that the withheld information - the handwritten note, is personal data and is not disclosable under regulation 13(1) of EIR.
8. The following analysis focuses on whether the Council was entitled to withhold some of the information under regulation 13(1) (personal information) of EIR. Also, whether the Council holds further information within the scope of the request.

Reasons for decision

Regulation 13 – personal information

9. Regulation 13(1) of EIR provides that information is exempt from disclosure if it is the personal data of an individual other than the requester, and if its disclosure would otherwise breach any of the data protection principles.

10. 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').
11. Information will be personal data if it relates to an identifiable living individual. In this instance, the request is for unredacted information – the handwritten note at the bottom of an anonymous complaint letter. If the hand-writing was disclosed, it is possible that the sender may be identifiable and therefore breach the Data Protection Act.
12. The Commissioner accepts that the information clearly relates to the letter's author and is therefore their personal information. Disclosure under FOIA or the EIR is effectively an unlimited disclosure to the world at large.
13. The Commissioner recognises that the Council disclosed the requested information to the complainant but transposed the redacted information – the handwritten note. He understands that this was an attempt for the Council to maintain the anonymity of the letter's author in line with Article 5(1)(a) of the UK GDPR. The Council informed the Commissioner that its website explains "planning application representations will be published showing who has submitted comments. Anonymous representations are not published and therefore, we consider the author's expectation was that the letter would not be published."
14. The Commissioner acknowledges that the complainant considers she has a legitimate interest in disclosure of the withheld information He also acknowledges a legitimate interest in openness and transparency of a planning process. The complainant is of the view that having sight of the unredacted letter would "determine the facts". She said that it would "establish whether there is a hand written note at the foot of the first page, confirm it is only six words long and there is no second page."
15. In the case of an EIR request, the personal data is processed when it is disclosed in response to the request. This means the information can only be disclosed if to do so would be lawful, fair and transparent.

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

16. 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.
17. The Commissioner considers that the complainant is pursuing a legitimate interest in this case. The complainant has requested information relating to a planning application. She has requested this information as she believes it could be relevant to her outstanding complaint about the permission granted for the redevelopment of this property. Whilst the Commissioner accepts that the complainant is pursuing a legitimate interest, he does not consider disclosure of the handwritten note at the bottom of the anonymous complaint letter is necessary to meet that interest.
18. The Commissioner has seen the withheld information and given that the Council had disclosed the information in electronic form, this meets the legitimate interests identified. Therefore, the legitimate interest in openness and transparency are met and as the Council had provided the complainant with this version, this meets their interest of determining the facts.
19. The Commissioner notes the complainant's view that having sight of the unredacted letter, this would confirm there is no second page. However, the Commissioner has seen the withheld information and he is satisfied there is no second page. Therefore, no further information is held in relation to the request.
20. The Commissioner is satisfied that the individual concerned – in this case the author of the anonymous complaint letter, would have reasonable expectations that their personal data would not be disclosed to the wider world in response to an EIR request. Disclosing their personal data would be likely to cause them harm or distress.
21. The Commissioner has not seen any evidence of any wider public interest in disclosure of the withheld information.

22. The Commissioner has a well-established position in cases² such as this, and he considers the Council is therefore entitled to rely on regulation 13(1) of EIR to withhold a specific line within the letter in question.

The Commissioner's conclusion

23. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subject's fundamental rights and freedoms. He considers the disclosure of the information in question, would contravene a data protection principle as it would not be lawful. Therefore, the Commissioner concludes that the information is exempt under regulation 13(1) of the EIR and the Council was entitled to withhold some of the information.

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

24. With regard to the complainant stating "there is no second page" it is clear that she is disputing the Council holds more information. As previously mentioned, the Commissioner has viewed the withheld information and is satisfied that all information has been disclosed in electronic form. Therefore, the Council does not hold any further information within scope of the request.

² <https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4022465/ico-175981-g5v2.pdf>

Right of appeal

25. 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: 0116 249 4253

Email: grc@justice.gov.uk.

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

26. 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.
27. 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

Phillip Angell
Head of Freedom of Information Casework
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF