

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 5 January 2023

Public Authority: Sevenoaks District Council
Address: Council Offices
Argyle Road
Sevenoaks
Kent
TN13 1HG

Decision (including any steps ordered)

1. The complainant requested information relating to parking management issues on a specific estate and on specific dates.
2. Sevenoaks District Council (the "Council") provided a redacted copy of information in scope of the request, and cited section 40(2) (personal information) of FOIA for the redaction of the disclosed information and stated it did not hold any further information within scope of the request.
3. The Commissioner determined that the Council incorrectly handled the request under FOIA and that the request fell to be considered under the EIR as it concerned planning and the environment. Having considered the application of regulations 13 – personal information and 12(4)(a) – information not held – which have similarities to sections 40 and 1(1) of FOIA, he is satisfied that the redacted information constitutes personal data, therefore regulation 13(1) of the EIR is engaged, and, on the balance of probabilities, the Council did not hold any further recorded information in scope of the request.
4. The Commissioner does not require any steps to be taken as a result of this decision notice.

Request and response

5. On 16 August 2022, the complainant wrote to the Council and requested information in the following terms:
 - “1. CPM’s log of patrols as supplied by (name redacted) to (name redacted) (Planning Enforcement Team Manager) and referred to in the attached email [omitted from this response]
 2. All correspondence (i.e. emails or letters), notes of phone calls (including any written by hand) and any other written material between (name redacted) (Planning Enforcement Team Manager), (name redacted) or (name redacted) from 3 to 16 August 2022.
 3. Any internal documentation (i.e. emails, notebook notes, database entries) to, from or by (name redacted) (Planning Enforcement Team Manager) which relates to the breach of planning consent on the Ryewood Estate - 20/03027/DETAIL in relation to condition 34 (parking management) of permission 11/03307/CONVAR from 3 to 16 August 2022.”
6. The Council responded on the 2 September 2022 with redacted copies of information it held and on 7 September 2022 with an explanation to clarify its response that no further information was held in scope of the request.
7. The complainant responded on 7 September 2022 requesting an internal review for a fresh and thorough search and pointing out that the Council had not cited which exemption(s) it relied on for their response.
8. On 13 September 2022, the Council responded stating they had carried out a thorough review of the request and that they upheld the original response and stated that no further information in scope of the request was available. They confirmed their reliance on section 40(2) of FOIA for the redactions of personal information within the disclosed documents.

Scope of the case

9. The complainant initially contacted the Commissioner on 13 September 2022, to complain about the way their request for information had been handled.
10. The Commissioner considers the scope of his investigation is to determine if the Council was entitled to rely on regulation 13 of the EIR for redactions to the disclosed information, and whether it has correctly

refused to provide information requested under regulation 12(4)(a) of the EIR.

Reasons for decision

Regulation 13 - personal information

11. 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.
12. 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').
13. The request for information specifies the name of third parties with regards to a breach of planning consent. The Commissioner considers that, in the context of this request, the information clearly relates to third party individuals and is therefore their personal information.
14. Disclosure under either FOIA or the EIR is effectively an unlimited disclosure to the world at large, without conditions.
15. The Commissioner acknowledges that the complainant considers that they have a legitimate interest in the disclosure of the withheld personal information.
16. However, the Commissioner must balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms.
17. In this case, the Commissioner is satisfied that the individuals concerned would have the reasonable expectation 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.

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

18. Other than the requesters own personal interest, the Commissioner has not seen any evidence of a wider public interest to weigh in favour of disclosure of the withheld information, apart from the general interests of transparency and openness.
19. 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. The Commissioner therefore considers that disclosing the information in question would contravene a data protection principle as it would not be lawful. Therefore, he has decided that the data is exempt under regulation 13(1) by virtue of 13(2A)(a).
20. It follows that the Council is entitled to withhold this information.

Regulation 12(4)(a) - determining whether information is held

21. The Commissioner notes that the request seeks information about parking management measures – which would be environmental information. Whilst it would not affect his conclusion as to whether the Council does or does not hold the information, he considers that the Council should have dealt with the request under the EIR.
22. In cases where there is a dispute as to the information held by a public authority, the Commissioner will use the civil standard of proof, i.e., the balance of probabilities. In order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request.
23. This reasoning covers whether the Council are correct when it says that it does not hold any further information in scope of the request.
24. The Commissioner has carefully considered the points made by the complainant and the Council.
25. The Commissioner appreciates that the complainant has concerns about the way their request was handled by the Council. However, the Commissioner considers that the Council's responses have adequately addressed these points.
26. During the Commissioner's investigation the Council has explained its approach and how it has carried out appropriate searches in order to confirm that it does not hold the requested information. It is unfortunate that the Council did not convey this approach more clearly to the complainant, which may have helped them better understand what the Council has done to comply with their request.

27. The Commissioner is satisfied that from the information provided to him, on the balance of probabilities, the Council does not hold any further recorded information falling within the scope of this request.

Right of appeal

28. 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

29. 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.
30. 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