

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 2 November 2023

Public Authority: South Hams District Council
Address: Follaton House
Plymouth Road
Totnes
Devon
TQ9 5NE

Decision (including any steps ordered)

1. The complainant requested information from South Hams District Council ("the Council") relating to a planning enforcement complaint.
2. The Commissioner's decision is that the Council is entitled to rely on regulation 13(1) (personal data) of the EIR to refuse to provide the requested information.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 24 July 2023, the complainant wrote to the Council and requested information in the following terms:

"who has made the complaint of unauthorised landscaping your ref 027833."
5. The Council refused to provide the requested information citing regulation 13(1) (personal data) of the EIR as its basis for doing so.

Reasons for decision

6. This reasoning covers whether the Council is entitled to rely on regulation 13(1) of the EIR to refuse to provide the requested information.
7. 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.
8. 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").
9. Section 3(2) of the Data Protection Act 2018 defines personal data as:

"any information relating to an identified or identifiable living individual."
10. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
11. In this case, the complainant has requested the name of the individual who made a specific planning enforcement complaint. The Commissioner is satisfied that the name of the individual who made the planning enforcement complaint both relates to and would identify that individual. Therefore, it falls within the definition of 'personal data' in section 3(2) of the DPA.
12. 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."
13. 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.
14. 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.

15. Based on information provided to him by the complainant, the Commissioner understands that the planning enforcement complaint referred to in the request affects the complainant in some way. Therefore, he considers that the complainant has a legitimate interest in knowing who made the planning enforcement complaint and that disclosure of the requested information is necessary to meet that legitimate interest.
16. However, the Commissioner has reviewed the Council's planning enforcement privacy policy¹. The policy states that the name, address and contact details of an individual who has reported a planning breach will remain confidential within the enforcement and legal teams and not held in the public domain. The Commissioner therefore considers that the individual who made the planning enforcement would have a strong and reasonable expectation that their name would remain confidential.
17. The Commissioner also recognises that, given the nature of the requested information, and the context and circumstances surrounding the case, the complainant would be likely to be distressed by the disclosure of the information.
18. The Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individual who made the planning enforcement complaint. Therefore, he considers that there is no legal basis for the Council to disclose the requested information and to do so would be in breach of principle (a).
19. The Commissioner's decision is that the Council is entitled to rely on regulation 13(1) of the EIR to refuse to provide the requested information.

¹ <https://www.southhams.gov.uk/your-council/freedom-information-and-data-protection/privacy-and-personal-data/privacy-notice-9>

Right of appeal

20. 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

21. 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.
22. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF