

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 5 September 2016

Public Authority: The London Borough of Merton
Address: London Road
Morden
Surrey
SM4 5DX

Decision (including any steps ordered)

1. The complainant has requested information or correspondence sent between the London Borough of Merton (the "Council") and the Lawn Tennis Association (the "LTA") in connection with the registration of a named tennis club as a tennis venue (place to play) and regarding any of its members. The Council initially refused this request under the EIR and the Data Protection Act 1998 (the "DPA"). However on review it considered that the whole request fell under the DPA.
2. The Commissioner's decision is that the request is for personal data and is therefore exempt under regulation 5(3) of the EIR.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 7 December 2015, with respect to his tennis club, the complainant requested information under the Freedom of Information Act 2000 with respect to correspondence or documents sent between the Council and the LTA from 1st January 2012 to date:

- '1. Any information or correspondence sent to the LTA in connection with the registration of [name redacted] Recreation Ground as a tennis venue (place to play)*
- 2. Any information or correspondence received from the LTA in connection with the registration of [name redacted] Recreation Ground as a tennis venue (place to play)*
- 3. Any information or correspondence sent to the LTA in connection with [name redacted] Rec Tennis Club or any of its members*
- 4. Any information or correspondence received from the LTA in connection with [name redacted] Rec Tennis Club or any of its members'*
5. On 7 January 2016 the Council explained it was considering this request and would need more time to respond. It provided a response on 4 February 2016. The Council explained that it had considered the request under the EIR and the DPA. It provided some information to the complainant and explained it had redacted the personal data of third parties.
6. The complainant requested an internal review on 15 February 2016. He explained he was not satisfied because he considered the Council had not provided all the information it holds.
7. On 14 March 2016 the Council provided its internal review under the EIR. The Council explained it had considered the request under the EIR and the DPA. It upheld its original response and confirmed it had applied section 7(4) of the DPA to that part of the request which concerned the complainant's personal data.

Scope of the case

8. The complainant contacted the Commissioner 16 March 2016 to complain about the way his request for information had been handled.
9. On 20 April 2016 the Commissioner wrote to the Council to investigate its DPA response under case reference RFA0621098. She asked the Council to outline what information had been withheld under the DPA and what information had been withheld under the EIR.

10. On review the Council explained it considered that the whole request fell under the DPA. It therefore confirmed that the withheld information had been withheld under section 7(4) of the DPA.
11. On 31 May 2016 the Commissioner wrote to the complainant and explained she had reviewed the withheld information and was satisfied that it fell under the DPA and not the EIR. She explained she was satisfied that all the correspondence the Council holds with the LTA regarding the registration of the recreation ground as a tennis club is about the complainant and his request to register the venue. She provided the complainant with her DPA assessment.
12. The Commissioner also explained to the complainant that as the request had been reviewed under the DPA, she had closed the EIR case.
13. The complainant remained dissatisfied and a case review of the DPA case was conducted under case reference RCC0632622. However the complainant also requested a decision notice as he wished to appeal against the decision to the Information Tribunal.
14. The Commissioner explained that the right to a decision notice does not apply to requests for personal data which fall under the DPA. She explained that a decision notice with respect to case reference FER0628322 would only state that the request falls under the DPA.
15. The Commissioner explained that the complainant could appeal this decision to the Information Tribunal only if he considered that the information which had been withheld was not his personal data.
16. The complainant confirmed he required a decision notice to address the fact that the Commissioner:
 - *'Has decided not to oppose Merton Council's decision to ignore my request under the FoIA (despite initially basing its decision not to release the information on this Act).*
 - *Has considered it appropriate for the Merton Council to classify the information/data about the [name redacted] Rec Tennis Club (a registered charity of which I am the Chairman) as 'personal' in order to prevent its release.*
 - *Has not provided any justification of the legal reason which underpin why this case not been considered under the FoIA.*
 - *Has not condemned the delay in releasing the information.*
 - *Has not asked the Local Authority to provide evidence of the types of searches carried out to ensure that no more information is held.*

- *Has failed to condemn the Local Authority's spreading of potentially defamatory allegations (about me and/or the charity I represent) in violation of both the FoIA and DPA. My legal right to respond to these allegations has been taken away'*

17. The Commissioner considers this case is concerned with the Council's revised position that the requested information is the personal data of the complainant and therefore exempt from disclosure under regulation 5(3) of the EIR.

Reasons for decision

Regulation 5(3) – Requester's own personal data

18. Regulation 5(3) of the EIR states:

"To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data".

19. Paragraph (1) as referred to in regulation 5(3), requires that environmental information shall be made available by the public authority holding it on request.
20. After reviewing the withheld information, the Commissioner is satisfied that the requested information is the complainant's own personal data.

Other matters

Late response

21. The complainant has complained that the Council failed to respond to his information request in a timely manner.
22. Regulation 5(2) of the EIR states that a public authority has a duty to inform the requester whether it holds the requested information, and if so, to communicate the requested information to them "as soon as possible, and no later than 20 working days after the date of receipt of the request".

23. In this case, the complainant made the request on 7 December 2015 and the Council responded on 4 February 2016. At the time, because the Council considered that the request partly fell under the EIR, the Commissioner considers that it should have responded within 20 working days. However as in fact this proved to be a request which fell under the DPA, there is no breach of regulation 5(2) in this instance.

Further concerns

24. The complainant has argued that the Commissioner did not ask the Council to provide evidence of the types of searches carried out to ensure that no more information is held.

25. The complainant has also argued that the Commissioner has failed to condemn the Council's spreading of "potentially defamatory allegations" about him and the charity he represents.

26. However as the request does not fall under the EIR, these concerns are not relevant to this case.

Right of appeal

27. 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@hmcts.gsi.gov.uk

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

28. 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.
29. 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

Rachael Cragg
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