

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

Decision notice

Date: 10 May 2022

Public Authority: The Governing Council
Address: University of Derby
Kedleston Road
Derby
DE22 1GB

Decision (including any steps ordered)

1. The complainant has requested information related to the fire safety of the Copper Building in Derby from the University of Derby (the university). The university refused to provide some of the requested information, citing regulations 12(5)(a)(public safety), 12(4)(b)(manifestly unreasonable), 12(5)(e)(commercial confidentiality) and the regulation 13 exception for third party personal data of the EIR which it later partly withdrew.
2. The Commissioner's decision is that the university has not demonstrated that either regulation 12(5)(a) or 12(4)(b) of the EIR are engaged. The university also failed to provide adequate advice and assistance to the complainant regarding regulation 12(4)(b), contravening regulation 9. The Commissioner has decided that regulation 12(5)(e) is only engaged in relation to part four of the request where the public interest favours maintaining the exception. The Commissioner has also concluded that the third party personal data the university sought to withhold under regulation 13 has been cited inappropriately, except in part. He has

decided that no further information is held regarding parts one and three of the request, on the balance of probability.

3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Part one of the request – disclose all the remaining information withheld by the university under regulation 12(5)(a) and 12(5)(e). This includes personal data with the exception of personal contact details which were correctly withheld under regulation 13.
 - Part two of the request - Issue a fresh response that does not rely on the exception at regulation 12(4)(b) of the EIR. If necessary, provide the complainant with appropriate advice and assistance with regard to the requested information that can be provided, to enable him to make an appropriately refined request.
 - Part three of the request – Disclose the names of those individuals acting in a professional capacity, either for the university or third party organisations. Any personal contact details and signatures should not be disclosed as they were correctly withheld under regulation 13. Additionally, disclose the information withheld under regulation 12(5)(e).
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 4 February 2021 the complainant wrote to the university and requested information in the following terms:

"With reference to the Copper Building at One Friargate Square, Agard Street, Derby:

1. Please provide sight of fire safety strategy internal audits and associated records, from 2015 to September 2018.

2. Please provide sight of all communications with third parties related to a fire escape, to include communications with Derby City Council and the building's developer or their agents, from 2015 to September 2018.

3. Please provide sight of any records that reference building regulations and / or the requirement for a fire escape in a six storey building, from 2015 to present day.

4. Please provide sight of any records that reference a 'people counting' system being used for fire safety purposes from 2015 to present day."

6. The university responded on 3 March 2021 and provided some information within the scope of the request but refused to provide the remainder:

Part 1 – the university cited regulation 12(5)(a)(international relations, defence, national security and public safety) and regulation 12(5)(e) – (commercial confidentiality).

Part 2 – the university cited regulation 12(4)(b)(manifestly unreasonable) and regulation 12(3) (personal data).

Part 3 – some of the information was provided with redactions for third party personal data. The university also cited regulation 12(5)(e).

Part 4 – some of the information was provided with redactions for third party personal data. The university also cited regulation 12(5)(e).

7. The complainant asked for a review on 6 April 2021.
8. The university provided an internal review on 6 May 2021 in which it maintained its original position.

Scope of the case

9. The complainant contacted the Commissioner on 19 May 2021 to complain about the way their request for information had been handled.

10. On 27 July 2021, the complainant added -

"To assist the UoD [University of Derby] and the Information Commissioner, I can confirm that the previously requested records should include all records related to:

the decisions to issue and then cancel the December 2015 Invitation to Tender for the construction of a fire escape at One Friargate

Square (Copper Building), Agard Street, Derby, and communications between Derbyshire Fire & Rescue Service and UoD on threats of enforcement action and / or building closure related to the lack of fire escape at the Copper Building, to include 2017-18 correspondence with UoD executive management.”

11. On 12 November 2021, the university responded to the Commissioner, confirming the exceptions it had cited above but withdrawing its reliance on the third party personal data exception for some of the redactions made in part four. The university confirmed that it was citing regulation 12(5)(e) for other redactions made in parts three and four.
12. The university again reviewed its previous responses after a further letter from the Commissioner and decided to release some of the information relating to part one of the request. This was released to the complainant unredacted on 14 January 2022.
13. On 24 January 2022 the university released some further information relating to part four of the request to the complainant that it no longer considered to be personal data as it was in the public domain.
14. On 25 January 2022, the complainant wrote to the university to acknowledge the recent disclosures and to point out that he had already received one of the documents previously when it had not been password protected. He also noted that the fire safety assessment –

“document originated in October 2017 following a formal notification to the Vice-Chancellor of a threat of enforcement action ...by Derbyshire Fire & Rescue Service and that this action taken by DFRS occurred as a result of a change of focus by Derby City Council following the Grenfell Tower fire in June 2017”.
15. On 8 February 2022, the complainant wrote again to the university asking why certain emails had not been provided as part of its response. The complainant stated that they had written to the Acting Head of Law on 6 October 2015 pointing out the lack of a fire escape,

“...in the six storey building. Evidence gathered from other sources confirms that a Building Control Final Certificate (partial) was issued in respect of the Copper Building by the building control consultants on 08.10.15. The Final Certificate makes no reference to the lack of fire escape whatever”.
16. Having had further discussion with the complainant on 7 April 2022, the Commissioner wrote again to the university on 8 April 2022 for clarity as to what searches had been conducted to ascertain that it held no further

information regarding parts one and three of the request and, in particular, regarding any fire strategy reports. These are different documents to the fire risk assessments that were part provided and part withheld within the scope of part one of the request.

17. On 29 April 2022 the university responded to the Commissioner's questions.
18. The Commissioner considers the scope of this case to be the university's citing of regulations 12(5)(a), 12(5)(e), 12(4)(b) and 13 to the remaining withheld information. He has also considered what information the university holds in relation to parts one and three of the request.

Reasons for decision

Is the information environmental information for the purposes of the EIR?

19. Regulation 2(1) of the EIR defines environmental information as any information in any material form on:

"(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)'

20. The requested information relates to measures concerning fire safety. This is clearly an environmental measure referred to in regulation 2(1)(c) of the EIR that will also affect the state of human health and safety referred to in regulation 2(1)(f) of the EIR.

Regulation 12(2) – Presumption in favour of disclosure

21. Regulation 12(2) of the EIR states that a public authority shall apply a presumption in favour of disclosure.

Regulation 12(5)(a) – international relations, defence, national security or public safety

22. Regulation 12(5) states:

'For the purposes of paragraph (1)(a) a public authority may refuse to disclose information to the extent that its disclosure would adversely affect – (a) international relations, defence, national security or public safety'.

23. The university has provided the Commissioner with the withheld information and shared certain information that cannot be disclosed here.
24. The university has concluded that disclosing some information would adversely affect public safety.
25. To show that disclosing information would harm one of the interests in 12(5)(a) the university needs to:
- identify a negative consequence (adverse effect) of the disclosure that is significant (more than trivial) and is relevant to the exception claimed;
 - show a link between the disclosure and the negative consequence, explaining how one thing would cause the other;
 - show that the harm is more likely than not to happen.

The university's view

26. The university argues that disclosure would adversely affect its security position and public safety. It contends that sharing information relating to fire strategies and evacuation processes creates a risk to it illustrated by five of the six attack methodologies, as defined by the National Counter Terrorism Security Office:

- Non penetrative vehicle attack
- Penetrative vehicle attack
- PBIED Person borne Improvised Explosive device (suicide) attack
- Firearms/Weapons attack including close quarter – (Marauding Terrorist Attack)
- Placed IED.

27. The university further explains that,

“...in relation to these attack methodologies, evidence of prior terror attacks have directly involved the attackers gaining knowledge of evacuation points and fire strategies and utilising this knowledge to enhance their success rate of causing casualties, damaging fire equipment, causing confusion and disruption of access to Emergency Services.”

28. The university attached a document by the Centre for the Protection of National Infrastructure 'Fire as a Weapon'¹ which goes into greater detail about the risks that are associated with fire, fire equipment, fire strategies and evacuation points. The university highlights slide 17 where it says that under the protect element in the document there is specific advice around the protection of fire safety and it quotes:

“Consideration should be given as to the vulnerability of fire safety systems being tampered with. This could include understanding how fire alarm (and other equipment) panels can be accessed and how the positioning of firefighting equipment and detection systems may increase their vulnerability to interference, or disablement.”

“additional and sustainable SUBSTANTIAL and SEVERE protective Security measures reflecting the broad nature of the threat combined with specific business and geographical vulnerabilities and judgements on acceptable risk.”²

¹ [Fire as a weapon | CPNI](#)

² [Threat Levels and building response plans - GOV.UK \(www.gov.uk\)](#)

The university stated that the national threat level was 'severe', meaning that an attack was "highly likely" and it had heightened its building response levels accordingly.

29. The university adds that the requester often publishes its responses on their website and in social media. It claims that this content is often out of context. The university does not believe that the information should be released to the wider public.

The complainant's view

30. The complainant has been concerned for several years about what they sees as deficiencies in fire safety in the building in question. These are matters that they maintain have been brought to the attention of the university. The Commissioner understands that the complainant wants the requested information in order to continue to hold the authorities concerned (there are more than one) to account. Their view is that information to which they believe they are entitled has been refused and that there may have been an effort to conceal the requested information.

The Commissioner's view

31. The Commissioner's guidance³ explains that the term public safety is not defined in the EIR:

"But in broad terms this limb of the exception will allow a public authority to withhold information when disclosure would result in hurt or injury to a member of the public. It can be used to protect the public as a whole, a specific group, or one individual who would be exposed to some danger as a result of the disclosure."

32. The Commissioner has looked at 'Fire as a Weapon' which the university has cited in its arguments in relation to this exception. It contains the following:

³ [International relations defence national security or public safety \(ico.org.uk\)](https://ico.org.uk)

"This guidance forms part of the series of MTA guidance documents released under title Marauding Terrorist Attacks – Making your organisation ready. It is relevant to those responsible for the protection of Critical National Infrastructure (CNI) sites, sensitive sites and crowded places."

"OUT OF SCOPE The following are considered out of the scope of this guidance:

- Attacks which do not involve marauding terrorists and only involve the use of fire and would usually be described as arson. This includes the deployment of incendiary devices which have historically been used on their own as an attack methodology to start fires."⁴

33. The university has directed the Commissioner to 'Fire as a Weapon' and referred him to particular parts, such as slide 17. However, it is not clear to the Commissioner why the disclosure of the requested information would be of any more use to a marauding terrorist than a reconnoitre of the building, even if he was to accept that the guidance applied to the university.
34. The Commissioner's understanding is that the university (education/higher education/universities) is not listed as one of the 13 critical national infrastructure⁵ sites or a sensitive site. The criteria for a "crowded place" is more difficult to define. Educational establishments are potentially a target for terrorists as they contain large numbers of individuals in concentrated spaces, just as in many other areas of national life. However, the guidance specifically refers to marauding terrorists deploying incendiary devices and not attacks only involving fire, such as arson.
35. It is the Commissioner's understanding that the threat level was classed as 'severe' when the university responded to the Commissioner on 7 January 2022 but it was not at the time of the refusal notice or the internal review when it was classed as 'substantial'.
36. The argument the university is making regarding the possibility of fire safety information being published on a website is unclear. The university seems to be saying that the fact that this might occur

⁴ [Fire as a weapon | CPNI](#)

⁵ [CNI Hub - NCSC.GOV.UK](#)

strengthens its citing of the exception, though it acknowledges that a release under the FOIA is a release to the world in any case.

37. Having looked at the withheld information, the Commissioner is not persuaded that the release of this particular information would adversely affect public safety. The contrary view could reasonably be argued that transparency when it comes to fire safety assessments is more likely to safeguard the public who use the premises. The bar to engage this exception is high and the link has not been made between the disclosure and the negative consequence. Despite the university having been invited to provide further argument, it reiterated the same arguments it had used previously. Although the university identified a serious negative consequence to the release of this information, it did not make a clear enough link between how the release of the withheld information would cause the adverse effect on public safety. Therefore the exception is not engaged. The university can provide explanation and/or context to the information being disclosed if it is unclear or inaccurate.
38. For this reason, the Commissioner has not gone on to consider the public interest arguments.

Regulation 12(4)(b) – manifestly unreasonable

39. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
40. The university cited this exception for the second part of the request.
41. The Commissioner considers that a request can be manifestly unreasonable for two reasons: firstly, if it is vexatious, and secondly, where it would incur unreasonable costs for a public authority or an unreasonable diversion of resources.
42. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') specify an upper limit for the amount of work required beyond which a public authority is not obliged to comply with a request. The Fees Regulations provide that the costs associated with dealing with a request (determining whether the requested information is held; finding the information, or records containing the information; retrieving the information or records; and extracting the requested information from records) should be worked out at a standard rate of £25 per hour per person. The appropriate limit is set at £450 for the university, which is the equivalent of 18 hours.

43. However, the EIR differ from FOIA in that, under the EIR, there is no specific cost limit set for the amount of work required by a public authority to respond to a request. While the Fees Regulations relate specifically to FOIA, the Commissioner considers that they nevertheless provide a useful point of reference where the reason for citing regulation 12(4)(b) of the EIR is the time and costs that would be incurred in dealing with a request. However, the Fees Regulations are not the determining factor in assessing whether the exception applies.
44. The exception is subject to the public interest test which also means that a public authority must demonstrate that the public interest in maintaining the exception outweighs the public interest in favour of disclosure.

The university's view

45. The university originally retrieved 19,231 emails from a wide search criteria. It acknowledged that not all of these emails would be related to "fire escape" as it used "One Friar Gate Square" as a search criterion. The internal review upheld the use of the exception but did not add any further information.
46. The university subsequently discovered an error in its search parameters as it had not included all recipients'/senders' names. It therefore carried out the search again and this time it returned 56,208 emails. The university describes the request as "vexatious, voluminous and creating a disproportionate effort". It concluded that it would create unreasonable costs and be an unreasonable diversion of resources. It estimates that the time taken to perform the permitted tasks would be five minutes per email which would take 195 days.

The Commissioner's view

47. Firstly, the Commissioner does not propose to look at whether the request is vexatious as the university has provided very limited supporting evidence for this view. However, he can look at whether the request is manifestly unreasonable because of the burden it would place on the university.
48. The Commissioner understands from the university that it used "search criteria" which would indicate that more than one search term was used. However, the university has not provided the Commissioner with any search term other than "One Friar Gate Square". His view is that the search term used by the university as the best method of locating any email that might be relevant is too wide. The search term "One Friar Gate Square" is one way of ensuring that any relevant email is located

but is so all-encompassing that it was likely to have a significant number of returns. The complainant has asked for communications “related to a fire escape” over a three year period. It is hard to see how “communications” involving a fire escape would not contain the phrase “fire” or “fire escape”. Using this as an initial search term might have been more effective, even if it brought up other buildings, and then narrowing the search of these emails to the relevant building.

49. There may be cogent reasons for the manner in which the university conducted these searches but they have not been provided. Therefore the Commissioner is not persuaded that the university can rely on regulation 12(4)(b) as its basis for refusing to disclose the requested information, either on grounds of cost or vexatiousness. The exception is not engaged. Consequently, the Commissioner has not gone on to consider the public interest in the disclosure of the information.
50. Similarly, the Commissioner has not considered the university’s citing of personal data regarding these emails because, although it makes the reasonable assumption that the emails will hold personal data, it has not been able to locate all the personal data there may be, relying as it has on the provision of these emails being manifestly unreasonable.

Regulation 9(1) – duty to advise and assist

51. The EIR states the following:

“9.—(1) A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

(2) Where a public authority decides that an applicant has formulated a request in too general a manner, it shall—

- (a)ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request; and
(b)assist the applicant in providing those particulars.”

52. The Commissioner’s guidance states⁶:

⁶ [Manifestly unreasonable requests - regulation 12\(4\)\(b\) \(ico.org.uk\)](https://ico.org.uk/manifestly-unreasonable-requests-regulation-12(4)(b))

“When refusing a request for environmental information under regulation 12(4)(b) on the grounds of cost, public authorities should provide the requester with appropriate advice and assistance. This will usually involve setting out the costs involved in answering the request and explaining how it might be refined to make it more manageable and therefore, not manifestly unreasonable. The aim of advice and assistance should be to help the requester to submit a new, more manageable, request.”

53. Although the university did provide its cost estimate to the complainant and a limited explanation as to how it had arrived at its estimate, it did not provide him with any advice and assistance as to how he could bring his request within the fees limit.
54. The Commissioner’s decision is that the university has breached regulation 9(1) of the EIR. If necessary, after having reconsidered its citing of regulation 12(4)(b), the university must provide a response to the complainant which complies with the requirements of regulation 9(1) and provide advice and assistance in relation to part two of his request.

Regulation 12(5)(e) - confidentiality of commercial or industrial Information

55. Regulation 12(5)(e) of the EIR provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect:

“the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest”.

56. This exception was applied to the following –
 - The information withheld from part one of the request.
 - Company name and VAT number from part three of the request.
 - Contract prices/commercial offer from part four of the request.
57. There are several conditions that need to be met for this exception to be applicable. They are as follows –
 - Is the information commercial or industrial in nature?
 - Is the information subject to confidentiality provided by law?
 - Is the confidentiality provided to protect a legitimate economic interest?
 - Would the confidentiality be adversely affected by disclosure

58. The university has withheld information under this exception relating to parts one, three and four of the request and provided the Commissioner with the withheld information. The following are the university's arguments:

Part one of the request –

Disclosure would be likely to prejudice the third party's commercial interests and, in turn, the university. The university considers that it would make it more difficult for third parties to conduct dealings with public bodies without the fear of suffering commercially as a result.

59. No explanation was provided as to why the information was commercial, why it was subject to confidentiality or whether it was provided to protect a legitimate economic interest. As pointed out earlier in this decision notice, there is always a high bar to reach where an adverse effect is claimed. It is not therefore possible to consider the exception as engaged on the strength of the argument provided for this particular information and, despite slightly more detailed argument being provided as to the public interest in this matter, the Commissioner has not gone on to consider it.

Part three of the request:

60. The university redacted a company name and VAT numbers. It argued that release would be likely to prejudice the commercial interests of the third party and, in turn, the university. The university made the same argument about third party's suffering commercially when conducting dealings with public bodies.
61. It is the Commissioner's view that the university provided very similar arguments for this exception to those it had provided over the disclosure of personal data and arguments more in line with what prejudice would be likely to occur that are more fitted to a consideration of section 43(2) FOIA. The university's responses are too generic to engage the exception in relation to what it has withheld under parts one and three of the request.
62. The Commissioner considers that there has been such limited argument provided with regard to the withholding of this information that he does not consider the exception to be engaged and has therefore not gone on to consider the public interest.

Part four of the request:

63. The university redacted the contract prices/commercial offer from pp 6 and 7 of the information it had provided to the complainant. It argued that release would be likely to prejudice the commercial interests of the third party and, in turn, the university. The university made the same argument about third party's suffering commercially when conducting dealings with public bodies.
64. The brevity of the university's argument has meant that the Commissioner has had to use precedent and his experience to make a decision regarding this particular information, involving as it does, contract prices/a commercial offer.
65. The redacted part of the information is clearly commercial in nature as it is the contract prices/offer provided to the university. The Commissioner considers that "provided by law" includes confidentiality imposed on any person by the common law of confidence, contractual obligation or statute. For the common law duty of confidence to apply, the information must have the necessary quality of confidence, meaning the information should not be trivial in nature and should not already be in the public domain.
66. The university did not explain whether there was a contractual obligation but did stress that the information it sought to withhold was not common knowledge which he takes to mean that the information is not in the public domain.
67. The redacted information represents a tailored commercial offer. The Commissioner's view is that confidentiality of these figures is necessary to protect a company's legitimate economic interest. If these figures were disclosed, competitors would be able to access them whilst not being subject to the same disclosure. This could undermine any bids made in the future as their prices could be undercut. The exception is engaged.

Public interest test

68. The university has only provided limited arguments and none in favour of disclosing the redacted information. Therefore, the Commissioner has been unable to set out his public interest test in the usual way and has provided his own balancing exercise by setting out factors in favour of disclosing the requested information.

Public interest factors in favour of disclosure

69. There is a presumption in accordance with regulation 12(2) in favour of disclosure regarding environmental information under the EIR. There is

also a general public interest in transparency and accountability to the public in the way in which public money is spent in the awarding of contracts.

Public interest factors in favour of maintaining the exception

70. The university argues that it would not be in the public interest to disclose information about a commercial body, if that information was not common knowledge. Disclosure would make it more difficult for third party organisations to conduct commercial dealings with public bodies without fear of suffering commercially, as a result.

Balance of the public interest

71. Although the Commissioner does not consider that the university has provided sufficient detail, he has concluded from his previous decisions in similar matters that it is not in the public interest for these commercial offer prices to be in the public domain. It would be unfair for a company's commercial offer to be placed in the public domain as it could potentially lead to undercutting by competitors in future bids, either with the public authority or other third parties. It is not in the public interest for bidders to be commercially undermined when taking part in public authority contract bidding. A reduced pool of bidders is not in the public interest in the long term, as it undermines the competitiveness of the bidding process. The public interest in this respect lies in withholding this particular information.

Regulation 13 – third party personal data

72. The university withheld information from the first, second and third part of the request under this regulation. The Commissioner is not considering the second part of the request for reasons given in paragraph 50.
73. 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.
74. In this case the relevant condition is contained in regulation 13(2A)(a)⁷. This applies where the disclosure of the information to any member of

⁷ As amended by Schedule 19 Paragraph 307(3) DPA 2018

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 General Data Protection Regulation ('GDPR').

75. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then regulation 13 of the EIR cannot apply.
76. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

77. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

78. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
79. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
80. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
81. The university has redacted the names, contact details and signatures of individuals acting on its behalf or representing third parties.
82. Having considered the withheld information, the Commissioner is satisfied that the information relates to the personal data of university employees or third parties acting in their professional capacity, their names, contact details, and signatures. He is satisfied that this information both relates to and identifies these individuals. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
83. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under

the EIR. The second element of the test is to determine whether disclosure would contravene any of the DP principles.

84. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

85. Article 5(1)(a) of the GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

86. 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.

87. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

88. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that “processing shall be lawful only if and to the extent that at least one of the” lawful bases for processing listed in the Article applies.

89. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”⁸.

⁸ Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, regulation 13(6) EIR (as amended by Schedule 19 Paragraph 307(7) DPA provides that:-

90. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the EIR, it is necessary to consider the following three-part test:-
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
91. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

92. In considering any legitimate interest(s) in the disclosure of the requested information under the EIR, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.
93. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
94. The university argues that the complainant does not know the names or contact details of the individuals and that disclosure would not be in the public interest and would be likely to cause damage and distress to third parties. The university contends that disclosure would contravene data protection legislation. It acknowledges that disclosure provides openness and transparency which is in the public interest but that there is a

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

greater public interest in not undermining the interests of individuals/commercial bodies who provide information to the university on a confidential basis and would make them less likely to share information with the university on issues such as buildings and fire safety matters. This would impair the university's ability to develop policies and make decisions on the basis of fully informed advice and evidence which would not be in the public interest. The university's view is that, not only would the disclosure of personal data breach the key principles of data protection legislation but it would also engage Article 8 of the Human Rights Act, as university employees and contractors have a right to expect that it will protect their data and their right to privacy and a private life.

Is disclosure necessary?

95. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the EIR must therefore be the least intrusive means of achieving the legitimate aim in question.
96. The Commissioner considers that the disclosure of the names is necessary for the legitimate interest of the complainant (and other interested members of the public) in order that they can see who was involved in this matter in their professional capacity, either on behalf of the university or third parties. He considers the disclosure of employee name/s is necessary for accountability in relation to the application/s, although he recognises that the advice is on behalf of the university or third party. The Commissioner does not consider it necessary to disclose personal contact details or signatures as this is not a legitimate interest.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

97. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the EIR in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
98. In considering this balancing test, the Commissioner has taken into account the following factors:

- the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
99. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
100. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
101. The Commissioner's guidance⁹ states that, although an employee may regard the disclosure of personal information about them as an intrusion into their privacy, often this may not be a persuasive factor on its own, particularly if the information is about their public role rather than their private life. This implies that the employee has some responsibility for explaining the policies or actions of the organisation.
102. The Commissioner has considered the personal data and his view is that the role of all these individuals is professional, they are representatives of their organisations and their names are in the public domain. He does not accept that the disclosure of their personal data would be beyond their reasonable expectations when dealing professionally either for or with a public authority. The Commissioner is not persuaded that they would expect confidentiality. His view is that the named individuals are the public face of various third parties concerned and the university and that this means that the processing is necessary for the interests of the complainant regarding this FOI request and the concerns he expresses, or those of any other individual making the same request.
103. Based on the above factors, the Commissioner has determined that there is sufficient legitimate interest to outweigh the fundamental rights and freedoms of the applicants. The Commissioner therefore considers that there is an Article 6 basis for processing and so the disclosure of

⁹ [Requests for personal data about public authority employees \(ico.org.uk\)](https://ico.org.uk)

this personal data information would be lawful, with the exception of personal contact details or signatures.

Fairness and transparency

104. Even though it has been demonstrated that disclosure of the requested information under the EIR would be lawful, it is still necessary to show that disclosure would be fair and transparent under the principle (a).

105. In relation to fairness, the Commissioner considers that if the disclosure passes the legitimate interest test for lawful processing, it is highly likely that disclosure will be fair for the same reasons.

106. The requirement for transparency is met because as a public authority, the university is subject to the EIR.

The Commissioner's view

107. In this instance, the Commissioner has decided that the university has failed to demonstrate that the exception at regulation 13(1) is engaged, except where it relates to personal contact details and signatures.

Regulation 5(1) – right of access to information

108. Regulation 5(1) of the EIR requires a public authority holding environmental information to make it available on request.

109. In cases such as this where there is some dispute as to whether information falling within the scope of the request is held, the Commissioner is not expected to prove categorically whether the information is held. He is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities, following the lead of a number of Information Tribunal decisions.

110. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. He will also consider the searches carried out by the university and any other relevant factor.

111. As previously set out earlier in this decision notice, the Commissioner asked the university what searches it had conducted to determine if it held any further information to that which it had already provided or withheld from the complainant under parts one and three of their request.

112. It is unclear from the response the university has provided as to whether some of these searches and the search terms used were conducted at the time the request was made or very recently (after 8 April 2022).
113. The university explained that the search was carried out on the Estates shared drives by a key member of staff in the Estates Department. They used various terms such as "fire strategy" and "strategy" along with a manual review of the files held in the project's folders and SSOT folders associated with this particular building.
114. The Corporate Information, Governance and Assurance Team (CIGA) also conducted separate searches of the restricted drives on the university system using the search terms "fire strategy" and "fire report". Within the timeframe of 1 January 2015 to 31 December 2017, CIGA has also conducted an email search using the terms "fire strategy", "OFGS fire strategy", and "Copper Box fire strategy". The university says that the search criteria used would have pulled results showing any documents with the following file names: "fire", "fire strategy", "strategy", "fire report", "report", "OFGS", "OFGS fire strategy", "Copper Box" and "Copper Box fire strategy". These search terms would have located any information held about fire strategy reports. Other than fire risk assessments (referenced earlier), the university did not locate and is unaware of any fire strategy reports within the timeframe parameters.
115. The university holds a fire strategy from 2014 that had been produced by the original building developer when the building was being designed and constructed and is based on its use as an open plan office and not for the educational use that the university converted the building to upon taking the tenancy. The university explains that the report is based on a different strategy, for a different use class, and references a lower quality/coverage fire alarm system than the university installed when carrying out the refurbishment and alteration works. The university provided a redacted and unredacted version of this to the Commissioner but argued that it was of questionable relevance to the building as used by the university. It is based on a single means of escape and doesn't reflect the need for a secondary means of escape.
116. The university described what email searches had been carried out, as above. Staff consultations were held on 8 February 2021, 16 November 2021, 30 November 2021, 5 January 2022 and 27 April 2022. These meetings included the Director of Estates, the Deputy Director of Estates, the Data Protection Officer, the Senior Information Governance Assistant, the Associate Director of Legal, Governance and Assurance Services. Search terms used included those detailed in paragraphs 113-

114, various organisations' names and the following terms: "Friargate", "Derby City Council", "DCC", "regulations", "planners", "landlord", "completion certificate", "fifth floor", "architect", "structural engineer", "design build", "fire risk assessment". These searches were conducted on the network shared drive Cloud (One Drive), and the personal laptop of a key member of staff in the Estates Department. The university was unable to search the personal laptops of certain key officials associated with the project 2015-17 (the then Director of Estates and former Deputy Director of Estates) as they had left the university some years before. Their laptops would either have been reformatted and re-issued or, due to the passage of time, decommissioned and recycled.

117. The university's view is that it has conducted adequate searches and reviewed them. All the information was held electronically and to the best of its knowledge, no information of this type has been deleted or destroyed. It detailed its relevant retention policy as follows:

Strategy and Policy documents – superseded document plus 10 years;

Strategy and Policy Review and Audit – current year plus ten years.

There is no business reason to hold this information and, as far as it is aware, no statutory requirements.

118. Finally, the university concludes that it has provided a series of information over the last five years to the complainant in relation to this issue.

The Commissioner's view

119. Firstly, the Commissioner has been provided with a document from 2014 that is outside the parameters of the request. If the university wishes to provide this document to the complainant it is at liberty to do so but it is not obliged to do this as the information does not fall within scope.

120. The complainant has provided argument to the Commissioner as to why they believe that the university holds information that it has not provided. These arguments are based on their knowledge of this matter, understanding of the regulations, and communications with other public authorities where documents have been provided that indicate to the complainant the likelihood that the university holds more information than it has provided or indicated it has withheld. It is nevertheless beyond the Commissioner's remit to consider what information should be held by a public authority. He can only consider what information a public authority actually holds.

121. The Commissioner considers that the university has now carried out thorough searches of its systems with appropriate search terms regarding parts one and three of the request. The searches were far more extensive than those carried out regarding part two of the request. However, he is unsure how much detailed searching was carried out in response to the request and how much has been conducted recently. He is satisfied that, on the balance of probability, no further information is held that falls within the scope of parts one and three of the request.
122. Finally, it seems quite possible to the Commissioner that the searches made (possibly recently) by the university may impinge on part two of the request and the university's citing of regulation 12(4)(b) but, as the university has maintained that exception throughout, his analysis stands and it will be required to carry out the steps in relation to part two of the request.

Other matters

123. The Commissioner acknowledges that the university engaged with his investigation and provided its responses in a timely manner. However, he would like to draw the university's attention to his guidance on the ICO website: [Guide to the Environmental Information Regulations | ICO](#) which provides links and practical examples within it to individual guidance regarding the exceptions and what is required to engage them.

Right of appeal

124. 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

125. 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.

126. 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

Janine Gregory
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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SK9 5AF