

## **Environmental Information Regulations (EIR)**

### **Decision notice**

**Date:** 14 March 2023

**Public Authority:** London Borough of Havering  
**Address:** Town Hall  
Main Road  
Romford  
RM1 3BB

#### **Decision (including any steps ordered)**

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1. The complainant has requested copies of correspondence between the London Borough of Havering ("the Council") and the Environmental Agency about fly-tipping. The Council provided the information but relied on Regulation 13(1) of the EIR to redact some sections of personal data
2. The Commissioner's decision is that the Council has correctly applied Regulation 13(1) to the withheld information. The Council did not comply with regulation 11(4) as it did not provide an internal review response within the required timescales.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 15 April 2021, the complainant made the following request to the Council:

"I thought you may find the attached of interest. The first photo shows continued fly-tipping behind the 18th fairway adding to the 100,000 plus cu. metres already deposited there. The photo shows both household waste and additional building rubble. In your email of 16th November 2020 you told me that you would inform Environment Agency of my concerns regarding industrial scale fly-tipping between 2015-16. Please advise me of the date that occurred and whether you have had any response. Can you furnish me with a copy of the information you sent them and copies of any responses. I am entitled to view that

information under the Environment Information regulations. The second photo shows destruction of trees on site. The third photo shows where the fencing to BS 5838: 2012 should be as detailed in the planning application. Despite your assertions that some fencing is in place, it clearly is not! The fencing should be in place from the post in the foreground in the third photo all the way round to where the excavator is located. NO FENCING HAS EVER BEEN IN PLACE. Perhaps you have photos taken on your site visit to prove me wrong."

5. The Council responded on 13 May 2021 and provided the requested information, although they redacted some elements of the documents, stating this was done under Regulation 12(3) of the EIR. As their reasoning referred to personal data, the Commissioner has considered the withheld information under Regulation 13(1) of the EIR.
6. The Council conducted an internal review on 23 September 2021 in which it maintained their position.

### **Reasons for decision**

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7. The following analysis explains why the Commissioner is satisfied that the Council was entitled to rely on Regulation 13(1) to redact some elements of the requested information.
8. 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.
9. It is clear from reviewing the released material that the redacted sections represent the names of individual staff members at the Environmental Agency. Therefore, the redacted information would be classed as personal data.
10. 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.
11. The Commissioner has considered whether there is a lawful basis for disclosure under Article 6(1)(f) of the UK GDPR. He acknowledges an argument that wider legitimate interests in accountability and transparency are relevant here. While disclosure of the requested personal data would be necessary to satisfy such interests, on this occasion the legitimate interests in disclosure are overridden by the interests in the fundamental rights and freedoms of the data subject

which require the protection of personal data. In this instance, the Council has confirmed the named individuals are not senior management.

12. The Commissioner has determined this by balancing the legitimate interests in disclosure against the fact that the individuals concerned would have a reasonable expectation that the requested information would not be disclosed 'to the world at large' by the London Borough of Havering in response to a request under the EIR, and to do so may result in unwarranted harm or distress to the individuals concerned.

### **Other matters**

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13. Regulation 11(4) of the EIR states that an internal review must be provided to an applicant as soon as possible and no longer than 40 working days after the date of receipt of the request for a review. In this case the complainant requested an internal review on 28 April 2021 and the Council did not provide one until 13 October 2021, following the Commissioner's intervention. The Council therefore did not comply with regulation 11(4).

## Right of appeal

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14. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

15. 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.
16. 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

**Joanna Marshall**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**