

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 3 August 2023

Public Authority: Oxfordshire County Council
Address: County Hall
New Road
Oxford
OX1 1ND

Decision (including any steps ordered)

1. The complainant has requested information about Oxfordshire County Council's ("the Council") invitation to an expert to provide professional input to a committee on the matter of a local travel plan. The Council withheld the information under regulation 13 (Personal Data).
2. The Commissioner's decision is that the Council is entitled to withhold part of the information under regulation 13, but not the remainder.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose the information specified in the confidential annex, subject to the allowed redactions under regulation 13.
4. The Council 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 19 December 2022, the complainant wrote to the Council and requested information in the following terms:

"In the report of the Scrutiny Committee to Cabinet November 2022, you refer to evidence presented by Dr [name redacted by ICO].

Please supply a copy of any correspondence held, including that in email traffic, between any elected member or officer of OCC and Dr [name redacted by ICO] between 1 January 2022 and 28th November 2022 that includes the word or words 'traffic', 'filter', 'carrot' and/or 'stick'. Please also provide a description of the electronic search process undertaken to find such correspondence on your email systems."

6. The Council responded on 18 January 2023. It stated that no information was held.
7. Following an internal review, the Council wrote to the complainant on 6 June 2023. It revised its position. It stated that information was held but was exempt from disclosure under the exemption provided by regulation 13.

Reasons for decision

8. Regulation 13 provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
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 Council has withheld correspondence between a Council officer and a member of academic staff ("the expert") at the University of Oxford. The correspondence relates to the Council's invitation to the expert to provide professional input to a Scrutiny Committee about the proposed 'Central Oxfordshire Travel Plan'.

12. The information therefore clearly relates to identifiable individuals. As such the Commissioner is satisfied that the information represents personal data.
13. 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.”
14. 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.
15. 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.
16. The Commissioner considers that the complainant is pursuing a legitimate interest – transparency about professional input the Council has received from the expert – and that disclosure of the requested information is necessary to meet that legitimate interest. As such, the Commissioner must proceed to consider whether this interest overrides the rights and freedoms of the individuals – namely the officer within the Council and the expert.
17. Having reviewed the correspondence, the Commissioner perceives that it represents:
 - Correspondence between the officer and the expert about the latter’s availability.
 - Correspondence between the officer and the expert about the substantive matter (on which the Council seeks the expert’s input).

Correspondence about the expert’s availability

18. In respect of those details about the expert’s availability, the Commissioner considers that the expert will hold the expectation that such information, relating as it does to their private circumstances (and unrelated to their input to the committee), would not be disclosed to the public under the terms of the EIR.

19. In respect of the identity of the officer, the Commissioner's guidance on the personal data of public authority staff¹ explains that identities will typically only be disclosed where the individuals are senior officers, or otherwise publicly representing their authority. In the circumstances of this the Commissioner considers that neither circumstance applies, and that the individual would not reasonably expect their identity to be disclosed to the public under the EIR.
20. The Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individuals. Therefore, he considers that there is no legal basis for the Council to disclose this information and so the disclosure of the information would not be lawful.
21. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he does not need to go on to separately consider whether disclosure would be fair or transparent.
22. The Commissioner's decision is that the Council is entitled to rely on regulation 13 of the EIR to refuse to provide this information.

Correspondence about the substantive matter

23. In respect of that information that relates the substantive matter (the Central Oxfordshire Travel Plan), the Commissioner is aware that it represents input that the Council has sought from the expert in a professional capacity.
24. In decision notice IC-111493-D7M8², the Commissioner considered that where a society or a body, rather than an individual, is submitting its views on an issue from a position of some knowledge and authority, there is a greater public interest in that information being disclosed than if a response were submitted by an individual who does not have a similar level of knowledge and authority.
25. Similarly, where an authority such as an academic or academic institution provides their opinion on an issue, greater strength may be attributed to those arguments, and again, this places a stronger public interest on the submission being open and transparent about its

¹ https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4019734/ic-111493-d7m8.pdf>

contents. In this way, interested parties can have more informed information on the subject at hand when they are considering their own opinion on the proposals. They are also more likely to understand whether a public authority's ultimate decision has taken account of the evidence provided and ultimately reached an appropriate and fair decision.

26. The Commissioner recognises that academics or authorities on a subject should have some understanding that their views will be persuasive, and that as a result, there will be a greater onus on these opinions being made public and open where possible.
27. In the circumstances of this case, the Commissioner is mindful that disclosure of the information would place the expert's professional views into the public domain. However, the Commissioner considers it reasonable to consider that the expert is likely to already have some expectation of transparency around their input, as the substantive matter is one of public policy and they have provided their input as professional within their field. The Commissioner also notes that the fact the expert has contributed to the committee is already a matter of public record in the Council's published reports, and that there is no evidence available to the Commissioner that suggests that the input has been provided with an expectation of privacy. In such a context, it is reasonable for the Commissioner to conclude that disclosure would have limited impact on the rights and freedoms of the expert.
28. Further, the Commissioner understands that the Council's resultant decision making on the travel plan may have a significant impact on the central Oxfordshire area and its residents. In this context, there is a compelling legitimate interest that there is transparency about the specific information that the Council has used in its decision making.
29. Having considered the above, the Commissioner has determined that there is sufficient legitimate interest to outweigh the fundamental rights and freedoms of the expert. Therefore, he considers that there is a legal basis for the Council to disclose this information, and so to do so would be lawful.
30. 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).
31. 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.

32. The requirement for transparency is met because as a public authority, the Council is subject to the EIR.
33. The Commissioner's decision is that the Council is not entitled to rely on regulation 13 of the EIR to refuse to provide this information. The Commissioner requires the Council to disclose the information specified in the confidential annex, subject to the specified redactions under regulation 13.

Right of appeal

34. 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

35. 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.
36. 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

Daniel Perry
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF