



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights  
Decision notice FER0773271**

**Appeal Reference: EA/2019/0048**

**Considered on the papers  
On 22 July 2019**

**Before**

**JUDGE CHRIS HUGHES**

**TRIBUNAL MEMBERS**

**ROGER CREEDON & ANNE CHAFER**

**Between**

**DR PENELOPE UPTON**

Appellant

**and**

**INFORMATION COMMISSIONER**

Respondent

**DECISION AND REASONS**

1. The appeal is dismissed.
2. The Appellant in these proceedings was concerned that activities in a property adjacent to hers were in breach of planning control. In the course of dealings with the Stratford-upon-Avon District Council (SADC, the local planning

authority) on this issue the occupier of the adjacent property wrote to SADC. The Appellant subsequently sought information from SADC in these terms:-

*"On 30 January 2018 (name redacted) wrote a letter to (name and address redacted). She referred to a letter and associated attachments that she had received from (name redacted) on 24 January 2018. I have learnt today that the letter and the associated attachments contain a number of allegations against me and my husband. Please may I have a copy of both the letter and associated attachments, redacted if necessary'.*

3. SADC considered the application as a request for information under the Environmental Information Regulations (EIR) and declined to supply her with a copy of the letter relying on exemptions contained in EIR. The Appellant sought an internal review and SADC maintained its stance. The Appellant complained to the Respondent in these proceedings, the Information Commissioner (IC).
4. The IC investigated and issued her decision notice on 25 January. She examined SADC's reliance on regulation 13 EIR. This provides (so far as is relevant):-

*"13. – (1) To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.*

*(2) The first condition is –*

*(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene –*

*(i) any of the data protection principles;*

*...."*

5. She considered the data protection principles:-

*1 Processing shall be lawful only if and to the extent that at least one of the following applies:*

- (a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;*
- (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;*
- (c) processing is necessary for compliance with a legal obligation to which the controller is subject;*
- (d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;*

- (e) *processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;*
- (f) *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.*

6. She considered that the only possible route to lawful disclosure was (f).

7. The Data Protection Act defines personal data:-

*"3 Terms relating to the processing of personal data*

*(1) This section defines some terms used in this Act.*

*(2) "Personal data" means any information relating to an identified or identifiable living individual..."*

8. The information which was the subject of the request was clearly information relating to identifiable individuals.

9. The IC applied the sixth data protection principle (principle (f) and indicated that for the disclosure to be permissible under this principle the disclosure had to be necessary in the pursuit of a legitimate interest and struck an appropriate balance between the legitimate interest and the rights of the data subject.

10. She concluded that there was no wider interest in the disclosure beyond the Appellant's personal interest. In balancing the interests the IC reasoned:-

*42. It is necessary to balance the legitimate interests in disclosure against the data subjects' 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 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.*

*43. The only interests in disclosure of the requested information are the complainant's personal ones. Against this are reasonable expectations and specific wishes of the author of the withheld information to maintain confidentiality in relation to the relevant correspondence.*

*44. The Commissioner also believes the complainant's husband, the person with whom he was corresponding and the complainant would also have a reasonable expectation that their personal data would not be disclosed to the world at large under the EIR.*

*45. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms, and that the disclosure of the information would not therefore be lawful."*

11. In her grounds of appeal the appellant explained that she had the attachments and was only interested in the letter itself. She believed that the letter was false and malicious and she believed that the author of the letter had provided false information to the Council and the decision not to prosecute him was favouritism by a Council Officer. She could not refute the material in the letter without seeing it. While she did not explicitly address the reasoning in the IC's decision notice or explain how the IC had erred in law the thrust of her notice of appeal was that her concerns outweighed the interests of the author of the letter.
12. In resisting the appeal the IC relied on the reasoning in her decision notice and referred to guidance she has issued on the application of data protection principles to the information disclosure rights contained in FOIA and EIR which states:-

*"A disclosure of this nature could constitute a disproportionate and unwarranted level of interference with the data subject's rights and freedoms (particularly their right to the protection of their personal data under Article 8 of the Charter of Fundamental Rights of the European Union)."*

*This being the case in our view it is unlikely that disclosure under FOIA based on purely private interests would ever meet the [criteria]*

### Consideration

13. While the Appellant feels deeply aggrieved and suspicious about the decision of SADC not to disclose the letter and feels that there should have been a prosecution; the tribunal is satisfied that the IC has correctly applied the exemption from disclosure under EIR to this letter. The letter is personal information relating to individuals which was received by SADC in its exercise of its regulatory functions. For the disclosure of the personal information to be lawful it needs to fall within one of (a) – (f) (above) however:-
  - (a) There is no consent to disclosure.
  - (b) There is no contract
  - (c) SADC has no legal obligation to disclose
  - (d) There are no vital interest involved; it is only the personal interest of the Appellant.
  - (e) SADC does not need to disclose it in carrying out its functions
  - (f) The Appellant is pursuing her personal interests, there are no wider interests in disclosure and her interests are clearly overridden by the rights of the data subjects.
14. Public authorities such as SADC hold personal information about many individuals. This information should be held securely and should not be disclosed to the public without good reason in accordance with the principles of data protection. While the Appellant has claimed that SADC has shown

favouritism in its conduct she has adduced no evidence in support of this claim and the tribunal has discounted this assertion. There is no justification for disclosure in this case. The IC's decision is correct in law and the appeal is dismissed.

Signed Hughes

Judge of the First-tier Tribunal

Date: 2 August 2019

Promulgation date: 13 August 2019