

Adult and Community Services  
Data Protection & Information Officer

8 April 2016

Our Ref: e18822

**Re: Request for information under the Environmental Information Regulations 2004.**

Your request for information which was received on 15 March 2016 has been considered. Please find our response below.

**Your request:**

*Please could you provide the full list of noise complaints made to your authority in 2016 during January and February?*

*Please include the date and time of the complaint, the content of the complaint, and the address that is being complained about.*

*Could you also provide a full list of all actions taken against noise complaints during the same time period?*

**Our response:**

We have provided a report (attached) relating to the date and type of noise complaints. Please note we have removed the exact figures where the number is fewer than 5 as we consider that low level data such as this could potentially identify individual complaints. We have provided an approximation of total numbers so these low figures cannot be worked out.

Unfortunately, our standard performance reports do not currently capture the time at which the complaints were made.

Please note that the addresses of residential properties complained of have been withheld as they are exempt from disclosure under Regulation 13 of the Environmental Information Regulations. This exception relates to personal data about third parties where disclosure would contravene any of the data protection principles.

With regards to commercial addresses and the action taken, these cases remain open and subject to further investigation, and as such we are of the opinion that disclosing this may impact upon any future formal action.

Please see Appendix 1 for the detailed legal reasoning behind the refusal to provide all the information requested and your right of appeal.

Kind regards

Data Protection and Information Officer

## Appendix 1

In accordance with recent Information Commissioner's Office decisions, I am treating this as an environmental information request under the Environmental Information Regulations 2004 (EIRs) and this letter acts as a Public Interest Refusal Notice.

The Environmental Information Regulations 2004 define categories of information which can be exempt from disclosure if it is in the public interest to do so. We consider the information requested falls within the scope of three of these exceptions and that the public interest is in maintaining these exceptions.

### Regulation 13: Personal data

**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.*

In England & London Borough of Bexley v Information Commissioner (Appeal No: EA/2006/0060 & 0066) the Tribunal found that information relating to an address of a property was personal data as it would be easy to find out the identity of those living at that property from that address.

In terms of identifying fewer than 5 complaints we have applied the reasoning in the following Information Commissioner Decision [FS50543792](#)

Paragraphs 15 & 16:

*15. The Commissioner has considered the information and the number of individuals involved and has concluded that if the Council were to disclose the exact number in each category, particularly if the numbers for any were one, it could be possible to identify the individuals concerned. By aggregating the information the Council has minimised the possibility of identification.*

*16. The Commissioner does however note that the chances of any member of the public being able to cross-reference this information to identify specific individuals is not high but given the low numbers involved there is a risk that specific individuals could be identified by a person with knowledge of special educational needs and appeals in the area. The Council has stated that the complainant in this case is an individual who has knowledge of this. In addition, the Commissioner recognises that other individuals, such as parents at schools or Council employees may be able to identify individuals. Therefore, on the balance of probabilities, the Commissioner accepts the information is personal data.*

Similarly, we consider a determined individual with other knowledge of this matter may be able to use the specific figure to attempt to identify the individuals involved. We therefore consider that this information constitutes personal data.

We have now considered whether disclosure would breach any of the principles of the Data Protection Act.

In coming to this decision, I took into consideration the Data Protection Act 1998 principles.

Such information should only be processed for specified, lawful and compatible purposes and I do not consider this to be a compatible purpose [Principle 2].

Furthermore such information should be processed in accordance with the rights of the data subject who would have a legitimate expectation that the information would not be disclosed to members of the public [Principle 6].

I consider that the disclosure of this information to members of the public could cause damage or distress to the data subjects. I have given regard to condition 6 of Schedule 2 of the DPA which provides:

6 (1) the processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

In reaching a view I have taken account of the individual's reasonable expectations of what would happen to their personal data and whether disclosure would be incompatible with the purposes for which it was obtained and whether disclosure would cause any unnecessary or unjustified damage to the individual.

In this particular case the data subjects would not have any reasonable expectation that this information would be made public.

I have concluded that it is neither in accordance with the Data Protection Act 1998 principles nor in the public interest to release this information.

Regulation 12 (5) (b): Course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;

The information requested, on the Council's actions and any addresses which do not engage regulation 13 above, fall within the scope of the exception Regulation 12 (5) (b).

The exception applies because release of the information could prejudice the course of justice. In the ICO decision notice [FER0368830](#) they determined that as well as communication with legal advisers this exception can also cover other information relevant to the enforcement action.

Local authorities have a duty to deal with statutory nuisances under the Environmental Protection Act 1990. Enforcement action relies on the Council's ability to investigate cases away from public scrutiny. Negotiation is an important part of rectifying breaches. If this information was open to public scrutiny those affected may choose not to engage with the Council. This would limit the effectiveness of the enforcement investigation where it is not considered proportionate or expedient to pursue formal enforcement action.

Disclosing specific information relating to noise complaints would prejudice the Council's ability to effectively regulate statutory noise nuisance. We therefore consider that disclosure of this information would adversely affect the course of justice.

#### Public Interest Test

I have established that your request non-residential addresses and the actions taken by the Council come under the scope of the exceptions stated above. I have therefore gone on to consider the public interest test.

Regulation 12(2) states that with environmental information exceptions there is a strong presumption in favour of disclosure. However I have found that in all the circumstances of

the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Public interest factors in favour of disclosure

I acknowledge that there is strong public interest in the general principles of transparency and accountability. More specifically there is a public interest in understanding how decisions are made and ensuring judgments relating to noise nuisance complaints are fair and balanced.

Public interest factors in favour of maintaining the exceptions 12(5)(b) and 12(5)(f)

The reasons why the public interest favours withholding the information is that release of this information could prejudice the way the Council conducts investigations into this or any other matter over which it has a duty to investigate.

This is especially true in this case where the investigations are currently on-going. Disclosing this information would prejudice the authority in carrying out its statutory functions. More specifically, with regard to 12(5)(b) for the purpose of ascertaining whether any person has failed to comply with the law.

I therefore concluded that it was not in the public interest to release the information

In accordance with the Environmental Information Regulations 2004 this letter acts as a Refusal Notice.

You have the right of appeal against the decision. If you wish to appeal please set out in writing your grounds of appeal and send to:

Corporate Complaints and Access to Information Manager  
Community Engagement & Accountability Team  
Adult and Community Services  
3rd Floor Civic Centre  
44 York Street  
Twickenham  
TW1 3BZ

E-mail: [foi@richmond.gov.uk](mailto:foi@richmond.gov.uk)

If you are dissatisfied with the outcome of the internal appeal you may appeal further to the information Commissioner's Office at:

Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

fax: 01625 524 510  
DX 20819

[www.ico.org.uk](http://www.ico.org.uk)