

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

**Decision notice**

**Date:** 30 January 2011

**Public Authority:** London Borough of Hounslow  
Civic Centre, Pavilion CF  
Lampton Road  
Hounslow, Middlesex  
TW3 4DN

**Decision (including any steps ordered)**

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1. The complainant requested drawings, plans and calculations in relation to a loft conversion at her neighbours' property which was the subject of a building control application.
2. The Commissioner's decision is that the London Borough of Hounslow (the council) was entitled to withhold the requested information under Regulation 13(2)(a) of the Environmental Information Regulations 2004 (EIR).

**Request and response**

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3. On 16 July 2010, the complainant wrote to the council and requested information in the following terms:
  - A complete set of drawings and plans in relation to loft conversion works at her neighbours' address.
4. On 9 August 2010, the complainant also requested:
  - Plans and calculations submitted under building notice/building regulations by the owners of her neighbours' address.
5. The council responded to the first request informally on the 20 July 2010. It stated that the requested information was not a public record and therefore would not be provided. The council replied to the second request by issuing a formal Refusal Notice on 29 October 2010. The

information was withheld under section 40 of the FOIA (personal information) and/or Regulation 13(2)(a) of the Environmental Information Regulations 2004 (EIR).

6. Following an internal review the council wrote to the complainant on the 7 February 2011. The council upheld its previous decision to withhold the requested information.

### **Scope of the case**

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7. On 16 September 2010, the complainant contacted the Commissioner to complain about the way her requests for information had been handled.
8. The complainant was of the view that the council's response to her first request was unsatisfactory. The complainant felt that the requested information would have been in the public domain and accessible through planning procedures.
9. The Commissioner has inspected the withheld information, as well as considering the arguments put forward by the complainant and the council in its correspondence with both parties.

### **Reasons for decision**

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#### **EIR - regulation 13(2)**

10. The exception under regulation 13(2) applies to information that is personal data of an individual other than the applicant (the complainant), where disclosure of that information would breach any of the data protection principles or section 10 of the Data Protection Act ("DPA").

#### **Is the information personal data?**

11. In considering whether the council has correctly applied regulation 13(2) of the EIR to the withheld information, the Commissioner has first considered whether the withheld information can be considered to be 'personal data'.
12. According to section 1(1) of the DPA, personal data can be defined as follows:

*"'personal data' means data which relate to a living individual who can be identified –*

*a) from those data*

*b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller or any other person in respect of the individual"*

*and includes any expression of opinion about the individual and any indication of intentions of the data controller or any other person in respect of the individual".*

13. In considering whether the information requested is 'personal data', the Commissioner has also taken into account his own guidance on the issue.
14. The two main elements of personal data are that the information must "relate to" a living person, and that person must be identifiable. Information will "relate to" a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
15. It is the Commissioner's view that an individual or individuals can often be identified from a postal address through sources such as the Land Registry and the electoral roll. He is therefore satisfied that the requested information relates to a living individual (the owner of the adjoining property), and that the individual can be identified from the information in question.

### **Would disclosure contravene any of the principles of the DPA?**

16. As the Commissioner is satisfied that the requested information constitutes the personal data of the owner of the property in question, he has next considered whether disclosure would breach any of the data protection principles. The council stated that it considered disclosure of the withheld information would breach the first data protection principle.

### **First data protection principle**

17. The first data protection principle has two main components. They are as follows:
  - a) The requirement to process all personal data fairly and lawfully; and
  - b) The requirement to satisfy at least one DPA Schedule 2 condition for the processing of all personal data.

18. Both requirements must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing (including disclosure as a result of an information request) will not be in accordance with the first data protection principle. The Commissioner's general approach to cases involving personal data is to consider the fairness element first. Only if he believes that disclosure would be fair would he move on to consider the other elements of the first data protection principle.

### **Expectations of the individuals concerned**

19. The council confirmed to the Commissioner that this type of information would not automatically be released to a third party on request. In its view, disclosure of the requested information would be unfair to the neighbour.
20. The council pointed out that the legal framework for processing and determining planning applications is quite different from the legal process for building control applications. Whilst planning applicants are aware that their applications are subject to a statutory consultation process and that certain details will be placed in the public domain, applicants for building regulations are not subject to the same amount of public scrutiny under the Building Act 1984.
21. The complainant's neighbour submitted a building regulations application to the council via the building notice route in accordance with Regulation 12 of the Building Regulations 2010. Under this route the building notice is formally 'accepted' by the council. The owner can then proceed with the construction works subject to Building Control inspecting and requesting evidence of building regulation compliance from the owner. During this case, communications between the council and the neighbour were ongoing and the neighbour provided relevant information. The council reviewed and assessed this information and carried out inspections to ensure Building Regulation compliance.
22. The council was satisfied that the minimum standards of the Building Regulations had been achieved and a Completion Certificate was issued to the neighbour. The council informed the neighbour of the requirements of the Party Wall Act 1996. The council has pointed out that the functional requirements of the Building Regulations apply to the building being extended or altered, this does not include a requirement of consultation with neighbouring properties apart from advising of potential demolition sites under Section 80/81 of the Building Act 1984.

23. On this basis, the council is satisfied that applicants for building regulations consent submitted in accordance with Regulation 12 of the Building Regulations 2010 will have a reasonable expectation that their applications will not be subject to public scrutiny.
24. The council also takes the view that the process under the building control legislation is in place to entrust local authorities to make the required technical decisions on behalf of the public, but they are not required to make them in the public gaze. The council feels therefore that the information which was submitted to it, as part of the building regulations application, was done so in the expectation that it would not be disclosed to any third parties.

### **Consequences of disclosure**

25. It is the council's view that the information requested is, by its nature, private to the property owner and not information that he would want or expect to be disclosed into the public domain. Further, the Council does not believe there is an overwhelming public interest in disclosure because the building control process is well established and, in itself, provides reassurance that a construction has been built in line with the regulations. It is the council's view therefore that if this information were disclosed, the associated loss of privacy has the potential to cause unjustified detriment to the individual concerned.
26. On considering all the information submitted regarding this matter, the Commissioner agrees with the council's overall view that disclosure of the requested information would be unfair to the neighbour. Further, the Commissioner agrees that applicants for building regulations consent submitted in accordance with Regulation 12 of the Building Regulations 2010 will have a reasonable expectation that their applications will not be subject to public scrutiny.
27. Given this, the Commissioner is persuaded that, where information contained on the case file is not already in the public domain, its disclosure would be unwarranted. This is because such information is, by its very nature, private to the property owner and not information that they would want or expect to be disclosed. The Commissioner also agrees with the council that there is not a strong argument that disclosure would be in the public interest.
28. The Commissioner has considered the submissions made by the council and the nature of the withheld information and he is satisfied that disclosure of the remainder of the case file and the associated loss of privacy has the potential to cause unjustified detriment to the relevant individual in this case.

## **General principles of accountability and transparency**

29. The complainant has indicated that she did not need to obtain any personal data relating to or linking to the neighbour, as she already has this information. The complainant stated that she only ever wanted the structural drawings and specification relating to works which are affecting her property. The complainant believes that works were carried out by her neighbour without going through the correct procedure. If the neighbour had followed correct procedure, the complainant would have been entitled to receive a set of drawings and specifications. On this basis, the complainant feels disadvantaged and feels the relevant information could be provided by the council in redacted form. However, it appears that the council has subsequently consented to the works carried out by the neighbour and therefore this argument by the complainant does not affect our considerations.
30. The Commissioner acknowledges that there is a legitimate public interest in the building control process to determine that Building Regulations have been properly applied. However, in this case, he does not consider there to be sufficient legitimate interest to warrant circumvention of the existing Building Regulations processes and procedures. The Commissioner considers that the process has been introduced with the specific aim of entrusting the council to apply the Building Regulations appropriately. The Commissioner also believes that in this case there is a greater interest in protecting the integrity of the building consent application process and that disclosure could damage the public trust in the Building Regulations processes.
31. The Commissioner recognises that the legitimate interests of the complainant must be weighed against any unwarranted prejudice to the rights and freedoms or legitimate interests of the owner of the adjoining property. After considering these factors, the Commissioner has come to the conclusion that the disclosure of the requested information would be unfair to the data subject.
32. As the Commissioner has decided that disclosure would be unfair, there is no need for him to go on to consider the other elements of the first data protection principle. The Commissioner therefore upholds the council's application of regulation 13(1) in respect of the remainder of the project file because disclosure of this information would breach the first data protection principle.

## **Procedural requirements**

33. The Commissioner notes that the council failed to respond to the request of the 9 August 2011 within 20 working days. The refusal notice was provided on 29 October 2011, 54 working days after the request. Therefore, the Commissioner finds that the council breached regulation 5(2) of the EIR.

## Right of appeal

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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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

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** .....

**Andrew White**  
**Group Manager, Complaints Resolution**  
**Information Commissioner's Office**  
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**Water Lane**  
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**SK9 5AF**