

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 8 July 2014

**Public Authority:** Gravesham Borough Council  
**Address:** Civic Centre  
Windmill Street  
Gravesend  
Kent  
DA12 1AU

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

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1. The complainant has requested information from Gravesham Borough Council concerning the notices it has served under Section 215 of the Town and Country Planning Act 1990. The Council informed the complainant that it had served 7 such notices during the period specified in his request and disclosed to him the requirements of each notice and the manner in which the notice was resolved. The Council withheld the addresses where the notices were served in reliance of Regulation 13 of the EIR.
2. The Commissioner's decision is that Gravesham Borough Council is entitled to rely on Regulation 13 of the EIR to withhold the addresses.
3. The Commissioner does not require the Council to take any further action in this matter.

#### **Request and response**

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4. On 20 December 2103 the complainant wrote to the Council and asked the Council to be provided with the following information:
  - "1. The list of Section 215 notices issued by Gravesham Borough Council in the period 01.01.10 to 18.12.13 inclusive.
  2. The requirements listed for each to rectify the perceived detriment to amenity for each.

3. The resolution of each where resolved.”
5. On 10 January 2013 the Council responded to the complainant’s request. The Council confirmed that it had issued 7 Section 215 notices during the period covered by the request. The Council provided the complainant with the requirements and outcomes for each of the addresses where the notices were served.
6. On 5 February 2104 the complainant wrote again to the Council. He complained that the Council was wrong not to have included the specific addresses of the properties where the Section 215 notices were served.
7. The Council responded to the complainant on 20 February by undertaking an internal review of its handling of his information request. The Council advised the complainant that the addresses of properties which were subject to Section 215 notices was withheld in reliance of Regulation 13 of the EIR, on the basis that the addresses constitute personal data.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 18 March 2104 to complain about the way his request for information had been handled. The complainant stated his belief that the addresses of the properties where the Section 215 notices were served falls within the scope of his request and this information had been wrongly withheld on the grounds that the addresses do not constitute personal data.
9. This notice considers whether the Council is entitled to rely on the exception to disclosure provided by Regulation 13 of the EIR.

### **Reasons for decision**

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#### **Is the requested information ‘environmental information’?**

10. Regulation 2(1) of the EIR defines what constitutes ‘environmental information’. Subsections (a) to (c) state –
  - ‘(a) *the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*

- (b) *factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges, and other releases into the environment referred to in (a);*
  - (c) *measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements.'*
11. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.
12. In the Commissioner's opinion the information sought by the complainant would satisfy the definition of environmental information as it relates to notices served under Section 215 of the Town and Country Planning Act 1990. This statutory provision concerns the amenity of an area within the jurisdiction of the Council which is adversely affected the conditions of land in their area. The information clearly relates to the state of the environment and to measures which will affect the state of the environment. It therefore falls to be considered under the IR.

### **Section 215 Town and Country Planning Act 1990**

13. The Council is able to serve a notice on the owner of a property which, in the opinion of the Council, adversely affects the condition of the land in its area. This is provided by Section 215 of the Town and County Planning Act 1990, which states –
- "215(1) If it appears to the local planning authority that the amenity of a part of their area, or of an adjoining area, is adversely affected by the condition of land in their area, they may serve on the owner and occupier of the land a notice under this section.
- (2)The notice shall require such steps for remedying the condition of the land as may be specified in the notice to be taken within such period as may be so specified.
- (3) Subject to the following provisions of this Chapter, the notice shall take effect at the end of such period as may be specified in the notice.
- (4) That period shall not be less than 28 days after the service of the notice."
14. The Commissioner understands that the Council has no statutory obligation to publish any notice issues under Section 215.

## **Regulation 13 – Personal data**

15. Regulation 13 of the EIR provides an exception to disclosure of personal data where the applicant is not the data subject and where disclosure of the personal data would contravene any of the data protection principles.
16. In order to engage regulation 13 the information sought by the applicant must satisfy the definition of personal data provided by section 1(1) of the Data Protection Act 1990 ("the DPA").
17. Section 1(1) of the DPA defines personal data as:

"data which relate to a living individual who can be identified (a) from those data, or (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."
18. The Commissioner notes that the details of the notices and the manner in which they were resolved has already been disclosed by the Council under the EIR.
19. The Commissioner believes that the addresses sought by the complainant cannot be considered in isolation: They are inexorably linked to the terms of the complainant's request and therefore to the fact that the owners of those properties have had a Section 215 notice served on them by the Council. The association of the addresses with the Section 215 notices leads the Commissioner to determine that the requested information has biographical significance to the owners of the properties and therefore must be treated as their personal data.
20. The association of the requested addresses with the information already made public by the Council could be used to identify the owners of those properties, not least via the electoral register of the land registry, and therefore lead to the identification of persons who have been successfully prosecuted under section 216 of the Town and Country Planning Act. These persons will have committed an offence under that Act.
21. In consequence of the above the Commissioner considers that all of the addresses constitute personal data and, moreover constitute sensitive personal data.
22. Sensitive personal data as defined by sections 2(g) and 2(h) of the DPA:

"...sensitive personal data" means personal data consisting of information as to—

  - (g) the commission or alleged commission by him of any offence, or

(h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.”

23. The Commissioner therefore finds that the information sought by the complainant engages regulation 13 of the EIR.
24. In order to determine whether a public authority may disclose personal data under the regulation 13 of EIR, the public authority must determine whether such disclosure would not contravene the first data protection principle.
25. The first data protection principle states:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

  - (a) at least one of the conditions in Schedule 2 is met, and
  - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”
26. In order to satisfy the first data protection principle the public authority must conclude that the processing is fair to the data subjects and also would satisfy at least one condition from Schedule 2 of the DPA, and, where the requested information is sensitive personal data, at least one condition from Schedule 3 of the DPA.
27. In this case the Commissioner has determined that the Council is correct to withhold the addresses of properties where it has served a notice under Section 215 of the Town and Country Planning Act. The Commissioner considers that the disclosure of the addresses would be unfair to the owners those properties as they would have no reasonable expectation that their sensitive personal data would be put into the public domain by the Council.
28. Should the addresses be made public, it is easy for the Commissioner to envisage that the owners of the properties might be subject to the unwarranted intrusion of their privacy by third parties.
29. The complainant has stated to the Commissioner that he requires the information for comparative purposes as he himself was subject of a section 215 notice.
30. The Commissioner must stress that the purpose of the person making a request under the EIR is not germane to the Council’s consideration of a request. Nevertheless the Commissioner believes that the information already provided to the complainant is sufficient to meet his stated purpose.

31. Notwithstanding the absence of fairness, the Commissioner considers that disclosure of the addresses would not satisfy any of the conditions contained in either of Schedule 2 or 3 of the DPA.

## Right of appeal

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32. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

33. 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.
34. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**