

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

**Date:** 6 October 2014

**Public Authority:** Staffordshire Moorlands District Council

**Address:** Moorlands House  
Stockwell Street  
Leek  
Staffordshire  
ST13 6HQ

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

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1. The complainant has requested building notices and an inspection log (2012) for a named domestic address.
2. The Commissioner's decision is that Staffordshire Moorlands District Council correctly relied on regulation 13 to withhold the requested information.
3. The Commissioner requires the public authority to take no steps to ensure compliance with the legislation.

### **Background**

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4. The Building Regulations are made under powers provided in the Building Act 1984, and apply in England and Wales. The current edition is the 'Building Regulations 2000' (as amended) and the majority of building projects are required to comply with them. They exist to ensure the health and safety of people in and around all types of buildings (i.e. domestic, commercial and industrial). They also provide for energy conservation, and access to and use of buildings.
5. The withheld information in this case is information generated during the improvement and renovation of a property undertaken by its then owner. Since the improvement of the property was subject to Building Regulations, the property owners were required to seek Building Regulations approval. The Council is responsible for granting this

approval once a construction is complete and monitoring the construction as it progresses, in line with the Building Regulations.

6. The property was subsequently purchased by the complainant. The complainant believes that there are defects in the property which evidences that the approval process was incorrectly carried out.

## **Request and response**

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7. On 5 December 2013, the complainant wrote to Staffordshire Moorlands District Council (SMDC) and requested information in the following terms:
  - Building Notices and an Inspection log (2012) for a named domestic address.
8. SMDC responded on 7 January 2014. It stated that whilst it held the requested information it relied on section 40(2)(a) not to release it to the complainant.
9. Following an internal review SMDC wrote to the complainant on 6 February 2014. It stated that it upheld its original decision.

## **Scope of the case**

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10. On 28 February 2014 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
11. SMDC, on 15 July 2014, explained to the Commissioner that after re-considering the matter it was of the view that the correct statutory regime was the Environmental Regulations 2004 (EIR). Regulation 13 therein, it believed, entitled it to withhold the requested information.

## **Reasons for decision**

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12. The first question for the Commissioner to address here is whether the information is environmental in accordance with the definition given in regulation 2(1) of the EIR, which defines environmental information as follows:

“any information in written, visual, aural, electronic or any other material form on –

- (a) the state of the environment, such as air and atmosphere, water, soil, land and landscape and natural sites including wetlands...
- (b) factors, such as substances, energy, noise, radiation or waste, emissions...affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes...and activities affecting or likely to affect the elements and factors referred to in (a) and (b)...".
13. The view of the Commissioner is that the information in question relates to "measures" that fall within the scope of regulation 2(1)(c). That is the information was generated as the works were subject to the Building Regulations. The Commissioner understands that the building involved constructing living space in the existing roof space of the address with resulting changes to the exterior of the property. The Commissioner therefore considers that the information relates to a 'measure' that affected the landscape, which is an element of the environment set out in regulation 2(1)(a). Information relating to this would constitute "any information on" the application or measure. Therefore it is the Commissioner's view that the request was for environmental information
14. Regulation 5(1) of the EIR provides that "a public authority that holds environmental information shall make it available on request". A public authority may only refuse to disclose information where an exception applies.
15. Regulation 13 provides that personal data of someone other than the person making the request shall not be disclosed where either one of two conditions are satisfied. The first condition, which is relevant here, is that disclosure would contravene one of the data protection principles in the Data Protection Act 1998 (DPA) or would contravene section 10 of the DPA.
16. Personal data is defined in section 1(1) of the DPA as -
- "...data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller; and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any person in respect of the individual".
17. In determining whether information is the personal data of individuals other than the requester, that is, third party personal data, the Commissioner has referred to his own guidance and considered the information in question. He has looked at whether the information

relates to living individuals who can be identified from the requested information and whether that information is biographically significant about them.

18. As requested, the withheld information consists of building notices and an inspection log relating to a domestic property over a particular period of time. 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. It would be a relatively simple task to marry up this information, with what is withheld, to determine the name of the owner/occupier when the building work was undertaken and inspected. Additionally, local knowledge of the area will likely mean that local residents will know who occupied and/or owned the building at the time the requested information was compiled. The complainant, of course, knows the name of the building's owner when the information was compiled. The withheld information therefore provides, amongst other things, biographical detail as to what building work the previous owner/occupier had undertaken. The Commissioner therefore does not doubt that the withheld information is the personal data, of the previous owner/occupier, for the purposes of the EIR.
19. In considering whether disclosure of personal data would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner considers the following factors:
  - The data subject's reasonable expectations of what would happen to their personal data.
  - The consequences of disclosure.
  - The balance between the rights and freedoms of the data subject and the legitimate interests of the public.
20. The Commissioner understands that the "data subject" has not given consent for the public dissemination of the withheld information that is their personal data. Furthermore, and as the Council has argued to the Commissioner, the Council does not as a matter of practice publically divulge Building Regulations files. Accordingly, the data subject would have the reasonable expectation that this data would not be publically disseminated.
21. The Commissioner's view is that it would be entirely reasonable for the data subject to object to the disclosure of his personal data in this matter. The data subject was compelled by law to in effect allow the Council to record his personal data in the context of building works carried out on his own property. It is quite reasonable for him then not to want this information publically disseminated. The Commissioner is

satisfied that the disclosure of this information into the public domain would have a detrimental impact on the data subject's privacy.

22. Acknowledging the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where regulation 13 has been cited is in favour of protecting the reasonable expectation of privacy of the data subject. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.
23. There is an argument for disclosure; whether the building regulations process was properly followed and/or whether the inspection regime is fit for purpose given the difficulties that the complainant says have been identified in the property post-sale. The complainant maintains that "the difficulties" cost a significant amount of money to rectify.
24. Notwithstanding this the Commissioner doubts how truly illuminating (for the public rather than the complainant) releasing the withheld information would truly be. This is because it merely records, in brief form, the view of a building inspector on building work on private property.
25. There may be some justification as to why the complainant himself may reasonably wish to access this information and have it released to serve his private interest in the matter. However, the Commissioner can only consider whether the information should be released into the public domain without restriction rather than whether the complainant alone should have access to it.
26. Due to the reasons above the Commissioner cannot find a compelling public interest reason to override the data subject's right of privacy. Accordingly the Commissioner finds that this information was correctly withheld by virtue of regulation 13.

## Right of appeal

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27. 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 123 4504

Fax: 0870 739 5836

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)

28. 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.
29. 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 .....**

**Alexander Ganotis**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**